

**DESIGN-BUILD CONTRACT**  
**Dulles Corridor Metrorail Project**  
**Phase 2**  
**Package B**

by and between



**THE METROPOLITAN WASHINGTON AIRPORTS AUTHORITY**

and

**HENSEL PHELPS CONSTRUCTION CO.**

**Metropolitan Washington Airports Authority  
PROCUREMENT AND CONTRACTS DEPT.  
SOLICITATION OFFER AND AWARD**

PAGE 1-1

Metropolitan Washington Airports Authority Procurement and Contracts Dept., MA-29 1 Aviation Circle, Suite 154 Washington, DC 20001-6000		<b>1. FOR INFORMATION CALL</b> NAME: <b>Eric R. Carey</b> TELEPHONE NUMBER: (No Collect Calls) <b>703-572-0514</b>							
<b>2. SOLICITATION NUMBER</b> <b>8-14-C001</b>	<b>3. TYPE OF SOLICITATION</b> REQUEST FOR PROPOSALS (RFP)	<b>4. DATE ISSUED</b> <b>February 11, 2014</b>							
<b>SOLICITATION</b>									
<b>6. DESCRIPTION OF SUPPLIES, SERVICES, CONSTRUCTION</b>									
Design and construction of Package B (Rail Yard and Maintenance Facility) for Phase 2 of the Dulles Corridor Metrorail Project as specified in Solicitation 8-14-C001.									
All questions concerning the Technical Proposals for this solicitation must be submitted by <b>2:00 PM</b> local time, <b>March 24, 2014</b> via e-mail to <a href="mailto:P2PackageB@dullesmetro.com">P2PackageB@dullesmetro.com</a> . Questions and clarifications specifically related to the Price Proposal will be accepted after the Technical Proposal Due Date until <b>2:00 p.m. local time on May 16, 2014</b>									
<b>Note:</b> This Solicitation has a 14% DBE Participation Goal.									
<b>NOTE:</b> CONTRACTORS ARE RESPONSIBLE FOR VERIFYING NUMBER AND DATES OF AMENDMENTS ISSUED AFTER SUBMISSION OF THE TECHNICAL PROPOSAL. FAILURE TO ACKNOWLEDGE AN AMENDMENT MAY RESULT IN PRICE PROPOSAL BEING DETERMINED NON-CONFORMING.									
<b>6. BOND REQUIREMENTS</b>									
PROPOSAL BOND: Yes (5%)      PAYMENT BOND: Yes (100%)      PERFORMANCE BOND: Yes (100%)									
<b>7. PRE-PROPOSAL CONFERENCE</b>									
DATE: December 4, 2013      TIME: 9:30 AM LOCATION: Doubletree Hotel - Sterling (Dulles Airport), Sterling, Virginia									
<b>9. DEADLINE FOR OFFER SUBMISSION</b>									
Sealed Price Proposals in original and one duplicate copy are due at the place specified at the top of this form by <b>2:00 P.M.</b> local time, <b>June 27, 2014</b> . Sealed envelopes containing Price Proposals shall be marked as required in the RFP.									
<b>OFFER (Must be fully completed by Offeror)</b>									
<b>9. NAME AND ADDRESS OF OFFEROR (Include Zip Code)</b>		<b>11. REMITTANCE ADDRESS (If different than Item 9)</b>							
Hensel Phelps 4437 Brookfield Corporate Dr. Chantilly, VA 20151									
		<b>12. E-MAIL ADDRESS</b> wthompson@henselphelps.com							
<b>10A. TELEPHONE NUMBER</b> 703.828.3200	<b>10B. FAX NUMBER</b> 703.802.1580	<b>12B. COMPANY INTERNET WEBSITE</b> www.henselphelps.com							
NOTICE: Offer shall be valid for 60 days									
<b>13. ACKNOWLEDGMENT OF AMENDMENTS (This Offeror acknowledges receipt of amendments to this solicitation - give number and date of each)</b>			<b>14A. NAME &amp; TITLE OF PERSON AUTHORIZED TO SIGN OFFER</b>						
AMENDMENT NO.	1	2	3	4	5	6	7	William A. Thompson Vice President & District Manager	
DATE	3/10	3/19	4/1	4/9	5/15	6/2	6/17		
								<b>14B. SIGNATURE</b> 	<b>14C. DATE</b> 6/27/14
<b>AWARD (To be completed by MWAA)</b>									
<b>15. ACCEPTED AS TO ITEMS NUMBERED</b> ALL				<b>20A. NAME OF CONTRACTING OFFICER</b> Eric R. Carey					
<b>16. CONTRACT NUMBER</b> 8-14-C001		<b>17. AMOUNT</b> \$252,989,000		<b>20B. SIGNATURE OF CONTRACTING OFFICER</b> 					
<b>18. DATE OF AWARD</b> 7-29-2014		<b>19. CONTRACT EFFECTIVE DATE</b> 7-29-2014							

## TABLE OF CONTENTS

	Page
ARTICLE 1. GENERAL .....	2
1.1 Certain Definitions.....	2
1.2 Recitals .....	2
1.3 Contract Documents and Order of Precedence.....	2
1.4 Project Technical Requirements and Codes and Standards. ....	3
1.5 Notice to Proceed.....	4
1.6 Confirmation of Scheduled Substantial Completion Date and Contract Price .....	4
ARTICLE 2. CONTRACTOR AND OWNER RESPONSIBILITIES .....	5
2.1 Scope of Work in General .....	5
2.2 Standards of Performance.....	5
2.3 Contractor Obligations.....	5
2.4 Owner Obligations.....	8
ARTICLE 3. FINAL PLANS AND SPECIFICATIONS.....	9
3.1 Contractor’s Technical Proposal and Obligation to Review Project Technical Requirements. ....	9
3.2 In-Progress Design Review .....	10
3.3 Owner’s Review of Design Documents and Final Plans and Specifications.....	10
3.4 Contractor Proposed Changes to Project Technical Requirements and/or Code(s) and Standard(s).....	10
ARTICLE 4. CONSTRUCTION SUPERVISION, SAFETY AND QUALITY MANAGEMENT .....	12
4.1 Supervision and Construction Procedures .....	12
4.2 Owner Oversight.....	14
ARTICLE 5. DIFFERING SITE CONDITIONS.....	15
5.1 Duty to Investigate.....	15
5.2 Definition.....	15
5.3 Procedure .....	16
5.4 Remedy.....	16
5.5 Baseline for Differing Site Conditions Based on Geotechnical Conditions Procedure .....	16
5.6 Historical, Scientific, and Archeological Discoveries. ....	16
ARTICLE 6. NOT USED .....	16
ARTICLE 7. NOT USED .....	16
ARTICLE 8. KEY PERSONNEL .....	17
8.1 Approval and Removal of Key Personnel .....	17

8.2	Availability of Key Personnel.....	17
8.3	Not Used .....	17
ARTICLE 9. HAZARDOUS SUBSTANCES .....		17
9.1	Hazardous Environmental Conditions .....	17
ARTICLE 10. APPLICABLE LAW AND REGULATORY APPROVALS .....		19
10.1	General.....	19
10.2	Obligation to Obtain Regulatory Approvals .....	20
10.3	Change in Law .....	21
ARTICLE 11. WARRANTIES .....		21
11.1	Warranties.....	21
11.2	Warranty Period.....	22
11.3	Subcontractor Warranties .....	22
11.4	Assignment of Warranties .....	23
11.5	Damages for Breach of Warranty .....	23
11.6	Landscaping Maintenance .....	24
ARTICLE 12. ESCROW BID DOCUMENTS, RECORDS AND REPORTS.....		24
12.1	Provision and Maintenance of Escrow Bid Documents.....	24
12.2	Maintenance of Books and Records .....	24
12.3	Public Records .....	25
12.4	Reporting Requirements .....	25
12.5	Access to and Audit of Books and Records.....	26
ARTICLE 13. SCHEDULES AND ADJUSTMENTS TO SCHEDULED SUBSTANTIAL COMPLETION DATE.....		27
13.1	Proposal and Baseline Schedules.....	27
13.2	Excusable Delays.....	27
13.3	Adjustment of Scheduled Substantial Completion Date.....	28
13.4	Force Majeure Events .....	29
13.5	Remedy for Concurrent Delay .....	30
13.6	Recovery Schedules.....	30
ARTICLE 14. COMPENSATION .....		30
14.1	Contract Price .....	30
14.2	Payments.....	32
14.3	Retainage, Deductions and Withholding .....	36
14.4	Additional Requirements for Specific Payment Events.....	38
ARTICLE 15. REPRESENTATIONS AND WARRANTIES.....		38
15.1	Owner Representations and Warranties.....	38
15.2	Contractor Representations and Warranties.....	39
ARTICLE 16. RISK OF LOSS AND TITLE .....		40
16.1	Risk of Loss .....	40
16.2	Title.....	40



16.3	Title to Work Product .....	40
<b>ARTICLE 17. TIME FOR COMPLETION; SUBSTANTIAL COMPLETION; AND FINAL ACCEPTANCE.....</b>		
	FINAL ACCEPTANCE.....	41
17.1	Time of Essence.....	41
17.2	Scheduled Substantial Completion Date.....	41
17.3	Dynamic Testing Readiness.....	41
17.4	Substantial Completion.....	42
17.5	Operational Readiness .....	44
17.6	Final Acceptance.....	44
17.7	Assignment of Causes of Action .....	46
<b>ARTICLE 18. CONFLICT OF INTEREST .....</b>		
	CONFLICT OF INTEREST .....	46
18.1	Prohibition on Conflict of Interest .....	46
18.2	Notification of and Response to Potential Conflict of Interest .....	46
<b>ARTICLE 19. CHANGES IN THE WORK.....</b>		
	CHANGES IN THE WORK.....	46
19.1	Acknowledgment .....	46
19.2	Owner-Directed Changes and Procedures .....	47
19.3	Contractor Request for Change.....	49
19.4	Pricing of Change Orders .....	50
19.5	Requirements for Adjustment to Scheduled Substantial Completion Date and Pricing Delay Claims .....	55
19.6	Change Order Records.....	55
19.7	Disputes and Duty to Proceed.....	56
<b>ARTICLE 20. OWNER’S RIGHT TO SUSPEND ALL OR PART OF WORK .....</b>		
	OWNER’S RIGHT TO SUSPEND ALL OR PART OF WORK .....	58
20.1	Suspension for Convenience.....	58
20.2	Suspension for Other Reasons .....	58
20.3	Project Safety.....	58
<b>ARTICLE 21. INDEMNIFICATION.....</b>		
	INDEMNIFICATION.....	59
21.1	Indemnifications by Contractor .....	59
21.2	Defense and Indemnification Procedures .....	60
21.3	Indemnification by Owner .....	62
<b>ARTICLE 22. INSURANCE AND BONDS.....</b>		
	INSURANCE AND BONDS.....	62
22.1	Insurance Generally .....	62
22.2	Performance and Payment Bonds .....	62
22.3	Not Used .....	62
<b>ARTICLE 23. CONTRACTING PRACTICES .....</b>		
	CONTRACTING PRACTICES .....	63
23.1	Obligation to Refrain from Discrimination.....	63
23.2	Disadvantaged Business Enterprises (“DBE”) .....	63
23.3	Minority Employment and Contracting Procedures .....	63
23.4	Subcontracts.....	63

ARTICLE 24. REPRESENTATIVES .....	64
24.1 Designation of Representatives.....	64
24.2 Representatives .....	64
ARTICLE 25. DEFAULT OF CONTRACTOR OR OWNER .....	64
25.1 Default of Contractor .....	64
25.2 Owner’s Remedies for Contractor Event of Default.....	66
25.3 Certain Limitations on Owner Remedies.....	68
25.4 Default of Owner .....	68
25.5 Limitation on Contractor Remedies.....	68
ARTICLE 26. LIQUIDATED DAMAGES AND LIMITATIONS ON DAMAGES .....	69
26.1 Liquidated Damages .....	69
26.2 Not Used .....	70
26.3 Exclusion of Consequential Damages .....	70
26.4 Effect on Successors and Assigns.....	71
ARTICLE 27. TERMINATION FOR CONVENIENCE.....	71
27.1 Notice of Termination.....	71
27.2 Contractor’s Responsibilities After Receipt of Notice of Termination .....	71
27.3 Inventory.....	73
27.4 Settlement Proposal .....	73
27.5 Amount of Termination Settlement .....	73
27.6 No Agreement as to Amount of Claim .....	74
27.7 Reduction in Amount of Claim.....	74
27.8 Payment .....	75
27.9 Inclusion in Subcontracts.....	75
27.10 No Consequential Damages.....	75
27.11 No Waiver.....	75
27.12 Dispute Resolution.....	75
ARTICLE 28. DISPUTE AVOIDANCE AND RESOLUTION.....	75
28.1 Cooperation and Communications.....	75
28.2 Certified Claim and Procedures.....	76
28.3 Mediation.....	77
28.4 Legal Proceedings.....	77
28.5 False Certifications .....	78
28.6 Continuance of Work During Dispute.....	78
ARTICLE 29. MISCELLANEOUS PROVISIONS.....	78
29.1 Assignment .....	78
29.2 Notices .....	79
29.3 Binding Effect.....	80
29.4 Relationship of Parties.....	80
29.5 Third-Party Beneficiary .....	81
29.6 Waiver.....	81
29.7 Governing Law .....	82
29.8 Survival.....	82

## DESIGN-BUILD CONTRACT

**THIS DESIGN-BUILD CONTRACT** (“Contract”) is made and entered into this 29<sup>th</sup> day of July, 2014 (“Effective Date”), by and between:

(1) The Metropolitan Washington Airports Authority (“Owner”) is an independent public body, created by the Commonwealth of Virginia and the District of Columbia, with its principal place of business at 1 Aviation Circle, Arlington, Virginia 20001; and

(2) Hensel Phelps Construction Co. (“Contractor”), with an address of 4437 Brookfield Corporate Drive, Chantilly, Virginia 20151.

### RECITALS

**WHEREAS**, on or about November 12, 2013, Owner issued a Request for Qualifications Information (“RFQI”) soliciting interested parties to submit Qualifications Statements to serve as the design-builder for the design and construction of Package B of Phase 2 of the Dulles Corridor Metrorail Project; and

**WHEREAS**, on or about January 28, 2014, Owner notified Contractor that it was invited to respond to a Request for Proposals (“RFP”) seeking the submission of technical and price proposals for the design and construction of Package B; and

**WHEREAS**, on or about June 4, 2014, Owner notified Contractor that it had submitted an acceptable final Technical Proposal in response to the RFP and was invited to submit a Price Proposal in response to the RFP; and

**WHEREAS**, on or about June 27, 2014, Contractor submitted its Price Proposal in response to the RFP; and

**WHEREAS**, on or about July 3, 2014, Owner issued to Contractor a Notice of Recommended Award, which notice advised Contractor that it was the apparent successful Offeror under the RFP.

**NOW, THEREFORE**, in consideration of the foregoing premises and the covenants and agreements set forth herein, the parties hereby agree as follows:

29.9 Construction and Interpretation of Contract ..... 82  
29.10 Counterparts..... 83  
29.11 Provisions Rendered Obsolete or Ineffective ..... 83  
29.12 Explanations; Omissions, Misdescriptions, Inclusions without Limitation..... 83  
29.13 Computation of Periods ..... 83  
29.14 Approvals..... 84  
29.15 Correspondence ..... 84  
29.16 Headings ..... 84  
29.17 No Limitation on Statutory Powers ..... 84  
29.18 Not Used. .... 84  
29.19 Limitation of Obligations and Liabilities..... 84  
29.20 Labor and Right to Work Requirements..... 84  
29.21 Enrollment in E-Verify Program ..... 85

**ARTICLE 1.  
GENERAL**

**1.1 Certain Definitions.** Exhibit 1.1 contains the meaning of certain terms used in the Contract Documents.

**1.2 Recitals.** The Recitals are hereby incorporated by reference herein.

**1.3 Contract Documents and Order of Precedence.**

**1.3.1** The Contract Documents consist of: (a) this Contract, including the Appendices and Exhibits set forth below, which are attached hereto or shall be deemed attached hereto and made a part hereof by this reference; (b) Final Plans and Specifications to be developed in accordance with the terms of this Contract; and (c) the Baseline Schedule to be developed in accordance with the terms of this Contract.

Exhibit 1.1	Definitions
Exhibit 2.3.14	Federal Requirements
Exhibit 8.1	Key Personnel
Exhibit 10.2.1	Owner Regulatory Approvals
Exhibit 10.2.4	Owner Responsibility for Regulatory Approval Charges and Fees
Exhibit 14.1.1	Contract Price Schedule
Exhibit 22.1.1(a)	Insurance Requirements
Exhibit 22.1.1(b)	OCIP Manual
Exhibit 22.2(a)	Form of Performance Bond
Exhibit 22.2(b)	Form of Payment Bond
Exhibit 22.2(c)	Form of Dual Obligee Rider
Exhibit 23.2	DBE Participation
Exhibit 24.1	Designated Representatives
Appendix 1	Division 1 Specifications
Appendix 2	Project Technical Requirements
Appendix 3	Contractor's Price Proposal
Appendix 4	Volume 2 of Contractor's Technical Proposal
Appendix 5	Proposal Schedule
Appendix 6	Cooperative Agreements

**1.3.2** Each of the Contract Documents is essential to this Contract, and a requirement occurring in one is as binding as though occurring in all. The Contract Documents are intended to be complementary and to describe and provide for a complete contract. In the event of any conflict among the Contract Documents, the Contract Documents shall take precedence in the order in which they are listed below:

- (a) Amendments or Change Orders issued in accordance with the terms of this Contract.
- (b) This Contract, including the Exhibits.
- (c) Appendix 1.
- (d) Appendix 2.
- (e) Appendix 6.
- (f) Appendix 3.
- (g) The Final Plans and Specifications to be developed in accordance with the terms of this Contract.
- (h) The Baseline Schedule to be developed in accordance with the terms of this Contract.
- (i) Appendix 4 and Appendix 5.

Unless otherwise specified in the Contract Documents, any reference in the Contract Documents to a Code and Standard affecting any portion of the Project shall be deemed to: (a) include all paragraphs and subparagraphs of such reference; and (b) mean the latest edition or revision thereof and amendments and supplements thereto in effect on the Price Proposal Due Date.

**1.3.3** The Contract Documents (with the sole exception of the Final Plans and Specifications and the Baseline Schedule, each of which will be developed after the Effective Date), set forth the full and complete understanding of the Parties relating to the subject matter hereof as of the Effective Date and supersede any and all negotiations, agreements and representations made or dated prior thereto. Subsequent to the Effective Date, this Contract may be supplemented, modified or otherwise amended; *provided, however*, that any such supplements, modifications or amendments must be in the form of a Change Order or written amendment to this Contract, signed by an Authorized Owner Representative and an Authorized Contractor Representative. The preceding sentence shall not be construed to affect Owner's right, pursuant to Article 19, to direct Contractor to proceed with disputed work, or Contractor's right, pursuant to Article 19, to seek adjustments for disputed work.

#### **1.4 Project Technical Requirements and Codes and Standards.**

**1.4.1** The intent of the Project Technical Requirements is, among other things, to describe and provide the design criteria, performance requirements and other requirements for Contractor's performance of the Work. All work, materials, and equipment that may reasonably be inferred from the Project Technical Requirements to properly execute and complete the Work to conform to the requirements of the Contract Documents shall be provided by Contractor with

no change in the Contract Price or Scheduled Substantial Completion Date, except as set forth in Section 1.4.2.

**1.4.2** Contractor shall comply with the most recent version or edition of the Codes and Standards in effect at the time of performing the applicable portion of the Work. If such version or edition of the applicable Code and Standard is not the same version or edition in effect on the Price Proposal Due Date, then Contractor shall promptly, but before performing any work in compliance with the more recent version or edition, notify Owner in writing about the existence of the more recent version or edition and request that Owner determine the applicability of the more recent version or edition. If Owner requires Contractor to comply with the more recent version or edition of a Code and Standard, Contractor will be entitled to an appropriate Change Order for the cost and/or schedule impact of such compliance, provided that Contractor satisfies the requirements of Articles 13 and 19.

**1.5 Notice to Proceed.**

**1.5.1** When Owner determines to proceed with the Work, Owner shall issue to Contractor a Notice to Proceed and Contractor shall be obligated to commence the Work; *provided, however*, that the Contract Price is based on an assumption that the Notice to Proceed will be issued within sixty (60) days from the Effective Date. Contractor has no obligation to commence the Work unless and until Owner issues a Notice to Proceed with respect thereto.

**1.5.2** A separate Notice to Proceed shall not be required for Work covered by a Change Order except as otherwise specified in the Change Order.

**1.6 Confirmation of Scheduled Substantial Completion Date and Contract Price.**

**1.6.1** Contractor agrees that it has carefully evaluated the feasibility and practicality of performing the Work by the Scheduled Substantial Completion Date specified in the Contract Documents and for the Contract Price, without relying on any matter other than the Contract Documents, and confirms that such performance (including achievement of Substantial Completion by the Scheduled Substantial Completion Date, for the Contract Price) is feasible and practicable.

**1.6.2** Contractor has, prior to the Effective Date, reviewed the Geotechnical Evaluation Report, inspected and examined the Site and surrounding locations and undertaken other appropriate activities sufficient to familiarize itself with surface conditions and subsurface conditions affecting the Work to the extent Contractor deemed necessary or advisable for pricing the Work. As a result of such review, inspection, examination and other activities Contractor is familiar with and accepts the physical requirements of the Work, subject to the provisions of Articles 5 and 19 regarding Differing Site Conditions. Contractor further acknowledges and agrees that changes in conditions at the Site may occur after the Effective Date, and that Contractor shall not be entitled to any Change Order in connection therewith except as specifically permitted under this Contract.

## ARTICLE 2. CONTRACTOR AND OWNER RESPONSIBILITIES

**2.1 Scope of Work in General.** Contractor shall perform all administrative, design, engineering, procurement, transportation, quality assurance, inspection, installation, construction, supervision, management, documentation, maintenance, testing, commissioning, and demonstration, and provide all labor, Equipment and Materials, machinery, tools, consumables, utilities and other services or items required by, reasonably implied by, and reasonably inferable from the Contract Documents, including the Project Technical Requirements (collectively referred to herein as the “Work”).

**2.2 Standards of Performance.** Contractor shall perform the Work: (a) in accordance with all engineering, architectural, and construction principles, practices and methods generally accepted as standards of the industry for projects similar in nature, size and complexity to this Project; (b) in accordance with applicable industry standards for performance, service life, deterioration and wear; (c) in a good and workmanlike manner, and in accordance with manufacturer’s recommendations and requirements; (d) in compliance with Regulatory Approvals and applicable Laws, Regulations, and Ordinances; and (e) in accordance with the Contract Documents.

**2.3 Contractor Obligations.** Contractor hereby covenants as follows:

**2.3.1** Contractor shall furnish all design and other services, provide all Equipment and Materials and labor and undertake all efforts required (excluding Equipment and Materials, labor, services and efforts which this Contract specifies will be undertaken by other Persons and/or Entities) to design and construct the Work in accordance with the requirements of the Contract Documents, all Regulatory Approvals, and all other Laws, Regulations and Ordinances, taking into account physical limits resulting from constraints affecting the Work so as to achieve Substantial Completion by the Scheduled Substantial Completion Date, and otherwise to do in a timely manner everything required by and in accordance with the Contract Documents. Contractor shall give the Work the attention necessary to facilitate progress and shall cooperate with the Authorized Owner Representative and other contractors.

**2.3.2** Contractor shall have full responsibility in accordance with the Contract Documents for the design of the Work, including, but not limited to, the design’s accuracy and completeness and achievement of any performance standards established in the Contract Documents. All architectural, engineering and other design Work shall be performed by or under the supervision of individuals licensed to practice architecture, engineering or surveying (as applicable) in the Commonwealth of Virginia, by personnel with demonstrated competence, responsibility and professional qualifications necessary for the satisfactory performance of the Work in accordance with the Contract Documents. Such individuals shall assume professional responsibility for the accuracy and completeness of the documents prepared by them and shall exercise their skill, ability and judgment reasonably for the benefit of the Project.



**2.3.3** Contractor shall at all times provide an Authorized Contractor Representative approved by Owner who will have responsibility for the prosecution of the Work and who will act as the single point of contact in all matters on behalf of Contractor. Contractor shall not change the Authorized Contractor Representative without the prior written approval of Owner.

**2.3.4** Subcontractors shall have on the Project at all times a competent superintendent capable of reading and understanding the Final Plans and Specifications and experienced in the type of work being performed who shall receive instructions from Contractor. By appropriate written agreement, Contractor shall require that each Subcontractor is bound to Contractor by applicable terms consistent with the Contract Documents, and assumes toward Contractor all the obligations and responsibilities that Contractor assumes toward Owner which are applicable to the Work performed by each Subcontractor. Such terms and obligations include, but are not limited to, those relating to the following: (a) warranty obligations; (b) Owner's right to assignment of Subcontracts; (c) access to and audit of records and documents; (d) termination; (e) cost accounting and record keeping for Change Orders; and (f) compliance with the requirements set forth in Exhibit 2.3.14. This Section 2.3.4 is not to be construed as affecting any obligations or liabilities of Subcontractor that may be greater than those obligations or liabilities assumed by Contractor to Owner, including, but not limited to, extended warranties or latent defects.

**2.3.5** Contractor shall obtain and pay the cost of obtaining all Regulatory Approvals as provided in Article 10.

**2.3.6** Contractor shall undertake and properly perform all actions required by and all actions necessary to maintain in full force and effect all Regulatory Approvals, including performance of all environmental mitigation measures required by the Contract Documents.

**2.3.7** Contractor shall supervise and be responsible to Owner for acts and omissions of all Contractor-Related Parties.

**2.3.8** Contractor waives any right it may have to file or enforce any mechanics liens against the Project, Site, and any property related to the Work and owned by Owner, WMATA, VDOT, VDRPT, Fairfax County, Loudoun County and/or TRIP II. Contractor acknowledges that consideration for such waiver is reflected in the Contract Price. Contractor shall require each Subcontractor to likewise waive its right to file or enforce any mechanics liens against the Project, Site and any property related to the Work and owned by Owner, WMATA, VDOT, VDRPT, Fairfax County, Loudoun County and/or TRIP II.

**2.3.9** Contractor is on notice that each of Owner, WMATA, VDOT, VDRPT, Fairfax County, Loudoun County and TRIP II has the right to contract with Separate Contractors, with such contracts including, but not limited to: (i) contracts executed by Owner for Packages A and S of Phase 2 of the Dulles Corridor Metrorail Project; and (ii) contract(s) to be executed by VDOT for the Route 606 Reconstruction and Widening Project. With respect to contracts with Separate Contractors, the following shall apply.

(a) Contractor shall cooperate with, and shall cause Contractor-Related Parties to cooperate with: (i) all Separate Contractors to the extent reasonably necessary for the performance by such Separate Contractors of their work; and (ii) Owner, WMATA, VDOT, VDRPT, Fairfax County, Loudoun County and TRIP II relative to any project performed by Separate Contractors. Such cooperation shall include, but not be limited to, complying with travel restrictions imposed by VDOT with respect to the Route 606 Reconstruction and Widening Project.

(b) Contractor shall make commercially reasonable efforts to conduct its Work without interfering and without hindering the progress or completion of the work being performed by such other Separate Contractors. Owner shall make commercially reasonable efforts to require that such other Separate Contractors are subject to and comply with similar obligations.

(c) Contractor and Owner will use their commercially reasonable efforts to enter into coordination agreements with Separate Contractors. The purpose of these coordination agreements is to coordinate the parties' respective construction schedules so as to minimize potential interference and delays among them in completing the work being performed. Contractor agrees, without precondition and regardless of whether it is required to do so by a coordination agreement, that it will attend and participate in coordination meetings with Separate Contractors as Owner may, in its sole discretion, require in an effort to avoid and/or mitigate cost and time impacts to the Project.

(d) If Contractor asserts that any Separate Contractor has hindered or interfered with Contractor's progress or completion of the Work, then Contractor shall be entitled to an appropriate Change Order for the cost and/or schedule impact of such hindrance of interference; provided that: (a) Contractor satisfies the requirements of Articles 13 and 19; (b) Contractor has not breached any applicable coordination agreement with such Separate Contractor; and (c) Contractor has exercised commercially reasonable efforts to avoid and/or mitigate such hindrance or interference.

**2.3.10** Contractor shall comply with the requirements of the Contract Documents concerning impacts on neighboring communities and businesses as outlined within the Dulles Corridor Metrorail Project Communications and Outreach Plan.

**2.3.11** Contractor shall be responsible for supplying all temporary power and utilities associated with the Work, as well as connecting all utilities that are required by the Contract Documents to the Utilities.

**2.3.12** Contractor shall design and construct all elements of the Work to interface with and be compatible with the ARS as required in the Contract Documents. All elements of the Work shall be designed and installed to be dimensionally, operationally, electrically, and mechanically compatible within and between Project elements.

**2.3.13** Contractor, either through itself or its Equity Members, shall self-perform Work having a value in the amount of no less than twenty-five percent (25%) of the Contract Price.

**2.3.14** In performing the Work, Contractor shall comply with the requirements set forth in Exhibit 2.3.14 (Federal Requirements).

**2.3.15** Contractor acknowledges that all Contractor-Related Parties will be obligated to pay tolls for their use of the Dulles Toll Road and the Dulles Greenway, and Contractor will ensure that such tolls are paid.

**2.3.16** Contractor acknowledges that it has reviewed the Cooperative Agreements and acknowledges that those agreements govern certain actions of the applicable parties with respect to the Work.

**2.3.17** Contractor shall, in addition to its other obligations under the Contract Documents: (a) participate with Owner and WMATA in the development of a plan and schedule for Operational Readiness Testing; (b) facilitate and support WMATA's completion of all Operational Readiness Testing; and (c) maintain the entire Work in working order during Operational Readiness Testing and through the Operational Readiness Date. For the sole purpose of enabling Contractor to establish its pricing for such services, Owner has advised Contractor to assume that the period between the Substantial Completion Date and the Operational Readiness Date will not exceed two (2) months. If such period exceeds two (2) months, Contractor shall be entitled to an appropriate Change Order for the additional costs directly associated with such extension.

**2.4**     **Owner Obligations.** Owner hereby covenants as follows:

**2.4.1** Owner shall obtain, or cause to be obtained, the Owner Regulatory Approvals.

**2.4.2** Owner shall be responsible for the interface between the Project and WMATA, VDOT, VDRPT, Fairfax County, Loudoun County and TRIP II relative to their review, comment and/or approval of drawings, specifications, calculations and other documents developed by Contractor, including, but not limited to, the Final Plans and Specifications. Such interface shall not be construed to relieve Contractor from its responsibilities under the Contract Documents to interface directly with the above-referenced entities to fulfill its duties under the Contract Documents, including, but not limited to, Contractor's duties relative to Regulatory Approvals.

**2.4.3** Not Used.

**2.4.4** Owner shall carry out its responsibilities under the Contract Documents in accordance with the requirements of the Contract Documents, including the Project Schedule. In

the event a responsibility of Owner is not specifically identified in the Project Schedule, Owner agrees to reasonably cooperate with Contractor to attempt to fulfill such responsibility in a manner that will support the Project Schedule; *provided, however*, that Contractor shall furnish Owner with reasonable advance notice of any such requirements.

**2.4.5** If Contractor meets its burden of proving that Owner has failed to fulfill an obligation of the Contract Documents, and that such failure has impacted its cost or time of performance, Contractor shall be entitled to an appropriate Change Order, provided Contractor satisfies the requirements of Articles 13 and 19.

### **ARTICLE 3. FINAL PLANS AND SPECIFICATIONS**

#### **3.1 Contractor's Technical Proposal and Obligation to Review Project Technical Requirements.**

**3.1.1** Although Owner reviewed Contractor's Technical Proposal and commented on such during the RFP process, Contractor understands and agrees that: (a) such work was prepared solely by Contractor; and (b) Owner shall not be responsible or liable in any respect for any deficiencies or assumptions in such Technical Proposal. Contractor expressly waives any rights to make any Claim for any loss, damage, injury, liability, cost, expense or cause of action whatsoever suffered by Contractor or any Contractor-Related Entity by reason of Contractor's Technical Proposal or the use of any information in such Technical Proposal.

**3.1.2** Except as specifically set forth in this Contract, Owner makes no representation or warranty to Contractor or any other Person and/or Entity that the information contained in the Project Technical Requirements is correct, sufficient, complete or accurate. Contractor shall review all technical specifications and design requirements included in the Project Technical Requirements in order to determine whether such specifications or requirements include any errors, omissions or other deficiencies that would in any manner or to any degree impair the ability of Contractor to complete the Work in accordance with the Contract Documents. Contractor shall promptly notify Owner in writing of any such errors, omissions or deficiencies, which notice shall include a reasonable description of the issue and its likely impact on the performance of the Work. In connection with such notice and subject to Section 3.1.3, Contractor may request an appropriate Change Order, in accordance with the requirements of Articles 13 and 19, that the Contract Price and/or Scheduled Substantial Completion Date be adjusted to compensate Contractor for the effects of any such errors, omissions or deficiencies; *provided, however*, that Owner reserves all rights to reject this requested Change Order if the error, omission or deficiency should have been discovered by Contractor prior to the Effective Date. The failure of Contractor to provide notice in accordance with this Section 3.1.2 and Articles 13 and 19 (as applicable) shall constitute a waiver of any right to any price, schedule or performance relief associated with any error, omission or deficiency included in the Project Technical Requirements.

**3.1.3** Contractor assumes and shall have exclusive responsibility for the efficacy of the Final Plans and Specifications. Accordingly, notwithstanding anything to the contrary in this Contract, in no event shall Contractor be entitled to any price, schedule or performance relief associated with any error, omission or deficiency included in the Final Plans and Specifications.

**3.2 In-Progress Design Review.**

**3.2.1** Owner is entitled to review and comment on all drawings, specifications, calculations and other documents for compliance with the requirements of the Contract Documents, including, but not limited to, the Final Plans and Specifications, in accordance with the design review process set forth in the Division 1 Specifications. Contractor acknowledges that it is responsible for satisfying all such requirements and that Owner will have the right to disapprove any design approach that is inconsistent with the Project Technical Requirements and/or Code(s) and Standard(s), including any Deviation conditionally approved that is included therein or that is not in compliance with the requirements of the Contract Documents, unless such design approach is subject to a Deviation previously approved in writing by Owner.

**3.2.2** Contractor shall provide Owner with the opportunity to perform continuous over-the-shoulder reviews of the design in progress during the Final Design process. These over-the-shoulder reviews may be conducted during normal business hours and in the presence of Contractor's design personnel with the intent to minimize disruption of on-going design Work. Contractor acknowledges that other Governmental Persons will have the right to attend over-the-shoulder reviews. Owner shall be entitled to review progress prints, computer images, draft documents, working calculations, draft specifications or reports or other design documents as determined by Owner.

**3.3 Owner's Review of Design Documents and Final Plans and Specifications.**

**3.3.1** Owner's review, comment and/or approval of drawings, specifications, calculations and other documents, including, but not limited to, the Final Plans and Specifications, are for the purpose of establishing Contractor's compliance with the requirements of the Contract Documents, and mutually establishing a conformed set of Contract Documents compatible with the requirements of the Work. Owner's comments may include those from other Governmental Persons. Owner's review, comment and/or approval of any drawings, specifications, calculations and other documents, including, but not limited to, the Final Plans and Specifications, shall not be deemed to transfer any liability from Contractor to Owner.

**3.4 Contractor Proposed Changes to Project Technical Requirements and/or Code(s) and Standard(s).**

**3.4.1** During Final Design, Contractor may propose a change to the Project Technical Requirements and/or Code(s) and Standard(s) by submitting a written proposal ("Design Standard Change Proposal") to Owner. The Design Standard Change Proposal shall contain the following information:

(a) an explanation outlining the purpose of the proposed change to the Project Technical Requirement and/or Code(s) and Standard(s), including but not limited to any potential impact to safety associated with such proposed change;

(b) itemization of the specific portion of the relevant Project Technical Requirements and/or Code(s) and Standard(s) which must be changed if the proposal is approved;

(c) the date or time by which final approval by Owner of the proposed change must be issued in order to obtain maximum cost reduction or time savings, if any; and

(d) reasonably detailed cost estimates, certified by Contractor to be true and complete to the best of its knowledge, comparing the estimated cost of performing the Work without the requested change with the cost impact if it is approved.

**3.4.2** Contractor may request Owner's permission to suspend the related Work until final approval by Owner of the proposed change to the Project Technical Requirement and/or Code(s) and Standard(s) is granted, which request Owner may grant or deny in its sole discretion. Contractor's suspension of the related Work pending final approval of the Design Standard Change Proposal shall be at Contractor's sole cost and expense, and shall not entitle Contractor to an adjustment to the Scheduled Substantial Completion Date.

**3.4.3** Owner shall have no obligation to approve any Design Standard Change Proposal. Contractor has the burden of persuading Owner that the proposed change to the Project Technical Requirements and/or Code(s) and Standard(s):

(a) is equivalent in safety with the relevant Project Technical Requirements;

(b) is recognized as good industry practice for comparable transit facilities;

(c) will not cause any material increase in operating and life-cycle costs for the completed Project; and

(d) is reasonably likely to achieve the estimated cost impact, including any savings.

**3.4.4** As part of Owner's final approval of a Design Standard Change Proposal, Owner and Contractor shall agree on the amount of realized cost and time savings resulting from the proposed change, if any, in which case a Change Order shall be issued reducing the Contract Price. If Contractor's Design Standard Change Proposal is approved by Owner, Contractor shall be responsible, at its sole cost and expense, for implementing the change to the Project Technical Requirement and/or Code(s) and Standard(s) and ensuring that any affected Work is performed in compliance with the Contract Documents.

**ARTICLE 4.**  
**CONSTRUCTION SUPERVISION, SAFETY AND QUALITY MANAGEMENT**

**4.1 Supervision and Construction Procedures.**

**4.1.1 Responsibility.** Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences, procedures and Site safety and for coordinating all portions of the Work under the Contract Documents, subject, however, to all requirements contained therein including the obligation to correct nonconforming Work.

**4.1.2 Safety Program.**

(a) Contractor has full responsibility for Site safety through the Operational Readiness Date. Owner will advise Contractor of situations which Owner deems unsafe and shall have the right to require Work to be stopped as specified in Section 20.2. Contractor shall take all reasonable precautions and be responsible for the safety of, and shall provide protection to prevent damage, injury or loss to:

(i) all Contractor-Related Parties, all Owner Indemnitees, and any other Persons and/or Entities who are on Site or would reasonably be expected to be affected by the Work;

(ii) the Work and Equipment and Materials to be incorporated therein;  
and

(iii) other property at or adjacent to the Site.

(b) All Persons and/or Entities referenced in Section 4.1.2(a)(i) above shall comply with and adhere to Contractor's safety procedures and rules for the Work at all times during the performance of the Work. Contractor shall ensure that such procedures and rules are sufficient for the Work to be conducted in a safe manner and in accordance with all applicable Laws, Regulations and Ordinances. Contractor shall ensure that all Contractor-Related Parties will comply with Contractor's safety procedures.

**4.1.3 Inspection and Testing.**

(a) Contractor shall perform all inspection, sampling and testing necessary to ensure and demonstrate compliance with the Contract Documents. Contractor shall maintain an adequate inspection system and perform such inspections as will ensure that the Work performed conforms to the requirements in the Contract Documents. Contractor shall maintain complete inspection records and make them available to Owner.

(b) Contractor shall prepare and submit for Owner's approval a Quality Management System developed in accordance with Section 014000 of the Division 1

Specifications. Contractor shall designate a QA Manager, who shall be responsible for implementation of quality assurance, inspecting and testing in accordance with the approved Quality Management System.

(c) Tests, inspections and approvals of portions of the Work required by the Contract Documents or Laws, Regulations and Ordinances shall be made at appropriate times. Unless otherwise provided in the Contract Documents, Contractor shall make arrangements in accordance with the Contract Documents for such tests, inspections and approvals and shall bear all related costs of such tests, inspections and approvals. Owner has the right to observe any inspections, tests, or approvals required under the Contract Documents. Contractor shall give Owner, Owner's authorized agents, and any other Person and/or Entity designated by Owner, timely notice of when and where tests, inspections and approvals are to be made so they may observe such procedures.

(d) Each part or detail of the Work, including but not limited to Equipment and Materials, shall also be subject to inspection and testing by Owner at all reasonable times. Owner shall have the right to reject Work which does not conform with the Contract Documents. Contractor shall immediately stop the affected Work and correct non-conformance items or obtain Owner's written concurrence that the Work may proceed and the non-conformance corrected within a specific time. Certificates of inspection, testing or approval required under the express terms of the Contract Documents shall be secured by Contractor and promptly delivered to Owner.

(e) If, after the commencement of the Work, Owner determines that any Work requires special testing, inspection or approval which is not required by the Contract Documents or Laws, Regulations and Ordinances, Owner will instruct Contractor to order such special testing, inspection, or approval. If the Work fails to comply with the Contract Documents or Laws, Regulations and Ordinances, Contractor shall bear all costs of such special testing, inspection or approval. If the Work complies with the Contract Documents and Laws, Regulations and Ordinances, Contractor shall be entitled to an appropriate Change Order for the costs and/or schedule impact of such special testing, inspection or approval, provided that Contractor satisfies the requirements of Articles 13 and 19.

(f) At all times before Substantial Completion, Contractor shall remove or uncover such portions of the finished construction Work as directed by Owner. After examination by any Person and/or Entity designated by Owner, Contractor 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: (1) uncovering, removing and restoring the Work; and (2) delays occasioned thereby and, if applicable, recovery of any such delay, shall be the sole responsibility of Contractor. Prior to the start of construction, Owner and Contractor shall meet to determine the general types of construction activities or other items of Work that Owner wishes to inspect. Any Work done or Equipment and Materials used without prior inspection by



Owner after receipt of such notice may be ordered uncovered, removed or restored at Contractor's sole cost even if the Work proves acceptable after uncovering. Except with respect to Work done or Equipment and Materials used contrary to Owner's inspection requirements as described in the foregoing sentence, if Work exposed or examined under this Section 4.2.2 is in conformance with the requirements of the Contract Documents, then Contractor shall be entitled to an appropriate Change Order for the cost of such efforts and a time extension, provided Contractor satisfies the requirements of Articles 13 and 19.

**4.1.4 Security.** Until the Operational Readiness Date, Contractor is responsible for the security of the Site.

**4.1.5 Adjoining Property.** Contractor shall ensure that all of its activities and the activities of all Contractor-Related Parties are undertaken in a manner that will reasonably minimize the effect on surrounding property and the public.

**4.1.6 Protection of Existing Structures, Utilities and Improvements.** Contractor shall protect and preserve all existing structures, Utilities and improvements on or adjacent to the Site which are not required to be removed under the Contract Documents. Contractor shall promptly notify Owner if such structures, Utilities or improvements are damaged. Contractor, at its sole cost and expense, shall repair any damage to such structures, Utilities and improvements, including those that are the property of a third party, caused by the failure of any Contractor-Related Party to perform the Work in accordance with the Contract Documents; *provided, however*, that such obligation shall not be construed to affect Contractor's rights, if any, to seek recovery from any applicable insurance.

## **4.2 Owner Oversight.**

**4.2.1 Effect of Reviews, Inspections, Tests and Approvals.** Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents by reviews, tests, inspections or approvals performed by any Person and/or Entity, or by any failure of any Person and/or Entity to take such action. Subject to Section 4.1.3(d), the reviews, inspections, tests and approvals conducted by Owner, Governmental Persons and others do not constitute acceptance of the Work reviewed, tested or inspected that are not in accordance with the Contract Documents, and Owner may reject or accept any Work not in conformance with the Contract Documents, request changes and/or identify additional Work which must be done at any time prior to the Final Acceptance Date, whether or not previous reviews, inspections, tests or approvals were conducted by any such Persons and/or Entities.

**4.2.2 Owner Delegation of Oversight.** Contractor is advised that Owner intends to contract with Persons and/or Entities for the performance of certain of its oversight responsibilities, each of whom will be acting as agents of Owner. Owner may, by specific delegation, grant limited contractual authority to such agents, and will advise Contractor in writing of such authority. Such Persons and/or Entities shall have full and complete access to the Project, the Work in progress, and to other technical documents and Project records associated

with quality control, verification of Equipment and Materials installation and testing. Contractor shall give Owner and such Persons and/or Entities not less than two (2) Business Days prior notice of and opportunity to participate in any meetings described in the Quality Management System developed in accordance with Section 014000 of the Division 1 Specifications.

## **ARTICLE 5. DIFFERING SITE CONDITIONS**

**5.1 Duty to Investigate.** Contractor represents that it has, as of the Effective Date, taken reasonable steps to ascertain the nature and location of the Work, and that it has investigated and satisfied itself as to the general and local conditions which can affect the Work or its cost, including but not limited to: (i) conditions bearing upon transportation, disposal, handling, and storage of Equipment and Materials; (ii) the availability of labor, water, electric power, and roads; (iii) uncertainties of weather, river stages, tides, or similar physical conditions at the Site; (iv) the formation and conditions of the ground, (v) the character of the Equipment and Materials and facilities needed preliminary to and during performance of the Work; and (vi) the location and character of existing or adjacent work or structures. Contractor also acknowledges that it has satisfied itself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the Site and the RFP. Any failure of Contractor to take the actions described in this Section 5.1 will not relieve Contractor from responsibility for estimating properly the difficulty and cost of successfully performing the Work, or for proceeding to successfully perform the Work without additional expense to Owner. Notwithstanding any factual statement, conclusion, or any language or recommendation contained in the RFP, including but not limited to the Geotechnical Evaluation Report (“GER”), Contractor assumes full responsibility for inspection of the Site and for the means and methods of construction that it employs when performing the Work.

**5.2 Definition.** The term “Differing Site Conditions” refers to:

- (i) subsurface or latent physical conditions at the Site which differ materially from those indicated in or reasonably inferable from the Project Technical Requirements; or
- (ii) unknown physical conditions at the Site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inherent in the type of work of the character provided for in the Project Technical Requirements.

The term “Differing Site Conditions” excludes: (1) conditions of which Contractor had actual or constructive knowledge as of the Effective Date; (2) conditions that should have been discovered through a reasonable site investigation performed in accordance with Section 5.1; (3) Hazardous Substances, including also contaminated soils and groundwater (which Hazardous Substances are governed by Article 9); (4) conditions caused by a Force Majeure Event; and (5) conditions that come into existence after the Effective Date.

**5.3 Procedure.** Upon discovering a claimed Differing Site Condition and before the condition is disturbed, Contractor shall immediately: (i) after taking appropriate measures to secure the Work, stop work in and secure the affected area; and (ii) notify Owner's Contracting Officer. Contractor's notice to Owner shall be issued by telephone or in person and followed immediately thereafter by written notice. Upon receipt of Contractor's notice, Owner shall have the right, but not the obligation, to investigate the Site conditions. If Contractor has not received a response to the contrary from Owner, by the second Business Day following written notice to Owner, Contractor shall proceed with the Work, provided it can do so in compliance with all applicable requirements of the Contract Documents. Contractor shall keep Owner apprised regarding actions it is taking to assure compliance with all such requirements.

**5.4 Remedy.** If Contractor establishes, in accordance with the Contract, that the Differing Site Condition has impacted its cost or time of performance, Contractor shall be entitled to an appropriate Change Order, provided that Contractor satisfies the requirements of Articles 13 and 19. The notification and, when required, work stoppage described in Section 5.3 are each conditions precedent to Contractor's entitlement to any increase in the Contract Price or to any extension of the Scheduled Substantial Completion Date.

**5.5 Baseline for Differing Site Conditions Based on Geotechnical Conditions Procedure.** The Geotechnical Evaluation Report ("GER") sets forth and establishes the contractual geotechnical baselines for the assumed geotechnical conditions. Whenever there is an inconsistency between conditions indicated in the GER and conditions indicated elsewhere in the Contract Documents, then the conditions indicated in the GER shall take precedence, and shall be the conditions against which actual conditions encountered are compared for the purpose of determining if a Differing Site Condition exists.

**5.6 Historical, Scientific, and Archeological Discoveries.** All articles of historical or scientific value, including, but not limited to, coins, fossils, and articles of antiquity, which may be uncovered by Contractor during the progress of the Work shall become Owner's property. If Contractor establishes that such discoveries have impacted its cost or time of performance, Contractor shall be entitled to an appropriate Change Order, provided that Contractor satisfies the requirements of Section 5.3 and Articles 13 and 19. The notification and, when required, work stoppage described in Section 5.3 are each conditions precedent to Contractor's entitlement to any increase in the Contract Price or to any extension of the Scheduled Substantial Completion Date.

**ARTICLE 6.  
NOT USED**

**ARTICLE 7.  
NOT USED**

**ARTICLE 8.  
KEY PERSONNEL**

**8.1 Approval and Removal of Key Personnel.** Owner shall have the right to approve all Key Personnel, and has already approved certain of the Key Personnel as are listed on Exhibit 8.1. Contractor may not thereafter remove or replace such Key Personnel without Owner's consent.

**8.2 Availability of Key Personnel.**

**8.2.1** Contractor acknowledges and agrees that the award of this Contract by Owner to Contractor was based, in large part, on the qualifications and experience of the Key Personnel identified by Contractor during the RFQI and RFP process, as well as Contractor's commitment that such individuals would be available to undertake and perform the Work. Contractor represents, warrants and covenants that such individuals are available for and will fulfill the roles identified for them in connection with the Project. If any of the Key Personnel will not be assigned full time to the Project, Contractor shall so advise Owner and shall obtain Owner's approval of the lesser amount of time to be spent by each such individual on the Project, which amount shall in all events be sufficient for satisfactory performance of the tasks to be performed by such individual. Upon Owner's request, Contractor shall document the time commitment for each Key Personnel to Owner's satisfaction.

**8.2.2** If: (a) Contractor removes or replaces any Key Personnel at the direction of Owner; or (b) any Key Personnel is unavailable due to death, retirement, injury, illness or no longer being employed by Contractor, or Subcontractor, Contractor shall promptly propose to Owner a replacement for such Key Personnel, which replacement individual shall be subject to Owner's review and written consent.

**8.3 Not Used.**

**ARTICLE 9.  
HAZARDOUS SUBSTANCES**

**9.1 Hazardous Environmental Conditions.**

**9.1.1** Contractor shall, in accordance with applicable Laws, Regulations and Ordinances, plan for and manage, treat, handle, store, monitor, remediate, remove, transport and/or dispose of any Hazardous Environmental Conditions that are discovered on, in or under the Site.

**9.1.2** Not Used.

**9.1.3** If Contractor encounters Pre-Existing Hazardous Environmental Conditions, it shall stop Work immediately in the affected part of the Work to the extent required to avoid any safety or health hazard. The Work stoppage shall remain in effect until Contractor

has taken such action as is necessary, in accordance with applicable Laws, Regulations and Ordinances, to protect the interests of any affected Person and/or Entity. Contractor shall, immediately upon encountering any Pre-Existing Hazardous Environmental Conditions, notify Owner and, if required by applicable Laws, Regulations and Ordinances, assist Owner in providing notifications to all applicable Governmental Persons having an interest in such Hazardous Environmental Condition. To the extent not covered by the Environmental Management Plan, Contractor will develop a remedial action plan setting out the scope of the remedial actions that Contractor proposes to take in relation to the relevant Hazardous Environmental Condition. Remedial actions may include, but are not be limited to: (i) conducting such further investigations as may be necessary or appropriate to determine the nature and extent of the Hazardous Environmental Condition and submitting copies of such data and reports to Owner for its review and approval; (ii) taking reasonable steps to avoid or minimize excavation or dewatering in areas with the Hazardous Environmental Condition in the case of excavation, construction, reconstruction or rehabilitation, modifications and/or construction techniques; (iii) preparing and obtaining Regulatory Approvals for remedial action plans, including Owner approval; (iv) carrying out the remedial action plan, including, as necessary, disposal of the Hazardous Substances; and (v) informing Owner of all such actions in a timely manner.

**9.1.4** Before Contractor takes any remedial actions that would inhibit Owner's ability to ascertain the nature and extent of any Pre-Existing Hazardous Environmental Condition, Contractor will afford Owner the opportunity to inspect areas and locations that require remedial actions; provided, that in the case of a sudden release of any Hazardous Substances, Contractor shall take all reasonable actions necessary to stabilize and contain the release without prior notice or inspection, but will promptly notify Owner of the sudden release and its location.

**9.1.5** Contractor shall be solely responsible for the management, treatment, handling, storage, monitoring, remediation, removal, transportation and/or disposal of Hazardous Substances that: (a) were brought or caused to be brought to the Site by an act or omission of any Contractor-Related Party in the performance of the Work; or (b) were handled, treated or stored at the Site by Contractor-Related Party contrary to the requirements of the Contract Documents or in violation of any applicable Laws, Regulations and Ordinances. Owner shall be entitled to review and approve the action, if any, to be taken by Contractor with respect to the containment, management, mitigation, disposal and remediation of such Hazardous Substances.

**9.1.6** Contractor will obtain all Regulatory Approvals relating to any remedial actions associated with Hazardous Environmental Conditions. Contractor will be solely responsible for compliance with such Regulatory Approvals and any applicable Laws, Regulations and Ordinances concerning or relating to Hazardous Substances. In carrying out remedial actions that are compensable by Owner pursuant to Section 9.1.8 below, Contractor will not take any steps or actions which impair Owner's potential claims for indemnity and contribution, statutory or otherwise.

**9.1.7** Upon Owner's request, Contractor shall, at no cost to Owner, provide reasonable assistance and supporting documentation to Owner to enable Owner to seek the recovery of costs from any available reimbursement program or from any third party responsible for generating or otherwise creating or contributing to conditions that lead to the need for remedial action, including reimbursement from the Virginia Petroleum Storage Tank Fund ("VPSTF") for qualifying expenses incurred during the course of investigation, containment, management, mitigation or remediation activities on petroleum storage tank releases. Any reimbursement or recovery of cost shall inure solely to the benefit of Owner

**9.1.8** Except for those Hazardous Environmental Conditions set forth in Section 9.1.9 below, Contractor shall be entitled to an appropriate Change Order for the impact on Contractor's cost or time of performance to the extent caused by Pre-Existing Hazardous Environmental Conditions, provided that Contractor satisfies the requirements of Articles 13 and 19. To the fullest extent permitted by Laws, Regulations and Ordinances, Owner shall indemnify and hold harmless Contractor from and against all claims, losses, damages, liabilities and expenses, including attorneys' fees and expenses, arising out of or resulting from such Pre-Existing Hazardous Environmental Conditions. Nothing in this Section 9.1.8 shall obligate Owner to indemnify or hold harmless Contractor from and against the consequences of the breach of contract, violation of Laws, Regulations and Ordinances, negligence, recklessness or willful misconduct of any Contractor-Related Entity.

**9.1.9** Notwithstanding anything to the contrary in this Section 9.1, Contractor shall bear all costs and expenses for: (a) those Hazardous Substances identified in Section 9.1.5 above; and (b) the creation or exacerbation of any Hazardous Environmental Condition due to the breach of contract, violation of Laws, Regulations and Ordinances, negligence, recklessness or willful misconduct of any Contractor-Related Entity. Further, as between Owner and Contractor, Contractor shall be deemed the generator of such Hazardous Substances described in clauses (a) and (b) above.

**9.1.10** As between Owner and Contractor, Owner shall be deemed the generator of Pre-Existing Hazardous Environmental Conditions, and nothing contained in this Section 9.1 is intended to identify Contractor as the generator of or potentially responsible party to any Hazardous Substances that is the subject of a Pre-Existing Hazardous Environmental Condition, except as set forth in Section 9.1.9 and any applicable Laws, Regulations and Ordinances.

## **ARTICLE 10. APPLICABLE LAW AND REGULATORY APPROVALS**

### **10.1 General.**

**10.1.1** Contractor acknowledges and agrees that it has familiarized itself with the requirements of any and all Laws, Regulations and Ordinances and the conditions of all Regulatory Approvals in effect as of the date of the Effective Date and applicable to the Work.

**10.1.2** Contractor has no reason to believe that any Regulatory Approval required to be obtained by Contractor as of the Effective Date in connection with the Work will not be granted in due course and thereafter remain in effect so as to enable the Work to proceed in accordance with the Contract Documents.

**10.1.3** Contractor shall comply with, and shall ensure that all Subcontractors comply with, all applicable Laws, Regulations and Ordinances and the conditions and requirements of all Regulatory Approvals.

**10.2 Obligation to Obtain Regulatory Approvals.**

**10.2.1** Contractor shall obtain all Regulatory Approvals required for the Work, except those designated as Owner Regulatory Approvals in Exhibit 10.2.1, in accordance with applicable Laws, Regulations and Ordinances. Approvals by third parties will be subject to the terms and conditions of any Cooperative Agreements and applicable Laws, Regulations and Ordinances, and Owner agrees to use reasonable efforts to expedite critical Regulatory Approvals from such entities, if and as requested by Contractor. Contractor shall deliver to Owner, promptly after Contractor's receipt, a copy of all Regulatory Approvals. Notwithstanding anything to the contrary in the Contract Documents, if Contractor's proposed design and/or construction methods results in a change or modification to an Owner Regulatory Approval obtained by Owner prior to the Effective Date, Contractor shall be: (a) fully responsible for obtaining, at its sole cost and expense, approval of such change or modification from the applicable Governmental Person; and (b) responsible for any delays or other impacts that result from seeking of approval of such change or modification.

**10.2.2** Prior to any construction, equipping or installation of the Work or any portion thereof, Contractor shall obtain all Regulatory Approvals required to be obtained by it in connection therewith; *provided, however*, that if any such Regulatory Approval cannot be obtained in accordance with the applicable Project Schedule, not due to the breach of contract, violation of Laws, Regulations and Ordinances, negligence, recklessness or willful misconduct of any Contractor-Related Party, then Contractor shall be entitled to an appropriate Change Order, provided that Contractor satisfies the requirements of Articles 13 and 19.

**10.2.3** If any Regulatory Approvals required to be obtained by Contractor must formally be issued in the name of Owner, Contractor shall undertake all efforts to obtain such approvals subject to Owner's reasonable cooperation with Contractor, including execution and delivery of appropriate applications and other documentation in form approved by Owner.

**10.2.4** Except as specifically provided in Exhibit 10.2.4 (Owner Responsibility for Regulatory Approval Charges and Fees) or Section 10.3, Contractor shall pay all charges and fees for obtaining any Regulatory Approvals and modifications thereto.

**10.2.5** For the avoidance of doubt, Contractor acknowledges that it is responsible for obtaining Regulatory Approvals from the Airports Authority Building Codes Department,

and acknowledges that, for purposes of this Contract, such department is considered a third party, separate and independent from Owner.

**10.2.6** Contractor shall provide, or cause to be provided, reasonable cooperation and assistance to Owner in Owner's obtaining Owner's Regulatory Approvals.

**10.3** **Change in Law.** Contractor shall be entitled to an appropriate Change Order for a Change in Law, provided that Contractor satisfies the requirements of Articles 13 and 19.

## **ARTICLE 11. WARRANTIES**

### **11.1** **Warranties.**

**11.1.1** Contractor warrants to Owner that: the Work shall meet all of the requirements of the Contract Documents; and Equipment and Materials furnished under the Contract Documents shall be of a quality required by the Contract Documents, new, and free of Defects in materials and workmanship.

**11.1.2** If any of the Work fails to meet the standards set forth in Section 11.1.1 at any time within the Warranty Period, then, upon reasonable notice to Contractor from Owner received by Contractor within the Warranty Period for failures or Defects that occur within the Warranty Period, Contractor shall correct such Work to meet the standards of Section 11.1.1, and repair to such standards any damage to the Project or other property of Owner, WMATA or any other Person and/or Entity to the extent caused by the failure of the Work to meet the standards set forth in Section 11.1.1, even if the performance of such corrective work or repairs extends beyond the Warranty Period.

**11.1.3** Within seven (7) days of receipt by Contractor of a notice specifying a failure of any of the Work to satisfy the Warranties, Owner will consult with Contractor to determine when and how Contractor shall remedy such failure; *provided, however*, that in case of an emergency requiring immediate curative action, Contractor shall implement such action as it deems necessary and shall notify Owner of the urgency of an expedited decision by the close of the following Business Day. Contractor and Owner shall agree on such remedy as soon as reasonably practicable. If Contractor does not proceed promptly to effectuate such remedy within the agreed time (or immediately, in the case of emergency conditions), Owner, after seven (7) days' notice to Contractor, if Contractor has not commenced a remedy within such seven-day period, shall have the right to perform or have performed by third parties the necessary remedy, and the costs thereof shall be borne by Contractor. If Contractor and Owner do not agree as to whether an item of Work is in compliance with the Contract Documents, Owner may issue a directive to Contractor to proceed with such Work as Owner determines is necessary, and Contractor shall perform such Work, subject to the right of Contractor to dispute such directive in accordance with the provisions of Article 28.



**11.1.4** Contractor shall bear all costs of correcting any Work that does not comply with the provisions of Section 11.1.1, including testing and inspections, and shall reimburse Owner or pay Owner's direct expenses of regulating traffic and protecting the public and third party expenses made necessary by such correction within thirty (30) days after Contractor's receipt of invoices therefor.

**11.1.5** Owner may, based on good cause, direct Contractor to perform a "root cause" analysis of any alleged Defect in the Work. If Contractor fails to perform such analysis as directed by Owner, or if Owner concludes that the "root cause" analysis is flawed, Owner may elect to conduct an independent analysis of the alleged Defect, whereupon Contractor shall cooperate with Owner and provide such information, test and Product Data, samples, and other data relevant to the alleged Defect as Owner may request. If the "root cause" or independent analysis reveals a Defect or Defects in any part of the Work, Contractor shall be responsible for the costs and expenses of remedying the Defect(s), including the costs of the "root cause" or independent analysis. If the "root cause" or independent analysis demonstrates that there is no Defect, then Owner shall bear the reasonable costs and expenses of such analyses. All remedial measures related to Defects revealed by any "root cause" or independent analysis must be approved by Owner prior to implementation by Contractor.

**11.2 Warranty Period.** The warranty set forth in Section 11.1 shall apply for a period of two (2) years after the Substantial Completion Date. If any Work is completed after Substantial Completion (i.e., Punch List items), or modified, corrected, repaired, replaced and/or reperformed pursuant to this Article 11, then the warranty applicable to such portion of the Work shall apply for two (2) years from the date of completion of the Work, or the modification, correction, repair, replacement or reperformance, but in no event longer than three (3) years after the Substantial Completion Date ("Warranty Period"). Notwithstanding the above, the expiration of the Warranty Period does not bar Owner's claim for any latent defect in the Work that could not have been reasonably discovered prior to the expiration of the Warranty Period. For the avoidance of doubt, any references to service life of Equipment and Materials in the Contract Documents shall be construed as a standard of quality and shall not be construed as a warranty or to increase in the duration of the Warranty Period.

**11.3 Subcontractor Warranties.**

**11.3.1** Without in any way derogating Contractor's own representations and warranties (including the Warranties) and other obligations with respect to all of the Work, subject to the provisions of Section 11.3.2 below, Contractor shall obtain from all Subcontractors and cause to be extended to Owner appropriate representations, warranties (for periods at least co-extensive in duration with the Warranty Period for such Work or, if a longer duration is specified in the Division 1 Specifications for the Subcontractor's Work, for a period at least co-extensive with such duration) guarantees and obligations with respect to Equipment and Materials, workmanship, tools and supplies furnished by such Subcontractors. Contractor shall also use commercially reasonable efforts to obtain from all Subcontractors such Subcontractors' commitment: (a) to remain liable for latent defects in the Work that the Subcontractor is

obligated to perform, whenever such defects are discovered; and (b) to provide a warranty of fitness for intended purpose for any Equipment and Materials that the Subcontractors are obligated to provide or furnish. Following the applicable Warranty Period, Contractor shall assign any rights or interest that it may have in such obligation of its Subcontractors to Owner. All representations, warranties, guarantees and obligations of Subcontractors: (y) shall be written so as to survive all inspections, tests and approvals hereunder, and (z) shall run directly to and be jointly and severally enforceable by Contractor, Owner and their respective successors and assigns. Contractor hereby assigns to Owner all of Contractor's rights and interest in all extended warranties for periods exceeding the applicable warranty period which are received by Contractor from any of its Subcontractors.

**11.3.2** During the Warranty Period, upon receipt from Owner of notice of a failure of any of the Work to satisfy any Subcontractor warranty, representation, covenant, guarantee or obligation, Contractor shall be responsible for enforcing in the name of and on behalf of Owner, if so directed, or performing any such representation, warranty, covenant, guarantee or obligation, in addition to Contractor's other obligations hereunder. Owner's rights under this Section 11.3.2 shall commence at the time such representation, warranty, guarantee or obligation is furnished and shall continue until the expiration of Contractor's Warranty (including extensions for redone Work). Until such expiration: the cost of any Equipment and Materials, labor (including re-engineering) or shipping shall be the responsibility of Contractor if such cost is covered by a Contractor warranty, and Contractor shall be required to replace or repair defective or damaged Equipment and Materials or workmanship furnished by Subcontractors in accordance with the procedures set forth in Section 11.1.3.

**11.4 Assignment of Warranties.** Contractor's Warranties (including warranties for re-done Work) and all Subcontractor warranties shall be assignable by Owner without approval by Contractor or any Subcontractor, which assignment shall be effective upon delivery of notice to Contractor of the assignment; *provided, however*, that Contractor shall not be required to assign any Claims with respect to Subcontractor warranties that Contractor has against its Subcontractors that existed prior to assignment to Owner.

**11.5 Damages for Breach of Warranty.**

**11.5.1** Subject to the provisions of this Article 11, Contractor's liability to Owner for damages resulting from any breach of an express warranty provided under this Article 11 (including warranties made by Subcontractors) shall be limited to all those out-of-pocket third party costs reasonably incurred by Owner in effecting the remedy described in Section 11.1.3 itself or through a third party, including the costs described in Sections 11.1.4 and 11.1.5. This limitation of liability shall not apply to liabilities incurred by Contractor arising out of its obligation to indemnify, defend and hold each Owner Indemnitee harmless from third-party Claims under Section 21.1 or to the extent covered by insurance required hereunder.

**11.5.2** EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN THIS CONTRACT, CONTRACTOR MAKES NO OTHER WARRANTIES OR

REPRESENTATIONS OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, LATENT OR PATENT, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR PURPOSE RELATING TO THE WORK PERFORMED UNDER THIS CONTRACT AND ALL SUCH OTHER WARRANTIES ARE HEREBY EXPRESSLY EXCLUDED AND DISCLAIMED. THE REMEDIES SET FORTH IN THIS CONTRACT SHALL CONSTITUTE OWNER'S SOLE AND EXCLUSIVE REMEDIES FOR NON-CONFORMING OR DEFECTIVE WORK.

**11.6 Landscaping Maintenance.** Contractor shall maintain in a growing condition all newly established landscaping (e.g., trees, plants, grass, seeds and sods) furnished under the Contract Documents and shall protect all new growth against injury, including replacing all dead or damaged landscape articles requiring replacement as specified in the Contract Documents, throughout an establishment period that shall commence at Substantial Completion and shall end two (2) years after the Substantial Completion Date.

## **ARTICLE 12. ESCROW BID DOCUMENTS, RECORDS AND REPORTS**

**12.1 Provision and Maintenance of Escrow Bid Documents.** The Escrow Bid Documents delivered into escrow in accordance with the RFP shall be maintained as specified therein. All such documents shall be available during business hours for joint review by Owner and Contractor in connection with resolution of any Claims arising under this Contract.

### **12.2 Maintenance of Books and Records.**

**12.2.1** Unless a longer period is required under applicable Laws, Regulations and Ordinances, Contractor shall maintain all Books and Records for a period of five (5) years after the Final Acceptance Date or termination date of all Work authorized hereunder, as applicable, and shall notify Owner where such Books and Records are kept. Notwithstanding the foregoing, all Books and Records which relate to Contractor's Claim being processed or actions brought under the dispute resolution provisions hereof shall be retained and made available until such actions and Contractor's Claim have been finally resolved.

**12.2.2** If approved by Owner, photographs, microphotographs or other authentic reproductions may be maintained instead of original Books and Records. In addition, with respect to Books and Records furnished to Owner as a condition of Final Acceptance of the Work, Contractor shall retain copies of such Books and Records for a period of two (2) additional years beyond that set forth in Section 12.2.1 above.

**12.2.3** Contractor shall require each Subcontractor to comply with the requirements applicable to Contractor set forth in this Section 12.2.

### **12.3 Public Records.**

**12.3.1** Any Work Product Owner owns pursuant to this Contract or otherwise, and any document of which Owner obtains a copy, may be considered a public record that could be subject to public disclosure. Contractor acknowledges that it has been provided a copy of Owner's public disclosure policy, and agrees to abide by such policy.

**12.3.2** If Contractor believes that any Work Product or any document subject to transmittal to or review by Owner under the terms of this Contract or any other Contract Document contains proprietary or confidential information or trade secrets that are exempt or protected from public disclosure, Contractor shall use its best efforts to identify such information prior to such transmittal or review. In such case, Contractor and Owner shall confer on appropriate means of ensuring compliance with Owner's disclosure policy prior to transmittal or review. Upon the written request of either party, Contractor and Owner shall mutually develop a protocol for the transmittal, review and disclosure of Work Product or other documents produced or obtained by Contractor so as to avoid violations of the disclosure policies of Owner or the disclosure requirements for Owner or any applicable Governmental Person under any applicable Laws, Regulations or Ordinances.

### **12.4 Reporting Requirements.**

**12.4.1** Each month for the duration of the Contract, Contractor shall prepare and deliver to Owner a written narrative report on the progress of the Work in accordance with requirements of Section 013216 of the Division 1 Specifications.

**12.4.2** Contractor shall report to Owner (a) not later than two Business Days after the occurrence thereof, any significant damage or destruction to the Work, and (b) at least two Business Days before commencement thereof, any planned work (other than emergency repairs) to repair or remedy such damage or destruction.

**12.4.3** Contractor shall obtain Owner's prior written approval of all proposed press releases and other statements concerning the Work before they are made available generally by Contractor to the public or media.

**12.4.4** Contractor shall furnish or cause to be furnished to Owner appropriate financial statements that are required by Laws, Regulations and Ordinances as Owner may reasonably request on a periodic basis, including those financial statements prepared by a Contractor-Related Party.

**12.4.5** Subject to the limitations set forth in Section 12.1 and 12.5, Contractor shall furnish or cause to be furnished to Owner such other documents, reports and information relating to the Work as Owner may reasonably request from time to time.

**12.5 Access to and Audit of Books and Records.**

**12.5.1** Contractor shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management, using accounting and control systems in accordance with generally accepted accounting principles and as may be provided in the Contract Documents. Contractor shall maintain a complete set of all accounts, books, records, documents, and other information and items (“Books and Records”) prepared or employed by Contractor in its management, scheduling, cost accounting and otherwise with respect to the Project. Contractor shall grant to Owner and any Governmental Person having jurisdiction over the Project such audit rights and allow Owner and such Governmental Person such access to and the right to copy such Books and Records at such times as Owner may request, but only as necessary and appropriate in connection with Work to be performed on a time and material cost basis (including but not limited to the costs identified under Sections 19.3.3 and 19.3.4), issuance of Change Orders (other than all or a portion of Change Orders issued on a lump-sum basis), and the resolution of Claims.

**12.5.2** Where the payment method for any Work is on a unit-priced basis, such examination and audit rights shall include all Books and Records of Contractor for the purpose of evaluating the accuracy of Contractor’s designations of quantities.

**12.5.3** Where the payment method for any Work is on a time and materials basis, such examination and audit rights shall include all Books and Records that evidence all direct and indirect costs of whatever nature claimed to have been incurred and anticipated to be incurred for the performance of such Work. If audit indicates Contractor has been over-credited under a previous progress report or progress payment, that over-credit will be credited against current progress reports or payments.

**12.5.4** For documentary information submitted in connection with pricing Change Orders, unless such pricing is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the public, or prices set by law or regulation, Owner and its representatives have the right to examine all Books and Records related to the negotiation of or performance of Work under such Change Orders for the purpose of evaluating the currency, accuracy, and completeness of the information Contractor submitted in connection with any Change Order. The right of examination shall extend to all documents deemed necessary by such Person and/or Entity to permit adequate evaluation of the information Contractor submitted with any Change Order, along with the computations and projections used therein.

**12.5.5** No audit rights shall extend to any lump-sum amount or unit price once the parties have agreed upon such amount or price, except to the extent such audit rights are allowed under Laws, Regulations and Ordinances.

**12.5.6** Contractor shall require each Subcontractor to comply with the requirements applicable to Contractor set forth in this Section 12.5.

**ARTICLE 13.  
SCHEDULES AND ADJUSTMENTS TO  
SCHEDULED SUBSTANTIAL COMPLETION DATE**

**13.1 Proposal and Baseline Schedules.**

**13.1.1 Proposal Schedule.** Contractor represents that the Proposal Schedule (Appendix 5) is an accurate representation of Contractor's plan for the execution of the Work as of the Effective Date and that Contractor intends to use such Proposal Schedule to execute the Work in compliance with the Contract Documents until the approval of the Baseline Schedule.

**13.1.2 Baseline Schedule.** Within one hundred twenty (120) days of the Notice to Proceed, Contractor shall, in accordance with Section 013216 of the Division 1 Specifications, submit a proposed Baseline Schedule to Owner for its review and approval. Contractor represents that the Baseline Schedule shall be an accurate representation of Contractor's plan for performing the entire Work as of the date it is submitted to Owner, and that Contractor intends to use such schedule to execute the Work in compliance with the Contract Documents. The parties shall reach agreement upon the Baseline Schedule no later than one hundred eighty (180) days of the Notice to Proceed.

**13.1.3 Updates.** Contractor shall update the Proposal Schedule and Baseline Schedule in accordance with Section 013216 of the Division 1 Specifications.

**13.1.4 Adjustment of Scheduled Substantial Completion Date.** If Contractor's Baseline Schedule submitted pursuant to Section 13.1.2 shows a projected date for Substantial Completion more than thirty (30) days earlier than the Scheduled Substantial Completion Date, Contractor agrees that Owner may, at no cost to Owner, decrease the Scheduled Substantial Completion Date by issuance of an appropriate Change Order changing the Scheduled Substantial Completion Date to the date reflected in the Baseline Schedule. The specific intent of this Section 13.1.4 is to ensure that Contractor does not have a right to seek recovery from Owner on the grounds that it was entitled to achieve Substantial Completion of the Project earlier than the Scheduled Substantial Completion Date.

**13.2 Excusable Delays.**

**13.2.1 Definition.** The term "Excusable Delay" shall refer to: (a) events caused by acts, omissions, conditions, events, or circumstances that are beyond the reasonable control of a Contractor-Related Party; and (b) events for which the Contract provides that Contractor is entitled to claim a schedule adjustment by reference to Article 13; *provided, however*, that in either case the event was not caused by the negligent acts or omissions, fault, recklessness, willful misconduct, breach of contract, or violation of Laws, Regulations and Ordinances of a Contractor-Related Party. Notwithstanding the preceding sentence, the risks arising from the following events or circumstances shall be borne exclusively by Contractor, shall not be deemed Excusable Delays, and shall not be the basis for any relief, monetary or otherwise, to Contractor:

(1) General market and economic conditions affecting the availability, supply or cost of labor, Equipment and Materials, construction equipment and supplies, or commodities; *provided, however*, that this provision shall not be construed to impact Contract Price adjustments under Section 14.1.3 for changes in certain Materials prices;

(2) Weather conditions of any type, except for hurricanes, tornados, and those weather conditions set forth in Section 13.2.2 below;

(3) Strikes, labor disputes, work slowdowns, work stoppages, boycotts or other similar labor disruptions, unless such strikes, disputes, slowdowns, stoppages, boycotts or disruption affect a specific trade on a national or regional level and were not caused by the breach of contract, violation of Laws, Regulations and Ordinances, negligence, recklessness or willful misconduct of any Contractor-Related Party;

(4) Delays in obtaining or delivery of goods or services from any Subcontractor, unless Subcontractor's reason for delay arises from an event that would otherwise be excusable to Contractor under this Contract;

(5) Delays by common carriers unless the common carrier's reason for the delay arises from an event that would otherwise be excusable to Contractor under this Contract; and

(6) Bankruptcy or insolvency of a Subcontractor or inability of a Subcontractor to perform, unless such inability would otherwise be excusable to Contractor under this Contract.

**13.2.2 Unusually Severe Weather Conditions.** Contractor represents that the Proposal Schedule has taken into account and reflects, and that the Baseline Schedule will take into account and reflect, anticipated weather conditions and expected weather-related delays or disruptions in the performance of Work. If Contractor intends to claim that a weather event is an Excusable Delay, it shall, in addition to fulfilling all other requirements for demonstrating that the event is an Excusable Delay, demonstrate that the actual weather encountered was unusually severe and abnormal compared with the ten-year average weather statistics compiled by the United States National Oceanic and Atmospheric Administration ("NOAA") at Dulles International Airport for the time of year.

### **13.3 Adjustment of Scheduled Substantial Completion Date.**

**13.3.1 Procedural Requirements.** If Contractor is delayed in the performance of the Work due to an Excusable Delay, Contractor shall be entitled to a Change Order adjusting, as applicable, the Contract Price and/or Scheduled Substantial Completion Date; *provided, however*, that as a condition precedent to such Change Order, Contractor must demonstrate that: (a) notice was given to Owner's Contracting Officer in accordance with this Contract; (b) the delay impacts the Critical Path; and (c) Contractor, in view of all the circumstances, has exercised reasonable efforts to avoid and mitigate the delay. For any Change Orders involving

an adjustment of the Contract Price, Contractor shall comply with the requirements of Article 19 below.

**13.3.2 Time Impact Analysis.** Within the relevant time periods set forth in Article 19, Contractor shall submit to Owner's Contracting Officer, pursuant to the Section 13.3.1 procedures, a written Time Impact Analysis ("TIA") establishing the influence of the event. The TIA shall be performed in accordance with Section 013216 of the Division 1 Specifications.

**13.4 Force Majeure Events.**

**13.4.1 Definition.** As used in this Contract, the term "Force Majeure Event" shall mean those Excusable Delays that satisfy the requirements set forth in Section 13.3.1 and that are also beyond the reasonable control of Owner, except for the following:

- (a) Differing Site Conditions, which are otherwise addressed in Article 5;
- (b) The presence at, near or on the Site, as of the Effective Date, of any Hazardous Environmental Conditions, which are otherwise addressed in Article 9; and
- (c) Suspensions of Work, which are otherwise addressed in Section 20.1.

**13.4.2 Compensation for Force Majeure Events.** In addition to an adjustment to the Scheduled Substantial Completion Date, the parties agree that Contractor shall be entitled to a Change Order increasing the Contract Price for those Force Majeure Events that: (a) have been, in accordance with the Contract requirements, properly noticed to Owner by Contractor; (b) cause delays that are the sole delay to the Critical Path and extend the Scheduled Substantial Completion Date; and (c) exceed the applicable Force Majeure Reserve. Contractor shall not be entitled to an increase in the Contract Price for those Force Majeure Events that do not comply with the requirements of this Section 13.4.2.

**13.4.3 Force Majeure Reserve.** The Force Majeure Reserve shall be a total aggregate of forty-five (45) work days, commencing as of the Notice to Proceed. The Force Majeure Reserve reflects the parties' intent that: (a) Contractor will bear the financial risk for delays by Force Majeure Events to the extent of the applicable Force Majeure Reserve; and (b) except for those Force Majeure Events that are encompassed by Section 13.5 below, Owner will bear the financial risk, and increase the Contract Price, for delays by Force Majeure Events that exceed the applicable Force Majeure Reserve and otherwise comply with Section 13.4.2(a) and (b). The preceding allocation of risk relative to the financial impact of a certain Force Majeure Events shall not be construed as limiting Contractor's rights to receive an extension to the Scheduled Substantial Completion Date for any Force Majeure Event that might be covered within the Force Majeure Reserve, and Contractor shall be entitled to a Change Order extending the Scheduled Substantial Completion Date for all Force Majeure Events, provided that Contractor satisfies the requirements of this Article 13.



**13.5 Remedy for Concurrent Delay.** Contractor's sole remedy for Excusable Delays satisfying the requirements of Section 13.3.1 that are concurrent delays to the Critical Path shall be an adjustment to the Scheduled Substantial Completion Date in accordance with this Contract. Multiple delays to the Critical Path caused by the same party shall not be considered concurrent delays.

**13.6 Recovery Schedules.** Should Owner have a reasonable belief that the Scheduled Substantial Completion Date will not be met for any reason, then Owner has the right, but not the obligation, to so notify Contractor and direct Contractor to overcome such delay by developing and implementing a recovery schedule to improve progress and mitigate such delay. The process for creating and implementing a Recovery Schedule is set forth in Section 013216 of the Division 1 Specifications. Any costs incurred by Contractor in overcoming delays to the Project, or in accelerating or resequencing the Work, including working additional overtime and engaging additional personnel, shall be at Contractor's own expense, unless: (a) the reasons for the delay are Excusable Delay(s), and that Contractor has complied with the provisions of this Article 13 relative to such Excusable Delays; (b) a recovery schedule has been approved by Owner; and (c) a Change Order has been issued for such costs.

## **ARTICLE 14. COMPENSATION**

### **14.1 Contract Price.**

**14.1.1 Amount.** As compensation for the performance of the Work and all other obligations to be performed by Contractor under the Contract Documents relating to such Work, and subject to the limitations contained herein, Owner shall pay Contractor the Contract Price stated in Exhibit 14.1.1, as such amount may be adjusted from time-to-time as provided herein. As and when adjustments are authorized pursuant to Article 19, Exhibit 14.1.1 shall be amended to include the Contract Price (and its components) applicable to such additionally authorized Work. The Contract Price shall be paid in accordance with Section 14.2. The Contract Price shall be adjusted only in accordance with Article 19.

**14.1.2 Items Included in Contract Price.** Contractor acknowledges and agrees that the Contract Price, as adjusted by Change Order as provided herein, includes: (a) all labor, Equipment and Materials, construction equipment and materials, intellectual property, insurance and bond premiums, home office, jobsite and all other overhead, profit and services relating to Contractor's performance of its obligations under the Contract Documents, whether through itself or any Contractor-Related Party; (b) performance of each and every portion of the Work authorized hereunder; and (c) payment of any taxes (including but not limited to sales and use taxes), duties, permit and other fees and/or royalties imposed with respect to the Work and any Equipment and Materials, construction equipment and materials, labor or services included therein.

### **14.1.3 Not Used.**

**14.1.4 Cost Breakdown Structures.** Within one hundred twenty (120) days of the Notice to Proceed, Contractor shall, in accordance with Section 013216 of the Division 1 Specifications, submit a proposed Cost Breakdown Structure, which document is intended to cause payments to approximate the value of the Work performed by Contractor. Owner and Contractor acknowledge that the actual cost of completion of a particular activity of Work may differ from that specified in the Cost Breakdown Structure. The parties shall reach agreement upon the Cost Breakdown Structure no later than one hundred eighty (180) days of the Notice to Proceed. If the parties cannot reach agreement, Owner shall have the right to establish the Cost Breakdown Structure.

**14.1.5 Maximum Payment Curve.** Within one hundred twenty (120) days of the Notice to Proceed, Contractor shall, in accordance with Section 013216 of the Division 1 Specifications, submit a proposed Maximum Payment Curve, which is intended to: (a) forecast the value of Work and payments to be made to Contractor for performance of the Work; and (b) provide a limitation on the timing by which Contractor can receive payment for the Contract Price. Contractor shall not be obligated to, but may at its discretion, proceed with the Work at a faster rate than envisaged by the Maximum Payment Curve. The parties shall reach agreement upon the Maximum Payment Curve no later than one hundred eighty (180) days of the Notice to Proceed.

**14.1.6 Utility Self-Performance Payment Amount.** The Contract Price includes the Utility Self-Performance Payment Amount. Prior to making any commitment with a Utility Owner over items covered by Utility Self-Performance Payments, Contractor shall first obtain in writing advance approval from Owner. Contractor shall require each Utility Owner covered by the Utility Self-Performance Payments to provide a level of detail for its invoices in the same detail as required for time-and-material work under Section 19.4.3, unless Owner agrees otherwise. If the actual amount of Utility Self-Performance Payments exceeds the Utility Self-Performance Payment Amount, then the Utility Self-Performance Payment Amount shall be adjusted accordingly by Change Order. If, at the time payment for Final Acceptance, the actual amount of Utility Self-Performance Payments is less than the Utility Self-Performance Payment Amount, such difference shall be reflected in a Change Order that reduces the Contract Price by such difference.

**14.1.7 Not Used.**

**14.1.8 Other Payment Amounts.** The Contract Price includes the Spare Parts Payment Amount. Such amount will be used by Owner to fund Change Orders for Work that is directed by Owner for items that Owner determines are to be covered by such payment amount. Once such payment amount is totally depleted, Owner will fund Change Orders due for such item by increasing the Contract Price in accordance with Article 19. If, at the time of payment for Final Acceptance, there are unused amounts in such payment amount, a Change Order shall be issued that reduces the Contract Price by such amount.

**14.1.9 Not Used.**

**14.2 Payments.** Contractor shall be entitled to submit one Draw Request per month to Owner in accordance with the following process and Section 013216 of the Division 1 Specifications:

**14.2.1 Delivery of Draw Request and Certificate.** On or about the thirtieth (30th) day of each month, Contractor shall submit to Owner five (5) copies of a Draw Request, in a form to be provided by Owner and agreed upon by Contractor (“Draw Request”). Each Draw Request shall be executed by a designated representative of Contractor appointed by Contractor to have such authority in accordance with Section 24.1. No Draw Request shall be considered complete unless it:

- (a) identifies all Work completed in the applicable month, and states the maximum amount payable based on the Maximum Payment Curve;
- (b) sets forth the related payments (less any applicable Retainage) for completed Work in accordance with the Cost Breakdown Structures as of the end of the twenty-fifth (25th) day of such month;
- (c) includes the required attachments thereto in form approved by Owner;
- (d) includes a written certificate (and Affidavit of Payment and Partial Lien Release that certifies, among other things, that all lien rights have been waived) from Contractor and each Subcontractor to be paid pursuant to the subject Draw Request that all prior invoices have been paid in full except for amounts in dispute and, with respect to Subcontractors, amounts not yet received from Contractor on account of prior requisitions;
- (e) in the case of amounts to be paid on a unit-price basis, includes invoices, receipts or other evidence establishing the number of units delivered or completed; and
- (f) in the case of amounts invoiced on a time and materials basis, includes all supporting documentation described in Section 19.4.3.

**14.2.2 Owner’s Review of Draw Request.** Within twenty (20) days after Owner’s receipt of the Draw Request, Owner will review the Draw Request and all attachments thereto for conformity with all requirements of the Contract Documents, and shall notify Contractor of the amount approved for payment and the reason for disapproval of any remaining invoiced amounts or of any other information set forth in the Draw Request. Contractor may include such disapproved amounts in the next month’s Draw Request after correction of the deficiencies noted by Owner (all such disapproved amounts shall be deemed in dispute unless otherwise agreed). Subject to Owner’s right to deduct or withhold amounts owed to Owner or suspect payment under the Contract Documents, Owner shall pay amounts approved for payment within thirty (30) days of Owner’s receipt of the applicable Draw Request.

**14.2.3 Interest.** If Owner fails to make payment of undisputed amounts due under a properly submitted Draw Request within forty-five (45) days after Owner's receipt of such Draw Request, Contractor shall be entitled to interest on the amount due at the variable rate per annum equal to one percent (1%) plus the reference rate announced by Bank of America, N.A. from time to time, but not to exceed the rate of interest established pursuant to Title 58.1, Chapter 18, Virginia Code § 581.1812.

**14.2.4 Limitation on Payment Amount.** Owner will not be required to pay Contractor in excess of the Maximum Payment Curve plus amounts allowed by Change Orders and adjustments under Sections 14.1.3 and 14.1.6. Payment of any amounts included in a Draw Request which are in excess of the maximum aggregate amount payable under the Maximum Payment Curve shall be deferred until such deferred amounts can be paid without aggregate payments exceeding the Maximum Payment Curve. Any progress payment on any line item is provisional and subject to adjustment on subsequent progress payments, including downward adjustment, and any downward adjustment may be offset against amounts payable for other line items.

**14.2.5 Payment.** Owner will make or cause to be made all payments for the Work pursuant to the terms of this Contract. All payments hereunder will be subject to the conditions to payment specified herein. Owner has the right, in addition to Retainage, to withhold a reasonable portion of a payment, not to exceed ten percent (10%) of such payment, if Contractor does not: (a) timely submit a monthly schedule update in accordance with Section 13.1.3; or (b) maintain an updated set of Project Record Documents, which documents are to be maintained in the central Project office and will be reviewed in such office by Owner as part of the draw request procedures. In no event shall Contractor be entitled to payment for any activity eligible for payment in excess of the demonstrated percentage of completion of such activity.

**14.2.6 Continued Performance During Disputes.** Subject to Contractor's right to suspend performing Work or to terminate this Contract to the extent permitted under this Contract, failure of Owner to pay any disputed amounts shall not postpone, alleviate, diminish or modify in any respect Contractor's obligation to perform under the Contract Documents, including Contractor's obligation to achieve Final Acceptance and perform all Work in accordance with the Contract Documents, and Contractor shall not cease or slow down its performance under the Contract Documents on account of any such amount. Any Claim between Contractor and Owner regarding such payment shall be resolved pursuant to Article 28.

**14.2.7 Unincorporated Equipment and Materials.** Owner will approve payment for Equipment and Materials not yet incorporated in the Work only under the following circumstances:

(a) Owner will approve payment for Equipment and Materials stored off-Site, subject to the following conditions precedent:

(i) Contractor shall provide Owner with at least forty (40) days prior notice of Contractor's plan to request payment for off-Site stored Equipment and

Materials. Such request shall include a certified description of the off-Site location, a listing of all Equipment and Materials covered by the request, the individual value of the Equipment and Materials, the status of the fabrications of the Equipment and Materials and the required dates of delivery at the Site. The statement shall be submitted on forms furnished by Owner and shall be accompanied by invoices or other documents that will verify the cost of such Equipment and Materials. Following the initial submission, Contractor shall submit to Owner a monthly certified update of the itemized inventory statement. The updated inventory statement shall show additional Equipment and Materials received and stored with invoices or other documents and shall list Equipment and Materials removed from storage since the last certified inventory statement, with appropriate cost data reflecting the change in the inventory. If Contractor fails to submit the monthly certified update, Owner may deduct the full amount of the previous statement from the invoice. At the conclusion of the Project, the cost of Equipment and Materials remaining in storage for which payment has been made will be deducted from the progress estimate.

(ii) Such other documentation satisfactory to Owner to establish Owner's title to such Equipment and Materials or otherwise protect Owner's interest.

(b) Owner will review the documentation for completeness and accuracy. If the documentation presented does not satisfy the aforementioned conditions precedent, or if for any other reason Owner is not satisfied, in its sole discretion, that Owner's interest is fully protected, the request for payment for stored Equipment and Materials shall be denied.

(c) Owner specifically reserves the right to discontinue payment for Equipment and Materials stored off-Site if such storage is not in compliance with the Contract Documents.

(d) Contractor shall bear all cost of Owner associated with the inspection of off-Site Equipment and Materials stored outside of the Commonwealth of Virginia unless, as described in the Quality Assurance and Control Inspection Program, Owner is required to furnish inspection for these Equipment and Materials.

(e) Following payment therefor, all such Equipment and Materials so accepted shall become the property of Owner. Contractor at its own expense shall promptly execute, acknowledge and deliver to Owner proper bills of sale or other instruments in writing in a form acceptable to Owner conveying and assuring to Owner title to such Equipment and Materials included in any invoice, free and clear of all Liens. Contractor at its own expense shall conspicuously mark or paint such Equipment and Materials as the property of Owner, shall not permit such Equipment and Materials to become commingled with non-Owner owned property and shall take such other steps, if any, as Owner may require or regard as necessary to vest title to such Equipment and Materials in Owner free and clear of Liens.

(f) Payment for Equipment and Materials furnished and delivered as indicated in this Section 14.2.7 will not exceed the amount paid by Contractor as evidenced by a bill of sale supported by paid invoice.

(g) Payment for Equipment and Materials furnished and delivered as indicated in this Section 14.2.7 shall be in accordance with the following terms and conditions:

(i) **Structural Units.** Payment of one hundred percent (100%) of the cost to Contractor for structural steel Materials for fabrication not to exceed forty percent (40%) of the Contract Price for such Materials may be made when such Material is delivered to the fabricator and has been adequately identified for exclusive use on the Project. Payment of one hundred percent (100%) of the cost to Contractor for superstructure units, not to exceed seventy percent (70%) of the Contract Price for such Materials, may be made when they have been fabricated. Payments shall be conditioned upon the structural steel Materials and fabricated units having been tested or certified and found acceptable to the QA Manager and having been stored in accordance with the requirements specified herein. Payment will be based on invoices, bills, or the estimated value as approved by Owner.

(ii) **Other Materials.** For reinforcing steel, aggregate, pipe, guardrail, signs and sign assemblies, and other nonperishable Material, payment of one hundred percent (100%) of the cost to Contractor for Materials, not to exceed ninety percent (90%) of the Contract Price for such Materials, may be made when such Material is delivered and stockpiled or stored in accordance with the requirements specified herein. However, no payment will be made for cement, seed, plants, fertilizer, and other perishable Material. Payments shall be conditioned upon the Material having been tested and found acceptable to the QA Manager. Payments will be based on invoices, bills, or the estimated value of the Material as approved by Owner.

(iii) **Excluded Items.** No payment will be made for fuels, form lumber, falsework, temporary structures, or other non-permanent work that will not become an integral part of the finished construction.

(iv) **Storage.** Material for which payment is requested shall be stored in an approved manner in areas where damage is not likely to occur. If any of the stored Materials are lost or become damaged, Contractor shall repair or replace them. When it is determined to be impractical to store Materials within the limits of the Project, Contractor may obtain approval for storage on private property or, for structural units, on the manufacturer's or fabricator's yard. Requests for payment for such Material shall be accompanied by a release from the owner or tenant of such property or yard agreeing to permit the removal of the Materials from the property without cost to Owner.

**14.2.8 Payment for Work Scheduled to be Performed After Final Acceptance.** Payment for habitat and landscape establishment and other Work scheduled to be performed after the Final Acceptance Date shall be made based on progress.

### **14.3 Retainage, Deductions and Withholding.**

#### **14.3.1 Retainage.**

(a) Except as provided below, Owner shall withhold funds, whether in the form of cash or the substitute letter(s) of credit set forth in Section 14.3.1(f) (the "Retainage") from each payment to be made to Contractor as described in Section 14.2, as well as from each mobilization payment under Section 14.4.1. The Retainage shall initially be an amount equal to five percent (5%) of the invoiced amount. After fifty percent (50%) of the total Contract Price has been completed and requisitioned through Draw Requests, and two and one-half percent (2.5%) of the Contract Price has been retained, Owner shall cease withholding Retainage from future payments owing to Contractor hereunder, provided however, that if Contractor is forecasting Substantial Completion to be forty-five (45) calendar days beyond the Scheduled Substantial Completion Date, the progress will be considered unsatisfactory and Owner shall resume withholding five percent (5%) of each invoiced amount from future payments until Owner and Contractor have agreed upon a plan for mitigating such delay, which may include the development of a Recovery Schedule in accordance with Section 013216 of the Division 1 Specifications. Owner shall not withhold Retainage from payments allocable to the premiums for the Performance and Payment Bonds.

(b) No portion of the Retainage shall be released/reduced unless and until all of the following conditions have been met: (i) Liquidated Damages payable by Contractor have been paid or otherwise satisfied, or Contractor has provided a letter of credit for such Liquidated Damages in accordance with Section 26.1.3 below; (ii) in cases where Retainage is being released/reduced in advance of Substantial Completion, Contractor shall have established to Owner's reasonable satisfaction that Liquidated Damages are not anticipated to be payable to Owner; (iii) Contractor shall have applied in writing for such release; (iv) no Contractor Event of Default remains uncured; (v) such release/reduction shall have been approved in writing by each Surety; and (vi) there are no outstanding warranty Claims against Contractor relating to the Work.

(c) Owner agrees to release/reduce Retainage being withheld for Work performed by Subcontractors upon receipt of an application from Contractor stating that the Subcontractor has completed all Work required to be performed under its Subcontract, stating the amount withheld by Contractor under the Subcontract, and providing all backup information and stop notice and Lien releases as may be required by Owner. Owner will process such applications once per fiscal quarter, with the first release/reduction to occur following completion of fifty percent (50%) of the Work.

(d) Subject to the requirements of clause (b) above, Owner agrees, thirty (30) days after Owner's execution of the Substantial Completion Certificate, to release/reduce the Retainage, less: (i) amounts applied to the payment of losses, damages or expenses incurred by Owner for which Contractor is responsible, (ii) amounts that Owner

reasonably considers to be necessary to retain to cover any existing or threatened Claims, Liens and stop notices from Subcontractors, laborers, Utility Owners or other third parties relating to the Project, and (iii) one hundred fifty percent (150%) of the estimated cost of (1) performing the Work associated with Contractor's obligations under Section 2.3.17 above; and (2) performing/repairing any Punch List items, nonconforming Work, or otherwise remedying any breach of contract by Contractor. Owner agrees, thirty (30) days after Owner's execution of a Final Acceptance Certificate, to pay the remaining balance of the Retainage.

(e) Contractor shall have the right to substitute an irrevocable letter of credit in lieu of cash for all or any portion of the Retainage, provided that the letter of credit shall: (i) be a direct pay letter of credit payable immediately upon presentation by Owner, issued by a financial institution, and on a form, approved by Owner in its sole discretion; (ii) permit partial draws and be in the amount of one hundred percent (100%) of the required Retainage amount, or such lesser amount as Owner agrees in writing from time-to-time to reflect reductions in required Retainage; and (iii) name Owner as sole payee and beneficiary. Owner shall be entitled to draw upon the letter of credit to provide the requisite cash to satisfy any of Contractor's obligations under the Contract Documents. Owner shall further be entitled to draw upon the letter of credit, and hold the proceeds as Retainage, if the letter of credit is not renewed or extended at least thirty (30) days prior to its expiration.

**14.3.2 Deductions and Withholding.** In addition to the deductions provided for under Section 14.3.1, Owner may deduct from each progress payment, or may withhold the entire progress payment, as a result of the following:

(a) Any Owner Claims or losses for which Contractor is responsible hereunder or any Liquidated Damages which have accrued as of the date of the application for payment;

(b) Any third party Claims or losses for which Contractor is responsible hereunder, if and to the extent Contractor has failed to honor its indemnity obligations in that regard;

(c) Any sums expended by Owner in performing any of Contractor's obligations under this Contract which Contractor has failed to perform;

(d) a notice of Lien or Claim is filed with Owner by any Subcontractor, laborer or Utility Owner due to Contractor's failure to pay for labor, Equipment and Materials, or other Work, or to pay or reimburse amounts due or claimed to be due to any Utility Owner, money due or claimed to be due for such labor, Equipment and Materials, or other Work, plus twenty-five percent (25%), will be withheld from payment to Contractor, unless and until Contractor posts bonds as required by applicable Laws, Regulations, and Ordinances as security against such notice of Lien or Claim; or



(e) Any other sums which Owner is entitled to recover from Contractor under the terms of the Contract Documents.

The failure by Owner to deduct any of these sums from a progress payment shall not constitute a waiver of Owner's right to recover such sums or to deduct such funds from future progress payments. All amounts Contractor owes to Owner under this Contract shall earn interest from the date on which such amount is due (unless a different date is specified herein) until paid at the lesser of: (i) seven and one-half percent (7.5%) per annum; or (ii) the maximum rate allowable under applicable Laws, Regulations and Ordinances.

**14.4 Additional Requirements for Specific Payment Events.** The following requirements are intended to supplement the payment processes described in this Article 14 for the following payments.

**14.4.1 Payment of Premiums for Performance and Payment Bonds and Contractor's Insurance.** Contractor shall be entitled to submit a Draw Request to Owner at any time after the Effective Date for the premiums of the Performance and Payment Bonds and the insurance required of Contractor under Section 1.8 ("Additional Insurance Required from Enrolled Parties and Excluded Parties") of Exhibit 22.1.1(a). Such premiums are to be paid under Item 112 of Exhibit 14.1.1. Contractor's Draw Request shall provide proof that such premiums have been actually paid by Contractor. Owner shall review such Draw Request and make payment within twenty-one (21) days of its approval. For the avoidance of doubt, Item 112 and the above-referenced Draw Request shall not include bond or insurance premiums for any Subcontractor.

**14.4.2 Substantial Completion Payment.** Payment for Substantial Completion will be conditioned upon Contractor's compliance with those requirements of Section 17.4 below.

**14.4.3 Final Acceptance Payment.** Payment for Final Acceptance will be conditioned upon Contractor's compliance with those requirements of Section 17.5 below and subject to Owner's right to withhold or deduct amounts as set forth in this Contract.

## **ARTICLE 15. REPRESENTATIONS AND WARRANTIES**

**15.1 Owner Representations and Warranties.** Owner hereby represents and warrants to Contractor as follows:

(a) Owner is an independent public body, created by the Commonwealth of Virginia and the District of Columbia, and has full power, right and authority to execute, deliver and perform its obligations under, in accordance with and subject to the terms and conditions of this Contract.

(b) Each Person and/or Entity executing this Contract on behalf of Owner has been or at such time will be duly authorized to execute each such document on behalf of Owner.

(c) Neither the execution and delivery by Owner of this Contract nor the consummation of the transactions contemplated hereby, is in conflict with or will result in a default under or violation of any other agreements or instruments to which it is a party or by which it is bound.

(d) There is no action, suit, proceeding, investigation or litigation pending and served on Owner which challenges Owner's authority to execute, deliver or perform, or the validity or enforceability of, this Contract, or which challenges the authority of an official of Owner executing this Contract, and Owner has disclosed to Contractor any pending and unserved or threatened action, suit, proceeding, investigation or litigation with respect to such matters of which Owner is aware.

**15.2 Contractor Representations and Warranties.** Contractor hereby represents and warrants to Owner as follows:

(a) Contractor is a duly organized and validly existing corporation created under the laws of Delaware, has the requisite power and all required licenses to carry on its present and proposed activities, and has full power, right and authority to execute and deliver this Contract and to perform each and all of the obligations of Contractor provided for herein and in the other Contract Documents.

(b) Contractor has taken or caused to be taken all requisite action to authorize the execution and delivery of, and the performance of its obligations under, this Contract.

(c) Each Person and/or Entity executing this Contract or any other Contract Documents on behalf of Contractor has been or will at such time be duly authorized to execute each such document on behalf of Contractor.

(d) Neither the execution and delivery by Contractor of this Contract and the other Contract Documents to which Contractor is a party, nor the consummation of the transactions contemplated hereby or thereby, is in conflict with or will result in a default under or a violation of the governing instruments of Contractor or any other agreements or instruments to which it is a party or by which it is bound.

(e) There is no action, suit, proceeding, investigation or litigation pending and served on Contractor or its members which challenges Contractor's authority to execute, deliver or perform, or the validity or enforceability of, this Contract, or which challenges the authority of a Contractor official executing this Contract or the other Contract Documents; and Contractor has disclosed to Owner any pending and unserved or threatened action, suit, proceeding, investigation or litigation with respect to such matters of which Contractor is aware.

- (f) Not Used.
- (g) Contractor is in material compliance with all Laws, Regulations and Ordinances applicable to Contractor or its activities in connection with this Contract.

**ARTICLE 16.**  
**RISK OF LOSS AND TITLE**

**16.1 Risk of Loss.** Contractor shall bear the risk of loss for the Work, including all Equipment and Materials, whether on-site or off-site, until the Operational Readiness Date, unless due to acts of terrorism, and shall be responsible for maintenance of the Project during its construction until the Operational Readiness Date. On the Operational Readiness Date, Owner or its designee shall accept care, custody and control of the Project and risk of loss for the Work, and Contractor's sole responsibility thereafter for damages caused to the Work shall be limited to those damages caused by any Contractor-Related Party for which it would otherwise be liable under the Contract Documents.

**16.2 Title.** Contractor warrants and guarantees that legal title to and ownership of the Work shall be free and clear of any and all Liens, Claims, security interests or other encumbrances when title thereto passes to Owner. Title to all Work, inclusive of Equipment and Materials, but exclusive of Work Product, will pass to Owner on the earlier of the date: (a) payment for such Work has been made by Owner; (b) such Work is incorporated into the Project; or (c) this Contract is terminated by Owner for Contractor Event of Default. Contractor shall deliver to Owner such assignments, bills of sale or other documents as reasonably requested by Owner to evidence such transfer of title.

**16.3 Title to Work Product.**

**16.3.1** Except as set forth in this Section 16.3, and provided Owner has made payment to Contractor of undisputed amounts due under this Contract, title to all Work Product developed by Contractor will pass to Owner on the earlier of the date: (a) Contractor has prepared or received such Work Product; (b) payment has been made by Owner for such Work Product; or (c) this Contract is terminated by Owner for Contractor Event of Default. Contractor shall promptly deliver possession of the Work Product to Owner; *provided, however*, that Contractor shall be permitted to retain one copy of such Work Product for archival purposes.

**16.3.2** "Contractor Background Data" means all intellectual property rights in all designs, plans, models, drawings, prints, samples, transparencies, specifications, reports, manuscripts, working notes, documentation, manuals, photographs, negatives, tapes, discs, databases, and software which Contractor (or any Contractor-Related Party) owns or has prepared prior to the Effective Date. Contractor Background Data used by Contractor in connection with the Contract shall remain the property of Contractor or any Contractor-Related Party as applicable, but Contractor grants a non-exclusive, irrevocable, royalty-free license to Owner, WMATA, Fairfax County, Loudoun County, VDRPT, VDOT and the FTA to use, copy, or modify Contractor Background Data solely with respect to this Project.

**16.3.3** With respect to any intellectual property rights in software vested in any third party that are supplied to Owner by Contractor as part of the Work, but not prepared, developed or modified under or in connection with this Contract, Contractor shall use all reasonable efforts to obtain from such third party such permission, waiver, or license as may be necessary to enable the software to be used, copied, or modified by Owner, WMATA, Fairfax County, Loudoun County, VDRPT, VDOT and the FTA solely in connection with this Project.

**ARTICLE 17.  
TIME FOR COMPLETION; SUBSTANTIAL COMPLETION;  
AND FINAL ACCEPTANCE**

**17.1** **Time of Essence.** Time is of the essence for the performance of the applicable Work by the Scheduled Substantial Completion Date.

**17.2** **Scheduled Substantial Completion Date.**

**17.2.1** **Scheduled Substantial Completion Date.** Contractor shall achieve Substantial Completion of the Work no later than fourteen hundred sixty (1,460) days from the Notice to Proceed (“Scheduled Substantial Completion Date”). The Scheduled Substantial Completion Date is subject to adjustment in accordance with this Contract.

**17.2.2** **No Time Extensions.** Except as otherwise specifically provided in this Contract, Owner has no obligation to extend the Scheduled Substantial Completion Date, and Contractor shall not be relieved of its obligation to achieve Substantial Completion for any reason.

**17.3** **Dynamic Testing Readiness.**

**17.3.1** **Notification and Contractor’s Certification.** Contractor shall notify Owner when all of the following have occurred (“Dynamic Testing Readiness”), requesting permission to proceed with Dynamic Testing:

(a) Contractor has completed the Work in accordance with the Contract Documents which renders the Project safe and capable of supporting Dynamic Testing in accordance with the System Acceptance Plan and related procedures. This Work shall include the following, all as witnessed and approved by Owner: (i) final alignment and track configuration; (ii) operation of traction and third rail power; (iii) placement and activation of Contractor safety procedures, such as lock-out, tag-out, and red tag procedures; and (iv) verification of train, track and structure clearances by Contractor’s survey and running of WMATA’s Clearance Train;

(b) Contractor shall have obtained all applicable Regulatory Approvals for which Contractor is obligated under the Contract Documents to obtain in order to utilize the Work for Dynamic Testing in accordance with Section 10.2;

(c) Contractor shall have certified to Owner that all Work required to be completed prior to the commencement of Dynamic Testing has been performed in accordance with the requirements of the Contract Documents; and

(d) Contractor has ensured that Dynamic Testing for the Project can be conducted safely.

**17.3.2 Owner's Actions.** Within seven (7) Business Days following the receipt of Contractor's request to commence Dynamic Testing, Owner shall either: (a) execute and deliver a Certificate of Dynamic Testing Readiness, duly executed by Owner, acknowledging that Contractor has completed the prerequisites to Dynamic Testing set forth in Section 17.3.1 and in the Contract Documents; or (b) reject the request, stating the reasons in reasonable detail as to why Dynamic Testing Readiness has not occurred. Owner shall be responsible for obtaining WMATA's agreement to the Certificate of Dynamic Testing Readiness. If Contractor accepts the reasons for such rejection, it shall take corrective action and repeat the process set forth above. If Contractor disagrees with the reasons for the rejection, it shall promptly notify Owner, whereupon Contractor and Owner shall meet to attempt to resolve the disagreement. If the disagreement cannot be resolved within seven (7) days, Contractor shall act in accordance with the instructions of Owner without prejudice to its rights under Article 28. Owner's execution of a Certificate of Dynamic Testing Readiness shall not relieve Contractor of any of its obligations under the Contract Documents.

**17.3.3 Commencement and Performance of Dynamic Testing.** Contractor shall not commence Dynamic Testing until such time as it receives a duly executed Certificate of Dynamic Testing Readiness. Contractor shall coordinate the Dynamic Testing with Owner to enable Owner to coordinate with WMATA and obtain, as may be required, WMATA's presence at and required personnel and equipment for the Dynamic Testing.

#### **17.4 Substantial Completion.**

**17.4.1 Conditions of Substantial Completion.** Substantial Completion shall have been deemed achieved when each of the following conditions have occurred.

(a) the Work is substantially complete and the Project is ready for Operational Readiness Testing;

(b) a Certificate of Dynamic Testing Readiness has been executed pursuant to Section 17.3.2;

(c) Contractor has delivered and installed all Equipment and Materials required for commencing operations, and all such Equipment and Materials have passed all testing, inspections and safety certifications required under the System Acceptance Plan and the Contract Documents;

(d) Contractor has received all applicable Regulatory Approvals which Contractor is obligated under the Contract Documents to obtain for use and operation of the Project;

(e) Contractor has successfully completed all of the inspections and tests defined in the System Acceptance Plan, including the System Performance Demonstration Tests, and has demonstrated that the requirements of the Contract Documents for operation of the Project have been met;

(f) Owner has received, in acceptable form, all documentation, including as-built information, required to be submitted prior to Substantial Completion in the System Acceptance Plan;

(g) Contractor has purchased and delivered to Owner (as directed by Owner), free and clear of Liens, spare parts, spare Equipment and Materials, special tools, materials, expendables and consumables in accordance with the Contract Documents;

(h) Contractor has completed all training of personnel in accordance with the Contract Documents;

(i) All Defects that materially adversely impact the operation of the Project have been corrected;

(j) Contractor has completed preparation of all Punch Lists and has prepared a schedule for the completion of all Punch List items that is acceptable to Owner;

(k) Contractor has submitted, in acceptable form, all of the required operations and maintenance plans, procedures, rules, schedules and manuals required by the Contract Documents;

(l) Contractor has delivered to Owner copies of Contractor's final Systems Safety/Security Certification Report and Certificate, as defined by Contractor's System Safety/Security Certification Management Plan (the format of the System Safety/Security Certification Report and Certificate shall be developed and agreed upon by Owner and Contractor at a reasonable time prior to the expected date of Substantial Completion); and

(m) All Liquidated Damages due under the Contract have been paid or otherwise satisfied, or Contractor has delivered to Owner a letter of credit for Liquidated Damages in dispute in accordance with Section 26.1.3.

**17.4.2 Substantial Completion Certificate.** When the conditions set forth in Section 17.4.1 have occurred, Contractor shall submit to Owner a duly executed and completed Substantial Completion Certificate, which certificate shall set forth the date that Substantial Completion is deemed to have occurred as described above.

**17.4.3 Owner's Actions.** Within fifteen (15) days following the receipt of Contractor's Substantial Completion Certificate, Owner shall either: (a) deliver such certificate, duly executed by Owner, acknowledging that Contractor has achieved Substantial Completion; or (b) reject such certificate, stating the reasons in reasonable detail as to why such certificate has been rejected. If Contractor accepts the reasons for such rejection, it shall take corrective action and repeat the process set forth above. If Contractor disagrees with the reasons for the rejection, it shall promptly notify Owner, whereupon Contractor and Owner shall meet to attempt to resolve the disagreement. If the disagreement cannot be resolved within seven (7) days, Contractor shall act in accordance with the instructions of Owner without prejudice to its rights under Article 28. Owner's execution of the Substantial Completion Certificate shall not relieve Contractor of any of its obligations under the Contract Documents.

**17.4.4 Work to be Performed after Substantial Completion.** Promptly after Substantial Completion, Contractor shall complete all Punch List items and all other Work, if any, which was waived for purposes of Substantial Completion, and shall satisfy all of its other obligations under the Contract Documents necessary to achieve Final Acceptance, including ensuring that the Project has been completed and all components have been properly adjusted and tested.

**17.5 Operational Readiness.**

**17.5.1 Conditions of Operational Readiness.** Operational Readiness shall be deemed to have occurred when all of the following have occurred:

- (a) Substantial Completion has been achieved; and
- (b) WMATA has determined that Operational Readiness has occurred.

**17.5.2 Operational Readiness Certificate.** When WMATA has confirmed that Operational Readiness has occurred, WMATA, Owner and Contractor shall jointly execute an Operational Readiness Certificate setting forth the Operational Readiness Date. Neither WMATA's concurrence that the Operational Readiness Date has occurred nor execution of the Operational Readiness Certificate shall relieve Contractor of any of its obligations under the Contract Documents.

**17.6 Final Acceptance.**

**17.6.1 Conditions of Final Acceptance.** Final Acceptance shall be deemed to have occurred when all of the following have occurred:

- (a) Substantial Completion and Operational Readiness has been achieved;
- (b) Owner shall have received in acceptable form: (i) all design documents, including drawings, calculations and specifications; (ii) all final Project Record Documents and Record Deliverables in accordance with the Contract Documents; (iii) the

most currently updated Project Schedule; (iv) all Project Right-of-Way maps, surveys and survey maps; and (v) all other deliverables under the Contract Documents;

(c) all of Contractor's and Subcontractors' personnel, supplies, equipment and materials, waste materials, rubbish and temporary facilities shall have been removed from the Site;

(d) Defects involving electromagnetic interference have been corrected;

(e) Contractor shall have delivered to Owner satisfactory evidence that there are no outstanding Claims, Liens or stop notices of Contractor or any Subcontractor, laborer or third party, including Utility Owners, with respect to the Work, other than any previously submitted unresolved Claims of Contractor or a Subcontractor, laborer or third party, being contested by Contractor (in which event Contractor shall provide a certification listing all such matters with such detail as is requested by Owner and, with respect to all Subcontractor and laborer Claims and Claims of third parties, shall include a representation of Contractor that it is diligently and in good faith contesting such matters by appropriate action, including legal proceedings which shall operate to prevent the enforcement or collection of the same). For purposes of such certificate, the term "Claim" shall include all matters or facts which may give rise to a Claim;

(f) the Punch List items shall have been completed in accordance with the Contract Documents; and

(g) all of Contractor's other obligations under the Contract Documents (other than obligations which by their nature are required to be performed after Final Acceptance) shall have been satisfied in full or waived.

**17.6.2 Final Acceptance Certificate.** When the conditions set forth in Section 17.6.1 have occurred, Contractor shall submit to Owner a duly executed and completed Final Acceptance Certificate, which certificate shall set forth the date that Final Acceptance is deemed to have occurred as described above.

**17.6.3 Owner's Actions.** Within fifteen (15) days following the receipt of Contractor's Final Acceptance Certificate, Owner shall either: (a) deliver such certificate, duly executed by Owner, acknowledging that Contractor has achieved Final Acceptance; or (b) reject such certificate, stating the reasons in reasonable detail as to why such certificate is rejected. If Contractor accepts the reasons for such rejection, it shall take corrective action and repeat the process set forth above. If Contractor disagrees with the reasons for the rejection, it shall promptly notify Owner, whereupon Contractor, Owner, and, if Owner believes appropriate, WMATA shall meet to attempt to resolve the disagreement. If the disagreement cannot be resolved within seven (7) days, Contractor shall act in accordance with the instructions of Owner without prejudice to its rights under Article 28. Owner's execution of the Final Acceptance Certificate shall not relieve Contractor of any of its obligations under the Contract Documents.



**17.7 Assignment of Causes of Action.** Contractor hereby assigns to Owner 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. Sec. 15), arising from purchases of Equipment and Materials, or other goods, services or materials pursuant to this Contract. This assignment shall be deemed made and shall become effective at the time final payment is tendered to Contractor, without further acknowledgment by the parties.

## ARTICLE 18. CONFLICT OF INTEREST

**18.1 Prohibition on Conflict of Interest.** Any Person and/or Entity that has materially participated in activities related to Phase 2 while under contract to Owner, or otherwise has an impermissible conflict of interest, is not allowed to participate on behalf of any Contractor-Related Entity. A Person and/or Entity is presumed to have an impermissible conflict of interest and an unfair competitive advantage if such Person and/or Entity: (a) materially assisted in drafting or establishing the requirements, restrictions, specifications, prerequisites, obligations, constraints, options or conditions of the procurement for Phase 2; or (b) prior to the due date for the submission of Qualifications Statements under the RFQI, gained confidential or other material information regarding any material part of the procurement for Phase 2 that was not available to others.

**18.2 Notification of and Response to Potential Conflict of Interest.** If Contractor has any doubt as to whether a Person and/or Entity has an impermissible conflict of interest or potential unfair competitive advantage, it shall notify Owner's Contracting Officer in writing and submit pertinent information to enable Owner to evaluate this situation. Owner, in its sole discretion, will make a determination relative to the potential conflict of interest or competitive advantage and the ability to mitigate such situation, which determination shall be final. General knowledge and experience gained from the performance of a contract with Owner which merely enhances a Person and/or Entity's qualifications or reputation shall not be deemed to constitute such a conflict or competitive advantage.

## ARTICLE 19. CHANGES IN THE WORK

**19.1 Acknowledgment.** Contractor hereby acknowledges and agrees that the Contract Price constitutes full compensation for performance of all of the Work in accordance with the Contract Documents, subject only to adjustment as specified in this Contract, and that Owner is subject to financing constraints which results in strict limitations on its ability to increase the Contract Price or extend the Scheduled Substantial Completion Date. Change Orders are subject to strict requirements, intended to reduce the potential for cost and time overruns chargeable to Owner, and to provide incentives to the parties to act expeditiously to resolve any issues that arise during the course of the Project. In no event shall Contractor be entitled to an adjustment in the Contract Price or the Scheduled Substantial Completion Date if: (i) Contractor fails to comply with the strict notice and Claims submission requirements in this Contract, or (ii) to the

extent that the adjustments in the Contract Price or Scheduled Substantial Completion Date arise out of or relate to events caused by the breach of contract, violation of Laws, Regulations and Ordinances, negligence, recklessness or willful misconduct of any Contractor-Related Party.

**19.2 Owner-Directed Changes and Procedures.**

**19.2.1 Authority to Direct Changes and Execute Change Orders.**

(a) Owner's Contracting Officer may by written order, at any time and from time-to-time, without notice to any Surety and without invalidating this Contract, authorize and/or require changes in, additions to, or deletions in the Work within the general scope of this Contract, including but not limited to changes:

- (i) in the scope of the Work;
- (ii) in the method, manner, sequence and time of performance of the Work; or
- (iii) in Owner-furnished services or deliverables.

(b) A Change Order signed by Owner's Contracting Officer and Contractor indicates an agreement between Owner and Contractor regarding the scope of the change in the Work, the amount of adjustment to the Contract Price, and the extent of the adjustment to the Scheduled Substantial Completion Date. Notwithstanding any other provision in this Contract, all Change Orders shall, unless otherwise expressly stipulated in the Change Order, fully and finally resolve all direct, indirect (including impact), schedule and financial effects of the subject of the Change Order.

(c) No oral instruction, order or statement by Owner shall constitute a change under this Article 19. If Contractor believes that any oral instruction, order or statement by Owner may result in a change in the Work or require an adjustment to the Contract Price or the Scheduled Substantial Completion Date, Contractor shall request that the oral instruction, order or statement be given in writing and shall comply with the provisions of this Article 19.

(d) If Contractor believes that any oral or written instruction, order or statement by WMATA, VDOT or any other Governmental Person affects its Work and shall be the basis for a change under this Article 19, Contractor shall immediately notify Owner's Contracting Officer. Contractor's notice to Owner shall be issued by telephone or in person and followed immediately thereafter by written notice. Upon receipt of Contractor's notice, Owner shall notify Contractor as to how to respond to such instruction, order or statement. If Contractor intends to seek relief under this Article 19 for such instruction, order or statement, it shall, in addition to all other obligations under this Article 19, provide Owner with the daily work reports identified in Section 19.6.

**19.2.2 Notice of Proposed Change.**

(a) If Owner desires to make a change in the Work or to evaluate whether to initiate such a change, Owner's Contracting Officer may, at its discretion, issue a Notice of Proposed Change. Such notice will, as applicable, identify any limitations in the scope or price of Contractor's estimating efforts for the proposed change.

(b) Prior to or after issuance of a Notice of Proposed Change, Owner may, in its sole discretion, schedule an initial meeting with Contractor to discuss and define the proposed change, including, but not limited to, Work impacted by the proposed change, and pricing and cost data. Contractor shall be obligated to participate in such meeting and follow Owner's instructions relative to the submission of information. Such initial consultation shall be at no additional cost to Owner.

(c) Contractor shall, within a reasonable time after receipt of the Notice of Proposed Change, but no later than thirty (30) days thereafter, prepare and submit to Owner's Contracting Officer the scope, price and schedule impact, if any, of the proposed change, incorporating and fully reflecting all requests made by Owner. Contractor represents and warrants that such information will: (i) personally be examined prior to delivery by the Authorized Contractor's Representative; (ii) clearly detail how the total price and individual components of that price were determined; and (iii) include all assumptions, detailed quantity takeoffs, rates of production and progress calculations, cost estimates and quotes from Subcontractors used by Contractor to arrive at the price in a format and level of detail reasonably required by Owner. If Owner subsequently elects not to proceed with the proposed change, a Change Order shall be issued to reimburse Contractor for reasonable costs incurred for estimating services, design services and services involved in the preparation of proposed revisions to the Contract Documents.

**19.2.3 Minor Changes.** Owner may order minor changes in the Work that Owner believes do not involve an adjustment in the Contract Price or Scheduled Substantial Completion Date, and do not materially or adversely affect the Work. If Contractor disputes that such order involves a minor change, Contractor shall notify Owner in accordance with Section 19.3.

**19.2.4 Directive Letters.** If the parties: (a) agree that a change in the Work has occurred but have not been able to agree upon the amount of any adjustment to the Contract Price or the Scheduled Substantial Completion Date; (b) disagree over whether a change in the Work has occurred; or (c) disagree over whether Contractor is entitled to any adjustment to the Contract Price or the Scheduled Substantial Completion Date for any alleged change, then Owner's Contracting Officer may, in its sole discretion, direct Contractor to proceed with the change or alleged change by issuing a Directive Letter to Contractor. In all such cases, Contractor shall comply with such Directive Letter. In the event of clause (a) above, Owner shall compensate Contractor for performing such work on a time and material basis as set forth in Section 19.4.3, until such time as the parties reach an agreement on a Change Order. If the

parties cannot reach agreement on a Change Order for such change, or in the case of clause (b) or (c) above, the parties shall resolve such dispute in accordance with Article 28.

**19.3 Contractor Request for Change.**

**19.3.1** If Contractor believes that it is entitled under this Contract to a Change Order for an adjustment to the Contract Price, Scheduled Substantial Completion Date, or any other relief due to any event or situation arising out of or related to the Work, Contractor shall, within seven (7) days after Contractor knows, or should have reasonably known, of such event or situation, deliver to Owner's Contracting Officer a written Request for Change ("Notice of RFC") describing the general nature of the event or situation and the relief sought.

**19.3.2** Within twenty-one (21) days after receiving a Notice of RFC, Owner may, in its sole discretion, schedule and hold an initial meeting with Contractor to discuss any aspect of such RFC, including but not limited to Work impacted by the proposed change, and the pricing and cost data to be submitted. Contractor shall be obligated to participate in such meeting and follow Owner's instructions relative to the submission of information. Such initial consultation shall be at no additional cost to Owner.

**19.3.3** Within twenty-one (21) days after the later of the submission of the Notice of RFC or, if applicable, a meeting held under Section 19.3.2, Contractor shall submit a Request for Change Order to Owner's Contracting Officer setting forth in detail the basis of its Request for Change Order, including: (a) the facts and circumstance underlying the Request for Change Order; (b) the cost information supporting any request for adjustment to the Contract Price; (c) the scheduling information and analysis with respect to the time impact on the Project as required under this Contract to support any request for adjustment to the Scheduled Substantial Completion Date; and (d) any additional submissions that Owner may have instructed Contractor to submit in the meeting held under Section 19.3.2. If Contractor in good faith is unable to provide final cost or schedule information at the time of its Request for Change Order, Contractor shall periodically update and supplement its Request for Change Order as additional cost and schedule information becomes available, and shall provide final cost and schedule information no later than sixty (60) days from the date of submitting its Request for Change Order. Unless Owner's Contracting Officer has, in writing, specifically extended such period, Contractor's failure to provide final cost and schedule information within such sixty (60) day period shall preclude Contractor from claiming any additional costs or time that is not supported in its Request for Change Order, and any such costs or time shall be waived by Contractor.

**19.3.4** In addition to any other certifications required under the Contract Documents, each Request for Change Order shall contain a written certification on behalf of Contractor that, to the best of the certifier's knowledge and belief: (a) the Request for Change Order is made in good faith, and that the documents containing supporting information provided by Contractor are current, accurate, and complete as of the date of certification; (b) the amount of additional compensation and/or time of performance requested accurately reflects a reasonable adjustment in the cost and time of performance to which Contractor reasonably believes it is

entitled; and (c) that there is supporting actual cost accounting records and actual schedule as-built data that reflect the Work performed as of the date of certification. For the purposes of this Section 19.3.4:

(a) “current, accurate” means, as to each document, that it is: (i) the version of that document used in preparing its request for adjustment of the Contract Price and/or the Scheduled Substantial Completion Date and to quantify the amount of such adjustment; (ii) contains information Contractor used in preparing its request for adjustment of the Contract Price and/or the Scheduled Substantial Completion Date and to quantify the amount of such adjustment; and (iii) is a true copy of that document; and

(b) “complete” means that the documents submitted to Owner are all the documents used by Contractor in preparing its request for adjustment of the Contract Price and/or the Scheduled Substantial Completion Date and to quantify the amount of such adjustment.

**19.3.5** Within twenty-one (21) days after receipt of a Request for Change Order, Owner will respond in writing to Contractor to: (a) confirm that a change has occurred; (b) deny that a change has occurred; (c) advise Contractor that the necessary information has not been submitted to decide which of the above two alternatives applies and indicate the information necessary for further review; or (d) inform Contractor that additional time is needed by Owner to evaluate the Request for Change Order and the reasons why additional time is needed.

**19.3.6** If Owner believes that the Request for Change Order is justified (in whole or in part), Owner’s Contracting Officer shall advise Contractor and request that Contractor follow the procedures set forth in Section 19.2.2(c). If Owner disputes that Contractor is entitled to a Change Order, Contractor shall comply with the dispute resolution procedures set forth in Article 28.

**19.4 Pricing of Change Orders.** The pricing of Change Orders, and any cost or credit to Owner resulting therefrom, shall be determined, as applicable, in one or more of the following ways:

**19.4.1 Unit Prices.** If Owner and Contractor are able to agree upon unit quantities and unit prices for any aspect of the change in the Work, Contractor shall be compensated for such changes on the basis of such unit quantities and prices.

**19.4.2 Fixed Price Lump Sum Amount.** Where Owner determines that the scope and extent of the change can be defined before the change in the Work is performed, Owner may elect to negotiate a fixed price lump sum amount with Contractor as compensation for such Work. For each such change, Contractor shall furnish a detailed, written proposal priced and itemized in accordance with the categories and limitations identified in Section 19.4.4 below. Owner and Contractor shall then seek to agree upon the lump sum price. A Change Order may also include a fixed price lump sum amount if Owner and Contractor have reached

agreement as a settlement basis for any disputed item, including Work that was performed under the time and material approach set forth in Section 19.4.3.

**19.4.3 Time and Material.** If Owner and Contractor are unable to agree on the basis of pricing a Change Order pursuant to Sections 19.4.1 or 19.4.2 above, then Contractor shall be paid on a time and material basis in accordance with Section 19.4.4, provided that: (1) such costs are reasonably and properly incurred by Contractor; (2) such costs are documented as required in this Section 19.4.3; (3) such costs would not have been incurred but for the change in the Work; and, for those Requests for Change Orders under Section 19.3, (4) Contractor is entitled to relief for such Request for Change Order in accordance with the terms of this Contract. To be considered eligible for reimbursement, Contractor shall strictly comply with the following requirements:

(a) Contractor shall collect and preserve concurrent time and materials data and records for all Work performed on a time and material basis. Contractor shall, on a daily basis, notify Owner of the scope of Work that is being performed on a time and material basis and, no later than 10:00 a.m. the following day present a summary of the time and material expended by Contractor for performing such activities. Owner will note any observations regarding the Work and countersign the time and material record sheet. Contractor shall, at the end of each week, or at such other intervals as Owner may direct, furnish to Owner the following information:

(i) Countersigned daily time records for manual and non-manual labor showing the name of each employee performing the Work, the number of hours (with straight time and overtime hours identified separately) employed thereon, the individual's duties, and the wage rate paid to the employee;

(ii) The rates and amounts of workers' compensation insurance premiums, and state and federal taxes based on such wages;

(iii) Vacation allowances, union dues and assessments and health, welfare, employment and retirement benefits which the employer actually pays based on such wages;

(iv) The amount and character of the Equipment and Materials furnished and/or installed in performing the Work, including the quantities installed on a daily basis;

(v) Construction equipment and other apparatus owned or rented in performing the Work, from whom they were purchased or rented, the description of the Work performed by each equipment or apparatus, the operating and standby hours, the transportation costs and the equipment rates or the amount paid therefore; and

(vi) Payments made to approved Subcontractors (with copies of Subcontractor invoices and supporting documentation as required under clauses (i) through (v) of this Section 19.4.3(a)).

(b) Unless Owner requires a more frequent summary, Contractor shall provide a monthly summary of the labor, Equipment and Materials, construction equipment and other costs related to changes in the Work performed on a time and material basis. All Equipment and Materials, rented construction equipment and other rented apparatus charges, and payments made to Subcontractors shall be substantiated by valid copies of invoices and paid receipts from the applicable Subcontractor. The failure of Contractor to furnish the supporting documentation required under this Section 19.4.3(b) with respect to any particular labor, Equipment and Materials, construction equipment, apparatus or subcontract as required herein shall constitute a waiver by Contractor of its claim for payment based thereon.

**19.4.4 Pricing Requirements.** The following constitutes the basis for compensation to Contractor for Change Orders that will be paid on a time and material basis.

(a) **Professional Services Labor.**

(i) To the extent a Design Professional is required to prepare and/or review design documents or undertake related tasks (e.g., surveys) associated with a change in the Final Plans and Specifications, such Design Professional shall be compensated for the actual salary costs associated with the number of hours spent on such tasks for all levels below the senior designer (or equivalent) level who are directly engaged in such change. For the avoidance of doubt, no professional services management above the senior designer (or equivalent) level, or any support tasks associated with the change (irrespective of the Design Professional providing those services), including, but not limited to estimating, scheduling, contract administration, procurement and accounting shall be included by such Design Professional as a direct labor cost to the Project. These, and other, costs are included in the Overhead Markup.

(ii) Time sheets will be maintained for all those professional services personnel that are covered by clause (i) above to support the hours worked on the change order tasks. The applicable Design Professional's professional services overhead rates shall be applied to the above-referenced professional services actual labor costs in accordance with such Design Professional's established corporate policies and accounting methodologies, and as adjusted to exclude insurance elements that are covered by the OCIP and all general liability insurance add-ons. All overhead rates will be in compliance with Federal Acquisition Regulations ("FAR") Part 31 Cost Principles, and will be net of any and all unallowable costs as defined in FAR Part 31. Contractor agrees to provide any and all supporting documentation for such overhead rates requested by Owner, and to cooperate with Owner in its review and audit of the rates being used for application to the professional services labor.

(b) **Craft Labor.**

(i) Actual wages shall be computed based upon base hourly rates (i.e., excluding premium pay) by craft for all levels below the general foreman (or equivalent level) and paid to all employees directly engaged by the Contractor or Subcontractor in the Work. No supervision or project management time above the crew foreman level shall be included by Contractor or Subcontractor as a direct labor cost to the Project. For the avoidance of doubt, no management above the general foreman (or equivalent) level, and no support tasks associated with the change, including, but not limited to estimating, scheduling, contract administration, procurement and accounting shall be included by Contractor or Subcontractor as a direct labor cost to the Project. These, and other, costs are included in the Overhead Markup.

(ii) Labor burden shall be established as a percent of actual wages paid for each craft and shall be limited to payment for: vacation allowance, health and welfare, pension, apprenticeship programs and other similar programs as required for each craft, social security, unemployment insurance, and workers' compensation insurance. Labor burden shall not include expenses relating to employee profit sharing plans, bonuses, voluntary employee contributions to charities, savings plans, general liability insurance, and any insurance covered by the OCIP.

(iii) Subsistence and/or mileage shall be a labor cost if required in union agreements or by written corporate policy, and shall be paid at rates not to exceed the Federal Travel Regulations per diem rates.

(iv) Premium time shall be the actual premium costs paid, plus paid social security taxes, unemployment insurance, workers' compensation insurance, union fringe benefits if required by union agreements and/or by written corporate policy, and not otherwise covered by the OCIP.

(c) **Equipment and Materials.** All Equipment and Materials incorporated into the Work shall be at Contractor's or Subcontractor's net cost, including freight and transportation. All actually received quantity discounts and prompt payment discounts shall be reflected as credits for any Equipment and Materials purchased.

(d) **Construction Equipment, Material and Consumables.**

(i) All construction equipment leased specifically for changes in the Work shall be at Contractor's or Subcontractor's net invoiced cost.

(ii) If construction equipment is owned and actually engaged in the performance of the change, hourly rates will be computed based on the latest version of the "Blue Book Rental Rate for Construction Equipment." Hourly rates will be computed by dividing monthly Blue Book rates (excluding operating costs) by 176, and adjusting for region and depreciation. In the case of any machinery or equipment not referred to in



the Blue Book Rental Rates, a monthly rental rate shall be computed on the basis of an amount that is the equivalent of 3% of the purchased price of such equipment. The hourly rate in such cases will be determined by dividing the monthly rate by 176 when actually operating. Payment for equipment idled as a direct result of the change, if applicable, shall be based on 40% of the rate determined herein, without inclusion of operating costs.

(iii) Transportation costs for equipment utilized to perform the change in the Work shall be reimbursed only if it is allocable solely to such change.

(iv) Small tools and consumables are defined as individual pieces of equipment, tools or material each having a new value of \$1,000.00 or less, and shall not be considered a direct cost of any change, as they are covered by the Overhead Markup.

(v) One-third ( $1/3^{\text{rd}}$ ) of the cost of reusable materials, such as concrete formwork (steel and lumber), shoring or temporary enclosures is allowed for each change, but not to exceed published rental rates for such reusable materials.

(e) **Subcontractor Cost.** Each Subcontractor's cost shall be priced in the manner prescribed in this Section 19.4.4 for Contractor.

(f) **Miscellaneous.** The following expenses incurred for performing changes in the Work shall be reimbursable without any Overhead Markup or profit:

(i) Unless separately covered and paid for by Owner under the OCIP, the net increase in premiums for public liability, property damage, and builder's risk insurance charged by insurance company(ies), which net increase is directly attributable to the change in the Work.

(ii) Fees for permits, licenses, tests, state and local inspections.

(iii) Any bond premiums directly attributable to the change in the Work.

(iv) Applicable business/professional/occupational license (BPOL) taxes and sales or use taxes.

(g) **Overhead Markup and Profit.**

(i) For professional services labor engaged under Section 19.4.4(a) above, five percent (5%) for Overhead Markup, and a profit up to and not to exceed ten percent (10%), shall be applied to the billable labor cost, including the audited overhead rate.

(ii) For craft labor engaged under Section 19.4.4(b) above, Equipment and Materials furnished under Section 19.4.4(c) above, rented and owned equipment

under Section 19.4.4(d) above, ten percent (10%) for Overhead Markup. Profit shall be added to the direct cost plus Overhead Markup not to exceed ten percent (10%) for totals up to \$100,000, seven percent (7%) for totals in excess of \$100,000 and up to \$500,000, and five percent (5%) for totals over \$500,000.

(iii) Contractor and each higher-tier Subcontractor not performing the Work will be allowed five percent (5%) Overhead Markup, and a profit not to exceed three percent (3%) on the lower-tier Subcontractor's direct costs (i.e., excluding the lower-tier Subcontractor's Overhead Markup and profit), regardless of the tier of the Subcontractor.

(iv) The maximum aggregate Overhead Markup per Change Order shall not exceed twenty percent (20%) of the direct cost. The maximum aggregate profit shall not exceed: sixteen percent (16%) for the direct cost plus Overhead Markup for totals up to \$100,000, thirteen percent (13%) for direct costs plus Overhead Markup for totals in excess of \$100,000 and up to \$500,000, and eleven percent (11%) for direct costs plus Overhead Markup for totals over \$500,000.

(h) **Deductive Change Orders.** If a Change Order only involves a net decrease in the Contract Price, the Contract Price will be reduced by the amount it would have cost Contractor if the Work omitted/deleted had not been eliminated, including the Overhead Mark-up and profit as calculated in clause (g) above; *provided, however*, that Contractor and the affected Subcontractor(s) will be allowed to retain a sum, totaling no more than three percent (3%) of the total value of the Change Order, for the administrative cost of the deductive change.

(i) **Changes that Involve Both a Credit and Deduction.** If a change involves both a credit and deduction, Contractor shall include a separate accounting of each with a summarization of the net adjustment to the Contract Price.

## **19.5 Requirements for Adjustment to Scheduled Substantial Completion Date and Pricing Delay Claims.**

**19.5.1 Adjustments to Scheduled Substantial Completion Date.** Any requests for adjustment of the Scheduled Substantial Completion Date shall be subject to the requirements set forth in Article 13.

**19.5.2 Pricing of Delay Claims.** Subject to Sections 13.4.3 and 13.5 above, Contractor will be entitled to an equitable adjustment for time-related Project overhead costs for compensable Excusable Delays. Once the Baseline Schedule is approved, the parties agree to negotiate in good faith and attempt to reach agreement on daily rates that will apply for such time-related Project overhead costs.

**19.6 Change Order Records.** Contractor shall maintain its records in such a manner as to provide a clear distinction between the direct costs (as contrasted with indirect or impact

costs) of Work for which it is entitled (or for which it believes it is entitled) to an adjustment in the Contract Price. Contractor shall contemporaneously collect, record in writing, segregate and preserve: (a) all information necessary to determine the costs of all Work which is the subject of a Change Order or a Request for Change Order; and (b) all information necessary to show the actual impact (if any) of the change on the Critical Path for the overall Project of all Work which is the subject of a Change Order or a proposed Change Order, if the impact on the applicable Project Schedule is in dispute. Contractor and Subcontractors shall establish and maintain an accounting system and records that properly accumulate and segregate incurred costs by line item for changes in the Work. Such information shall be provided to Owner and any authorized representative of Owner reviewing any Request for Change Order or Claim regarding compensation for such Work as provided in Article 12.

**19.7 Disputes and Duty to Proceed.** The failure of Owner and Contractor to agree to any Change Order under this Article 19 (including Claims as to the entitlement to a Change Order, Claims relating to a Directive Letter, and any disputed amount of any adjustment to the Contract Price or the Scheduled Substantial Completion Date in connection with a Change Order) shall be a dispute to be resolved in accordance with Article 28. Unless directed otherwise by Owner's Contracting Officer, Contractor shall have the duty to diligently proceed with the Work in accordance with Owner's instructions, including a Directive Letter, pending resolution of a Request for Change Order or Claim.

**19.8 Price Adjustment for Failure to Furnish Certain Documents**

**19.8.1** If any adjustment to the Contract Price as a result of any Change Order was increased by any significant amount because of the items set forth in the following clauses (a) and (b), and, in respect of the relevant document which Contractor has not furnished, a reasonably prudent Person and/or Entity would have found such document significant in negotiating the adjustment to the Contract Price, then such adjustment to the Contract Price shall be modified accordingly.

(a) Contractor furnished documents containing supporting information that were not current, accurate and complete as certified in the certification given pursuant to Section 19.3.3; or

(b) As to the following documents, Contractor has not furnished such documents to Owner as part of the documents containing supporting information required to be submitted under Section 19.3.3:

(i) all documents Contractor considered in preparing its request for adjustment of the Contract Price;

(ii) all documents generated by Contractor's Project team in preparing its request for adjustment of the Contract Price; or

(iii) all documents Contractor received from any Person or Entity who is, or is seeking to be considered as, a Subcontractor on the Project in relation to the work which is the subject of the relevant Change Order.

**19.8.2** If Owner's Contracting Officer determines under Section 19.8.1 that a price or cost reduction should be made, Contractor agrees not to raise the following matters as a defense:

(a) Contractor was a sole source supplier or otherwise was in a superior bargaining position and thus the adjustment of the Contract Price as a result of the Change Order would not have been modified even if all required documents used in preparing the request for such adjustment had been submitted.

(b) Owner or Owner's Contracting Officer should have known that the documents in issue failed to constitute all documents Contractor considered, generated, received or should have used in preparing its request for adjustment to the Contract Price, even though Contractor took no affirmative action to bring the absence of such documents to the attention of Owner's Contracting Officer.

(c) Contractor did not submit its certification, as required under Section 19.3.4.

**19.8.3** An offset in an amount determined appropriate by Owner or Owner's Contracting Officer based upon the facts shall be allowed against the amount of a reduction in the adjustment of the Contract Price if Contractor certifies to Owner that, to the best of the Contractor's knowledge and belief, Contractor is entitled to the offset in the amount requested and proves that such an offset is due and proper.

**19.8.4** If any reduction in the adjustment to the Contract Price under this clause reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, Contractor shall be liable to and shall pay Owner at the time such overpayment is repaid, then the following shall apply:

(a) Simple interest on the amount of such overpayment to be computed from the date(s) of overpayment to Contractor to the date Owner is repaid by Contractor at the applicable underpayment rate effective for each quarter prescribed by the Secretary of the Treasury under 26 U.S.C. 6621(a)(2); and

(b) A penalty equal to the amount of the overpayment, if Contractor or Subcontractor knowingly did not submit all documents required to be submitted in support of its request for adjustment to the Contract Price as a result of a Change Order; *provided, however*, that the failure to submit any such document resulted in the overpayment.

**19.8.5** The provisions of this Section 19.8 shall not be construed to expand or limit the audit rights and obligations established in Section 12.5 above.

**ARTICLE 20.  
OWNER'S RIGHT TO SUSPEND ALL OR PART OF WORK**

**20.1 Suspension for Convenience.**

**20.1.1** Owner may, for its convenience and for any reason, suspend the Work at any time by providing three (3) Business Days' prior written notice to Contractor (except that such written notice is not required in the case of an emergency), stating the nature, effective date, and anticipated duration of such suspension, whereupon Contractor shall suspend the Work to the extent specified. Except as set forth in Section 20.1.2, if Contractor claims that such suspension has affected the cost or time of performance, Contractor shall be entitled to a Change Order, provided that Contractor satisfies the requirements of Articles 13 and 19. Any Claims for costs due to a suspension under this Section 20.1.1 shall be priced in accordance with Section 19.5.2. However, in no event shall Contractor be entitled to a mark-up for profit on the increased costs of performance caused by such suspension.

**20.1.2** Owner has the right to order Contractor in writing to suspend, delay, or interrupt all or any part of the Work for a period of time not to exceed twenty-four (24) hours twice in any twelve (12) month period, as Owner may determine to be appropriate for the convenience of Owner, which shall not be considered an Excusable Delay, nor entitle Contractor to an adjustment to the Contract Price.

**20.2 Suspension for Other Reasons.**

**20.2.1** Owner has the authority to suspend the Work, wholly or in part, for such period as Owner deems necessary because of the failure on the part of Contractor to correct conditions that are unsafe for workers or the general public, to carry out orders properly given, or to perform any requirements of the Contract Documents if (a) Owner gives written notice to Contractor which sets forth the failure with specificity; and (b) Contractor does not commence a cure of such failure within seven (7) days after receipt of such notice, and thereafter diligently pursues such cure to completion within thirty (30) days or, if such failure is not curable within such thirty-day period, commence to cure and diligently pursue such cure within such thirty-day period. The suspended Work shall be resumed when appropriate corrective action has been taken.

**20.2.2** Contractor shall not be entitled to any increase in the Contract Price or extension of the Scheduled Substantial Completion Date in connection with any suspension under this Section 20.2, including for the Work described in Section 20.3 unless it is later determined that such suspension was wrongful.

**20.3 Project Safety.** In the event of a suspension of Work under this Article 20, Contractor shall undertake all work necessary to ensure Project safety.

**ARTICLE 21.  
INDEMNIFICATION**

**21.1 Indemnifications by Contractor.**

**21.1.1** Except as otherwise expressly provided below, Contractor shall indemnify, protect, defend, hold harmless and release each Owner Indemnitee from and against any and all losses, damages, costs and expenses, including reasonable attorneys' fees, arising out of Claims by third parties with respect to the following:

(a) to the extent of any actual or alleged negligent or intentionally wrongful act, error, or omission of any Contractor-Related Party, provided that the indemnity under this Section 21.1.1(a) shall be limited to such Claims arising out of death, bodily injury or property damage, including loss of use of property, suffered by third parties;

(b) any monetary imposition arising from a violation by any Contractor-Related Party of Laws, Regulations and Ordinances in connection with or relating to the Project or the Work;

(c) any mechanic's, materialman's or design professional's Lien on Owner's right, title and interest in and to any Project Right-of-Way or other Owner property arising out of the actual or alleged furnishing of labor, Equipment and Materials, or other materials or services to or for the Project or any portion thereof by or on behalf of or at the request of any Contractor-Related Party and due to Contractor's failure or alleged failure to pay to others any amount due or alleged to be due;

(d) any actual or alleged failure of any Contractor-Related Party to pay any sales, use or other taxes due or alleged to be due in connection with the Work and for which it is responsible to pay pursuant to Section 14.1.2;

(e) any Hazardous Substances or Hazardous Environment Condition described in Sections 9.1.9(a) or 9.1.9(b);

(f) Not Used;

(g) infringement by any Contractor-Related Party (excluding third-party vendors of software and Equipment and Materials) of any actually or allegedly patented, copyrighted, trademarked, service-marked or other proprietary materials, Equipment and Materials, devices or processes, including intellectual property (except with respect to any particular design process or the product of a particular manufacturer or manufacturers specified and required by Owner); and

(h) actual or alleged fraud or intentional misrepresentation by any Contractor-Related Party.

**21.1.2** To the fullest extent permitted by Laws, Regulations and Ordinances, Contractor's indemnities exclude the portion of liability on a Claim that is attributable to: (a) the negligent acts or omissions of an Owner Indemnitee; (b) an error, omission, or deficiency in the technical specifications or requirements included in the Project Technical Requirements which either: (i) is unknown to any Contractor-Related Party; or (ii) although known to a Contractor-Related Party, is communicated in writing to Owner pursuant to Section 3.1.2 and Owner has failed to issue an appropriate Change Order as required pursuant to Section 3.1.2; (c) any injuries or loss arising from acts of terrorism; or (d) those losses, damages, costs and expenses addressed in Section 21.3 below. If the Claim is attributable to those causes identified in clauses (a) through (d) above, Contractor shall not be obligated to indemnify Owner Indemnitees for the proportionate share of such Claim caused thereby.

**21.1.3** For purposes of this Section 21.1, a "third party" means any Person and/or Entity other than an Owner Indemnitee or a Contractor-Related Party, except that a third party includes: (a) any Owner employee, agent and contractor or his or her heir or representative who asserts a Claim arising out of death, bodily injury or property damage against an Owner Indemnitee or a Contractor-Related Party and which is not covered by worker's compensation, and (b) any Governmental Person which in the exercise of its authority imposes upon Owner Hazardous Substance remediation requirements or costs which are within the scope of an indemnity set forth in this Section 21.1.

**21.1.4** Except with respect to its obligations set forth in Section 21.1.1(f), Contractor shall not have any obligation to indemnify Owner or any third-party beneficiary or assignee with respect to any third party Claim relating to Pre-Existing Hazardous Environmental Conditions. Except to the extent provided in Section 21.1.1(f), Owner shall be solely responsible for the satisfaction and discharge of, as and when due, any and all liabilities, obligations and other Claims by a third party for personal injury or damage or harm to its property or business due to Pre-Existing Hazardous Environmental Conditions suffered or incurred at any time.

## **21.2 Defense and Indemnification Procedures.**

**21.2.1** If Owner receives notice of or otherwise has actual knowledge of a Claim which it believes is within the scope of Contractor's indemnification under Section 21.1, it shall by writing as soon as practicable: (a) inform Contractor of such Claim; (b) send to Contractor a copy of all written materials Owner has received asserting such Claim; and (c) notify Contractor that either: (i) the defense of such Claim is being tendered to Contractor; or (ii) Owner has elected to conduct its own defense for a reason set forth in Section 21.2.5 below.

**21.2.2** If the insurer under any applicable insurance policy accepts tender of defense, Contractor and Owner shall cooperate in the defense as required by the insurance policy. If no defense is provided by insurers under potentially applicable insurance policies, then Sections 21.2.3 through 21.2.7 below shall apply.

**21.2.3** If the defense is tendered to Contractor, it shall within forty-five (45) days of said tender deliver to Owner a written notice stating that Contractor: (a) accepts the tender of

defense and confirms that the Claim is subject to full indemnification hereunder without any “reservation of rights” to deny or disclaim full indemnification thereafter; (b) accepts the tender of defense but with a “reservation of rights” in whole or in part; or (c) rejects the tender of defense if it reasonably determines it is not required to indemnify against the Claim under Section 21.1. If such notice is not delivered within such forty-five (45) days, the tender of defense shall be deemed rejected.

**21.2.4** If Contractor gives notice under Sections 21.2.3(a) above, Contractor shall have the right to select legal counsel for the Owner Indemnitees, subject to reasonable approval of Owner, and Contractor shall otherwise control the defense of such Claim, including settlement, and bear the fees and costs of defending and settling such Claim. During such defense: (a) Contractor shall at Contractor’s expense, fully and regularly inform Owner of the progress of the defense and of any settlement discussions; and (b) Owner shall, at Contractor’s expense for all of Owner’s reasonable out-of-pocket third party expenses, fully cooperate in said defense, provide to Contractor all materials and access to personnel it requests as necessary for defense, preparation and trial and which or who are under the control of or reasonably available to Owner and maintain the confidentiality of all communications between it and Contractor concerning such defense to the extent allowed by Laws, Regulations and Ordinances.

**21.2.5** Owner shall be entitled to select its own legal counsel and otherwise control the defense of such Claim if: (a) the defense is tendered to Contractor and it refuses the tender of defense, or fails to accept such tender within forty-five (45) days, or reserves any right to deny or disclaim such full indemnification thereafter; or (b) Owner, at the time it gives notice of the Claim or at any time thereafter, reasonably determines that: (i) a conflict exists between it and Contractor which prevents or potentially prevents Contractor from presenting a full and effective defense; or (ii) Contractor is otherwise not providing an effective defense in connection with the Claim and Contractor lacks the financial capability to satisfy potential liability or to provide an effective defense. Owner may assume its own defense pursuant to Section 21.2.5(b) above by delivering to Contractor written notice of such election and the reasons therefor. A refusal of, or failure to accept, a tender of defense may be treated by Owner as a Claim against Contractor subject to resolution pursuant to Article 28.

**21.2.6** If Owner is entitled and elects to conduct its own defense pursuant hereto, all reasonable costs and expenses it incurs in investigating and defending and Claim for which it is entitled to indemnification hereunder (and any settlements or judgments resulting therefrom) shall be reimbursed by Contractor after completion of the proceeding.

**21.2.7** If Owner is entitled to and elects to conduct its own defense, then it shall have the right to settle or compromise the Claim with Contractor’s prior written consent, which shall not be unreasonably withheld or delayed, or with approval of the court, and with the full benefit of Contractor’s indemnity. Notwithstanding the foregoing, if Owner elects to conduct its own defense and it is later determined that no indemnification obligation existed as to the particular Claim, Owner shall pay its own costs and expenses relating thereto. In addition, if



Owner elects to conduct its own defense because it perceives a conflict of interest, Owner shall pay its own costs and expenses relating thereto.

**21.3 Indemnification by Owner.** To the fullest extent permitted by Laws, Regulations and Ordinances, Owner shall indemnify, protect, defend, hold harmless and release Contractor from and against any and all losses, damages, costs and expenses, including reasonable attorneys' fees, arising out of Claims by third parties (inclusive of WMATA) to the extent of any actual or alleged negligent or intentionally wrongful act, error, or omission of WMATA occurring during the period between the Substantial Completion Date and the Operational Readiness Date.

## **ARTICLE 22. INSURANCE AND BONDS**

### **22.1 Insurance Generally.**

**22.1.1** Owner has created an Owner-Controlled Insurance Program ("OCIP") for the Project, which OCIP will provide Contractor and Subcontractors with commercial general liability insurance, excess liability insurance, contractors' pollution legal liability insurance, and, if required, railroad protective liability insurance, in accordance with the terms specified in Exhibit 22.1.1(a) and the OCIP Manual contained in Exhibit 22.1.1(b).

**22.1.2** Not Used.

**22.1.3** Insurance that is not encompassed by the OCIP shall be provided and maintained by Contractor in accordance with the terms specified in Exhibit 22.1.1(a).

**22.1.4** Contractor is obligated to provide and maintain the Builders' Risk Insurance required by Section 1.8 of Exhibit 22.1.1(a) from the Notice to Proceed until the Owner delivers the Final Acceptance Certificate. For the sole purpose of enabling Contractor to establish its pricing for the Builders' Risk Insurance premium, Owner has advised Contractor to assume that the period between Substantial Completion and the date that Owner delivers the Final Acceptance Certificate will be six (6) months. If such period exceeds six (6) months, Contractor shall be entitled to an appropriate Change Order for the additional Builders' Risk Insurance premium cost associated with such extension.

**22.2 Performance and Payment Bonds.** Prior to the Effective Date, Contractor delivered to Owner a Performance Bond and a Payment Bond, each in the penal sum of the Contract Price, and in the forms set forth in Exhibits 22.2(a) and 22.2 (b) respectively, executed by Contractor and a surety company or surety companies (collectively "Surety") authorized to do business in the Commonwealth of Virginia in accordance with the Laws, Regulations and Ordinances of the Commonwealth of Virginia and the Commonwealth of Virginia's State Corporation Commission.

**22.3 Not Used.**

**ARTICLE 23.  
CONTRACTING PRACTICES**

**23.1 Obligation to Refrain from Discrimination.**

**23.1.1** Contractor covenants and agrees that it shall not discriminate, and it shall require all of its Subcontractors not to discriminate, against any Person, or group of Persons, on account of age, sex, race, creed, color, national origin, religion or the presence of any disability, in connection with the Project, nor shall Contractor establish or permit any such practice or practices of discrimination or segregation with reference to the selection, use, hiring, firing, promotion or termination of employees or Subcontractors; *provided, however*, that the prohibition against discrimination on the basis of disability shall not apply if the particular disability prevents the proper performance of the particular Person involved.

**23.1.2** Contractor shall conduct its activities in connection with the Project in compliance with all other requirements imposed pursuant to Title 2.2, Chapter 42, Virginia Code §§4200 et seq.; Titles VI and VII of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973, as amended; Americans With Disabilities Act of 1990; and applicable Laws, Regulations and Ordinances, including, but not limited to, provisions of Title 23, Code of Federal Regulations and Title 49, Code of Federal Regulations, Subtitle A, Office of the Secretary of Transportation, Part 1 (49 C.F.R. Part 21), which are applicable to the Project by reason of use of federal funds, and as said regulations may be amended.

**23.2 Disadvantaged Business Enterprises (“DBE”).** Owner has adopted a DBE program for the Project, which program includes the DBE requirements for this Contract as set forth in Exhibit 23.2. Contractor shall diligently comply with the requirements of Exhibit 23.2, and shall incorporate in all Subcontracts the requirement to diligently comply with Exhibit 23.2.

**23.3 Minority Employment and Contracting Procedures.** Contractor acknowledges and agrees that it is the policy of Owner to promote and ensure economic advancement of minorities and women through employment. Contractor shall employ or select employees possessing the necessary skill, expertise, cost level and efficiency for the performance of the Work.

**23.4 Subcontracts.** Notwithstanding any Subcontract or agreement with any Subcontractor, Contractor shall be fully responsible for all of the Work (except as may be expressly provided to the contrary herein). Owner shall not be bound by any Subcontract, and no Subcontract shall include a provision purporting to bind Owner.

**ARTICLE 24.  
REPRESENTATIVES**

**24.1 Designation of Representatives.** Owner and Contractor shall each designate an individual or individuals who shall be authorized to make decisions and bind the parties on matters relating to the Contract Documents. Exhibit 24.1 hereto provides the initial designations. Such individuals shall constitute Authorized Owner Representatives and Authorized Contractor Representatives, respectively. Such designations may be changed by a subsequent writing delivered to the other party. The parties may also designate technical representatives who shall be authorized to investigate and report on matters relating to the construction of the Project and negotiate on behalf of each of the parties but who do not have authority to enter into binding agreements.

**24.2 Representatives.** Contractor shall cooperate with Owner and all representatives of Owner designated as described in Section 24.1.

**ARTICLE 25.  
DEFAULT OF CONTRACTOR OR OWNER**

**25.1 Default of Contractor.** The term “Contractor Event of Default” shall mean the occurrence of any one or more of the following events or conditions:

(a) Contractor either: (i) fails to promptly begin the Work under the Contract Documents following its receipt of the Notice to Proceed; or (ii) materially fails to prosecute the Work in accordance with the applicable Project Schedule; or

(b) Contractor materially fails to perform the Work in accordance with the Contract Documents, including conforming to applicable standards in constructing the Project, or refuses to correct, remove and replace Work, including Equipment and Materials that have Defects; or

(c) Contractor suspends, ceases, stops or abandons the Work or fails to continuously and diligently prosecute such work (exclusive of work stoppage: (i) due to termination by Owner; (ii) due to and during the continuance of an Excusable Delay or suspension by Owner; or (iii) due to Contractor’s exercise of any of its rights set forth in Article 5 or Section 25.4); or

(d) Contractor fails to resume performance of Work which has been suspended or stopped within a reasonable time after receipt of notice from Owner to do so or (if applicable) after cessation of the event preventing performance; or

(e) Contractor commences a voluntary case seeking liquidation, reorganization or other relief with respect to itself or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect seeks the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part

of its assets; becomes insolvent, or generally does not pay its debts as they become due; admits in writing its inability to pay its debts; makes an assignment for the benefit of creditors; or takes any action to authorize any of the foregoing; or any of the foregoing acts or events shall occur with respect to any member of Contractor; or

(f) An involuntary case is commenced against Contractor seeking liquidation, reorganization, dissolution, winding up, a composition or arrangement with creditors, a readjustment of debts or other relief with respect to Contractor or Contractor's debts under any bankruptcy, insolvency or other similar Laws, Regulations and Ordinances now or hereafter in effect; seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of Contractor or any substantial part of Contractor's assets; seeking the issuance of a writ of attachment, execution, or similar process; or seeking like relief, and such involuntary case shall not be contested by Contractor in good faith or shall remain pending and unstayed for a period of sixty (60) days; or any such involuntary case, or any of the foregoing acts or events, shall occur with respect to any member of Contractor; or

(g) Any representation or warranty made by Contractor in the Contract Documents or any certificate, schedule, instrument or other document delivered by Contractor pursuant to the Contract Documents, shall have been materially false or misleading when made; or

(h) Contractor breaches any material agreement contained in the Contract Documents, including those relating to insurance and bonding; or

(i) Contractor fails to make payment when due in accordance with its agreements with Subcontractors and applicable Laws, Regulations and Ordinances; or

(j) Contractor materially fails to comply with any Laws, Regulations and Ordinances or unreasonably fails to comply with the instructions of Owner consistent with the Contract Documents; or

(k) Not Used; or

(l) Contractor assigns or transfers (or attempts to assign or transfer) the Contract Documents or any right or interest therein without Owner's prior written consent, and any transfer of partnership or membership interests, shares or beneficial interests or otherwise shall constitute an assignment or transfer prohibited under this Section 25.1.1(l) unless Owner gives its prior written consent; or

(m) Contractor fails to achieve Substantial Completion by the Scheduled Substantial Completion Date.

Except for a Contractor Event of Default under clause (g) above and those which by their very nature cannot be cured, Contractor and Surety, upon receipt of written Notice of Default from

Owner's Contracting Officer, shall cure such Contractor Event of Default within twenty (20) days following receipt of such notice, or, if not curable within such twenty-day period, commence to cure and diligently pursue such cure within such period; provided that: (i) in the case of an emergency Owner shall have the right to shorten the twenty-day notice period by so specifying in the Notice of Default; and (ii) no cure period shall extend the Scheduled Substantial Completion Date, nor shall any cure period excuse, delay or extend Contractor's obligations to pay Liquidated Damages hereunder.

## **25.2 Owner's Remedies for Contractor Event of Default.**

**25.2.1** Upon the occurrence of a Contractor Event of Default, Owner's obligation to make payments to Contractor hereunder shall be suspended (but only to the extent necessary to protect Owner from loss) unless and until such Contractor Event of Default is cured.

**25.2.2** If a Contractor Event of Default is not cured within the time period required in Section 25.1 above, or, if not curable within such time period, Contractor fails to commence such cure and fails to diligently pursue such cure within such time period, Owner, without prejudice to any other rights and remedies that may be available and subject to any limitations in this Contract, may: (a) supplement Contractor's forces; (b) take over and perform part of the Work by issuing a deductive Change Order; or (c) terminate all or a part of this Contract by delivering to Contractor a Notice of Termination.

**25.2.3** In the event of termination by Owner under this Article 25, the close-out procedures in Sections 27.2.1 and 27.2.2 shall apply, and Owner shall have the right:

- (a) to request the Surety to complete the Work;
- (b) to take temporary possession of and use all Contractor equipment, Work Product, Equipment and Materials, documents, records, and files at the Site on the date of the Notice of Termination for the purpose of completing the Work;
- (c) to require Contractor to assign to Owner any or all Subcontracts relating to the terminated Work;
- (d) to complete the terminated Work by whatever method Owner may deem necessary, including, but not limited to, entering into an agreement with another contractor for the completion of the Work;
- (e) to make such expenditures and to use such other methods as Owner deems necessary in its sole discretion to accomplish the timely completion of the terminated Work in accordance with the terms of the Contract Documents; and
- (f) to deduct from any moneys due or to become due to Contractor or the Surety all amounts for which Contractor is liable under Section 25.2.4.

If any Subcontracts are assigned to Owner under this Section 25.2.3, Owner shall not be directly liable to any Subcontractor for amounts owed to such Subcontractor for work performed prior to termination, and Contractor shall remain liable to any Subcontractor for such amounts.

**25.2.4** Subject to the limitations in Section 26.3, in the event of termination by Owner under this Article 25, Contractor shall be responsible for and shall reimburse Owner for the following:

- (a) all costs and expenses incurred in connection with the act of termination of this Contract;
- (b) all Liquidated Damages incurred as a result of Substantial Completion occurring after the Scheduled Substantial Completion Date;
- (c) the amount by which the cost to complete or cure deficiencies in the Work, including, without limitation, all costs and expenses incurred by Owner to engage third-party contractor(s), plus the amount paid or payable by Owner to Contractor, exceeds the Contract Price; and
- (d) attorneys' and consultants' fees and expenses incurred by Owner in enforcing its rights against Contractor or Surety.

Termination by Owner pursuant to this Article 25 shall not relieve Contractor or Surety from liability for Liquidated Damages. If, after termination under this Article 25, it is determined that there was no Contractor Event of Default, the rights and obligations of the Parties will be the same as if the termination had been issued for the convenience of Owner under Article 26.

**25.2.5** All costs incurred by Owner as set forth in this Section 25.2, together with the cost of completing the Work, will be deducted from any moneys due or that may become due Contractor or the Surety, including the remaining portion of the Contract Price that would have been paid had Contractor completed the Work in accordance with the Contract Documents, subject to Owner's good faith efforts to mitigate damages. Subject to Sections 25.3.1 and 25.3.2, if such expense exceeds the sum which would be available from such moneys, then Contractor shall be liable and shall pay to Owner the amount of such excess.

**25.2.6** Each right of Owner hereunder shall be cumulative and shall be in addition to every other right provided herein, and the exercise or beginning of the exercise by Owner of any one or more of any of such rights shall not preclude the simultaneous or later exercise of any or all other such rights.

### **25.3 Certain Limitations on Owner Remedies.**

#### **25.3.1 Not Used.**

**25.3.2** Where this Contract provides an expressly stated remedy, such expressly stated remedy shall be exclusive of any inconsistent, additive or alternative extra-contractual remedies which might otherwise have been available at law or equity, except for (a) any Claim or cause of action for fraud or intentional misrepresentation and (b) any subject matter on which no express contractual remedy is provided. The parties may resort to any remedy available at law or equity with respect to the foregoing exceptions, and where the Contract does not provide any express remedy.

**25.4 Default of Owner.** Owner shall be in default of this Contract if Owner fails to pay undisputed amounts owed to Contractor within twenty-one (21) days of the date such payment is due under this Contract. In such event, if Owner fails to make such payment within five (5) days following Contractor's delivery to Owner of a written Notice of Default of such nonpayment, Contractor's remedies shall be as follows:

**25.4.1 Suspension.** Contractor is entitled to suspend the Work five (5) days after delivery to Owner of Contractor's written Notice of Default. If Contractor claims that the suspension has affected the cost or time of performance, it shall be entitled to an appropriate Change Order, provided Contractor satisfies the requirements of Articles 13 and 19. Any Claims for costs due to a suspension under this Section 25.4.1 shall be priced in accordance with Section 19.5.2.

**25.4.2 Termination.** If a suspension for nonpayment pursuant to Section 25.4.1 continues for more than one hundred eighty (180) consecutive days, Contractor shall have the right to deliver Owner a Notice of Intent to Terminate. If Owner fails to cure the nonpayment within twenty (20) days of its receipt of the Notice of Intent to Terminate, Contractor is entitled to terminate this Contract for default by delivering to Owner a Notice of Termination, which termination shall become effective upon delivery to Owner. Upon such termination, Contractor shall be entitled to retain all payments already received from Owner and, in addition, to receive from Owner payment of: (a) any amounts which Contractor is entitled in accordance with this Contract for Work properly performed and which have not yet been paid; and (b) demobilization costs, termination penalties and other shut-down costs, all reduced by the amount of all payments already paid to Contractor. Upon payment of such monies by Owner, Owner shall have the right to take possession of and Contractor shall make available to Owner all Equipment and Materials, and any other components of the Work, paid for. If requested by Owner, Contractor shall perform the obligations set forth in Sections 27.2.2(d) and 27.3, the expense of which shall be borne by Owner. Under no circumstances shall Contractor be entitled to anticipatory or unearned profits, unabsorbed overhead, opportunity costs or consequential or other damages as a result of a termination for default under this Section 25.4.2.

**25.5 Limitation on Contractor Remedies.** Except as otherwise provided herein, in the event of any alleged breach of this Contract by Owner other than for nonpayment as set forth

in Section 25.4 above, Contractor shall provide Owner written notice describing the alleged breach and thirty (30) days opportunity to cure the same, as a condition precedent to exercising any remedies to which Contractor is entitled at law or in equity with respect thereto.

**ARTICLE 26.**  
**LIQUIDATED DAMAGES AND LIMITATIONS ON DAMAGES**

**26.1 Liquidated Damages.** Given the unique nature of the Project and the fact that inconvenience to the traveling public will be one of the significant impacts of any failure by Contractor to complete performance by the Scheduled Substantial Completion Date, it is impracticable and extremely difficult to ascertain and determine the actual losses which would accrue to Owner and the public in such event. Contractor and Owner have agreed to liquidate damages incurred by Owner with respect to any delay in achieving Substantial Completion by the Scheduled Substantial Completion Date (collectively, the "Liquidated Damages"). Contractor acknowledges and agrees that the Liquidated Damages are intended to constitute compensation solely for Contractor's failure to achieve Substantial Completion by the Scheduled Substantial Completion Date, and shall not excuse Contractor from liability for any other breach of Contract requirements, including any failure of the Work to conform to applicable requirements. The fact that Owner has agreed to accept Liquidated Damages as compensation for its damages associated with any delay in achieving Substantial Completion by the Scheduled Substantial Completion Date shall not preclude Owner from terminating the Contract. It is understood and agreed by Contractor that any Liquidated Damages payable are in the nature of liquidated damages and not a penalty and that such sums are reasonable under the circumstances existing as the Effective Date.

**26.1.1 Amount.** If Substantial Completion has not occurred on or before the Scheduled Substantial Completion Date, then Contractor shall pay to Owner Liquidated Damages of Twenty-Five Thousand Dollars (\$25,000) per day for each day until Substantial Completion is achieved. It is understood and agreed by Contractor that any Liquidated Damages payable in accordance with this Section 26.1 are in the nature of liquidated damages and not a penalty and that such sums are reasonable under the circumstances existing as of the date of the Effective Date. Contractor further acknowledges and agrees that Liquidated Damages may be owing even though no Contractor Event of Default has occurred or been declared. Further, such Liquidated Damages shall constitute Owner's sole right to damages for such delay in achieving Substantial Completion, except for any damages recoverable under Section 25.2.4 as a result of a termination for Contractor Event of Default that may result from such delay.

**26.1.2 Payment Terms.** If Owner intends to deduct Liquidated Damages from a Draw Request pursuant to Section 14.2.2, it shall give written notice thereof to Contractor. Thereafter, each Draw Request under Section 14.2.2 shall include a calculation of Liquidated Damages occurring since the prior Draw Request (or since the notice if there has been no prior Draw Request) and that amount will automatically be due on or prior to submission of such Draw Request if not paid by offset under Section 14.3. Failure of Owner to give written notice shall not constitute a waiver of the Liquidated Damages.



**26.1.3 Liquidated Damages Letter of Credit.** In the event of a dispute over the amount of Liquidated Damages owed at Substantial Completion, Contractor shall have the right to furnish an irrevocable letter of credit in lieu of cash for all or any portion of such amount of Liquidated Damages in dispute, provided however that the letter of credit shall: (i) be a direct pay letter of credit payable immediately upon presentation by Owner, issued by a financial institution, and on a form, approved by Owner in its sole discretion; (ii) permit partial draws; and (iii) name Owner as sole payee and beneficiary. Owner shall be entitled to draw upon the letter of credit upon the resolution of the dispute over Liquidated Damages in accordance with Article 28. Owner shall further be entitled to draw upon the letter of credit if it is not renewed or extended at least thirty (30) days prior to its expiration.

**26.2 Not Used.**

**26.3 Exclusion of Consequential Damages.**

**26.3.1 Liability Excluded.** Notwithstanding any other provision of the Contract Documents and except as set forth in Section 26.3.2, in no event shall either Owner or Contractor be liable to the other party for incidental, special, punitive or consequential damages of any nature, including, but not limited to, loss of use, loss of revenue, or loss of income, whether arising in contract, tort (including negligence) or other legal theory.

**26.3.2 Exceptions to Exclusion.** The exclusion of consequential damages set forth in Section 26.3.1 shall not exclude or affect:

- (a) Contractor's obligation to pay Liquidated Damages in accordance with Section 26.1;
  - (b) Owner's liability for interest on unpaid amounts, as described in this Contract;
  - (c) Contractor's liability for fraud, false claims, intentional misconduct or criminal acts, as such criminal acts are determined in a court of law (other than a violation of a criminal law based upon strict liability or negligence);
  - (d) Contractor's liability for its indemnity obligations as set forth in Section 21.1;
  - (e) Owner's liability for its indemnity obligations as set forth in Section 9.1.8;
- or
- (f) Contractor's liability for any type of damage or loss to the extent it is covered by the proceeds of insurance Contractor is required to carry hereunder and/or proceeds from the OCIP.

**26.4 Effect on Successors and Assigns.**

**26.4.1** The provisions of this Article 26 shall be binding on all successors and assigns of each party.

**26.4.2** The releases and limitations on damages expressed in this Article 26 shall apply even in the event of the fault, negligence (in whole or in part), tort, strict liability, breach of contract or otherwise, of the party in whose favor such provisions operate and shall extend to such party's Affiliates and their directors, officers, employees and agents.

**ARTICLE 27.  
TERMINATION FOR CONVENIENCE**

**27.1 Notice of Termination.** Owner may terminate this Contract and the performance of all or any portion of the Work by Contractor at any time after issuance of the Notice to Proceed if Owner determines, in its sole discretion, that a termination is in its best interest. Owner shall notify Contractor of the decision to terminate by delivering to Contractor a written Notice of Termination specifying the extent of termination and its effective date.

**27.2 Contractor's Responsibilities After Receipt of Notice of Termination.**

**27.2.1** After receipt of a Notice of Termination, and except as directed by Owner, Contractor shall immediately proceed as follows, regardless of any delay in determining or adjusting any amounts due under this Article 27:

- (a) Stop Work as specified in the notice;
- (b) Notify all affected Subcontractors that this Contract is being terminated and that their Subcontracts (including orders for Equipment and Materials, services or facilities) are not to be further performed unless otherwise authorized in writing by Owner;
- (c) Enter into no further Subcontracts except as necessary to complete the continued portion of the Work, if any, or for mitigation of damages;
- (d) Cease placing further Subcontracts except as necessary to complete the continued portion of the Work, if any, or for mitigation of damages;
- (e) Take such other actions as are necessary or appropriate to mitigate further cost of Owner; and
- (f) Carry out such other directions as may be given by Owner for termination of the Work.

**27.2.2** Within three (3) days after receipt of a Notice of Termination, Contractor shall meet and confer with Owner for the purpose of developing an interim close-out plan for the orderly termination of Work, demobilization and transfer of Site control to Owner. The parties shall use diligent efforts to complete preparation of the interim close-out plan within fifteen (15) days after the date Contractor receives the Notice of Termination. The parties shall use diligent efforts to complete a final close-out plan within thirty (30) days after such date. The close-out plan shall be in form and substance acceptable to Owner and shall include at least the following procedures, all of which procedures Contractor shall immediately follow, regardless of any delay in preparation or acceptance of the close-out plan or in determining or adjusting any amounts due under this Article 27:

(a) Unless instructed otherwise by Owner, terminate all Subcontracts to the extent they relate to the Work terminated and except to the extent that continuation of the Subcontract is necessary in order to mitigate damages;

(b) Assign to Owner or its designee in the manner, at the times, and to the extent directed by Owner, all of the right, title, and interest of Contractor under the Subcontracts so terminated, in which case Owner will have the right, in its sole discretion, to accept performance, settle or pay any or all Claims under or arising out of the termination of such Subcontracts; *provided, however*, that Contractor shall not be required to assign any Claims that Contractor has against its Subcontractors that existed prior to assignment of such Subcontracts to Owner;

(c) Settle outstanding liabilities and Claims arising out of such termination of Subcontracts, with the approval or ratification of Owner, to the extent it may require;

(d) Transfer and deliver to Owner or its designee, as directed by Owner: (i) possession and control of the Project; and (ii) all right, title and interest of Contractor in and to: (A) the Work in process, completed Work, supplies and Equipment and Materials produced or acquired for the Work terminated; (B) the Final Plans and Specifications and all other completed or partially completed drawings (including plans, elevations, sections, details and diagrams), specifications, records, reports, books, samples, information and other Work Product that would have been required to be furnished to Owner if the Work had been completed; and (C) all intellectual property;

(e) Complete performance in accordance with the Contract Documents of all Work not terminated;

(f) Take all action that may be necessary, or that Owner may direct, for the protection and preservation of: (i) the Project; (ii) the Work; and (iii) the Equipment and Materials, machinery, materials and property related to the Project that is in the possession of Contractor and in which Owner has or may acquire an interest;

(g) As authorized by Owner, use its best efforts to sell at fair market value any property of the types referred to in Section 27.3; *provided, however*, that Contractor: (i)

shall not take any such action with respect to any items for which title has previously transferred to Owner; (ii) is not required to extend credit to any purchaser; and (iii) may acquire the property itself, under the conditions prescribed and at prices approved by Owner. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by Owner under the Contract Documents or paid in any other manner directed by Owner;

(h) If requested by Owner, withdraw from the portions of the Site designated by Owner and remove such Equipment and Materials, tools and instruments used by, and any debris or waste materials generated by, Contractor and any Subcontractor in the performance of the Work as Owner may direct; and

(i) Take other actions directed by the accepted close-out plan or by Owner.

**27.3 Inventory.** Contractor shall submit to Owner an inventory list of all Equipment and Materials previously produced, purchased or ordered from Subcontractors for use in the Work and not yet used in the Work, including its storage location, as well as any documentation or other property required to be delivered hereunder which is either in the process of development or previously completed but not yet delivered to Owner, and such other information as Owner may request; and transfer title and deliver to Owner through bills of sale or other documents of title, as directed by Owner, (a) the Work in process, completed Work, Equipment and Materials, supplies and other materials produced or acquired for the Work terminated, and (b) the Final Plans and Specifications, 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 Owner if the Work had been completed. Owner shall review the inventory list and notify Contractor regarding the action to be taken with respect to the inventory.

**27.4 Settlement Proposal.** After termination, Contractor shall submit a final termination settlement proposal to Owner in the form and with the certification prescribed by Owner. Contractor shall submit the proposal promptly, but no later than sixty (60) days from the effective date of termination unless Contractor has requested a time extension in writing within such 60-day period and Owner has agreed in writing to allow such an extension. If Contractor fails to submit the proposal within the time allowed, Owner may determine, on the basis of information available, the amount, if any, due Contractor because of the termination and shall pay Contractor the amount so determined.

**27.5 Amount of Termination Settlement.** Contractor and Owner shall negotiate in good faith to reach agreement on the settlement amount to be paid to Contractor by reason of the termination of Work pursuant to this Article 27. Such negotiated settlement shall include an allowance for profit solely on Work which has been performed as of the termination date. With the exception of demobilization costs, termination penalties and other shut-down costs recoverable by Contractor under this Contract, such agreed amount or amounts payable for the terminated Work shall not exceed the total Contract Price after adjustment to account for the

Contract Price of Work not performed. Upon determination of the settlement amount this Contract will be amended accordingly, and Contractor will be paid the agreed amount as described in this Section 27.5. Owner's execution and delivery of any settlement agreement shall not be deemed to affect any of its rights with respect to completed Work, relieve Contractor from its obligations with respect thereto, or affect Owner's rights under the Performance Bond, or any of its rights against Subcontractors.

**27.6 No Agreement as to Amount of Claim.** In the event of the failure of Contractor and Owner to agree upon the whole amount to be paid to Contractor by reason of the termination of work pursuant to this Article 27, Owner shall authorize payment to Contractor of the amounts determined by Owner as follows, but without duplication of any amounts agreed upon in accordance with Section 27.5:

(a) With respect to all Work performed prior to the effective date of the Notice of Termination, the total, without duplication of any items, of the following:

(i) The cost of such Work, less payments made by Owner for Work performed;

(ii) The cost of settling and paying Claims arising out of the termination of work under Subcontracts or orders as provided in Section 27.2, exclusive of the amount paid or payable on account of supplies or Equipment and Materials delivered or services furnished by the Subcontractors prior to the effective date of Notice of Termination, which amounts shall be included in the cost on account of which payment is made under Section 27.5; and

(iii) A sum, as profit on amounts payable under Section 27.6(a)(i), determined by Owner to be fair and reasonable; *provided, however*, that if it appears that Contractor would have sustained a loss on the entire Contract had it been completed, no profit shall be included or allowed and an appropriate adjustment shall be made reducing the amount of the settlements to reflect the indicated rate of loss; and

(b) The reasonable cost of the preservation and protection of property incurred pursuant to Section 27.2; and any other reasonable cost incidental to the termination, including expense incidental to the determination of the amount due to Contractor as the result of the termination.

**27.7 Reduction in Amount of Claim.** The amount otherwise due Contractor under this Article 27 shall be reduced by (a) the amount of any valid Claim which Owner may have against Contractor in connection with this Contract and (b) the agreed price for, or the proceeds of sale of, Equipment and Materials, supplies or other things previously paid for by Owner and to be retained by Contractor or sold by Contractor (with the proceeds being retained by Contractor), pursuant to the provisions of this Article 27.

**27.8 Payment.** Owner may from time to time, under such terms and conditions as it may prescribe and in its sole discretion, make partial payments on account against costs incurred by Contractor in connection with the terminated portion of this Contract, whenever in the opinion of Owner the aggregate of such payments shall be within the amount to which Contractor will be entitled hereunder. If the total of such payments is in excess of the amount finally agreed or determined to be due under this Article 27, such excess shall be payable by Contractor to Owner upon demand together with interest at a variable rate per annum equal to the reference rate announced by Bank of America, N.A. from time to time, plus one percent (1%).

**27.9 Inclusion in Subcontracts.** Contractor shall insert in all Subcontracts a provision stating that the Subcontractor shall stop Work on the date of and to the extent specified in a Notice of Termination from Owner and shall require that Subcontractors insert the same provision in each Subcontract at all tiers. Contractor shall communicate, immediately upon receipt thereof, any Notice of Termination issued by Owner to all affected Subcontractors.

**27.10 No Consequential Damages.** In the event of a termination for convenience under this Article 27, Contractor acknowledges and agrees that it shall not be entitled to any compensation in excess of the value of the Work performed as determined in accordance with Section 27.5 plus its settlement and close-out costs. Under no circumstances shall Contractor or any Subcontractor be entitled to anticipatory or unearned profits, unabsorbed overhead, opportunity costs or consequential or other damages as a result of a termination for convenience under this Article 27. The payment to Contractor determined in accordance with this Article 27 constitutes Contractor's exclusive remedy for a termination hereunder.

**27.11 No Waiver.** Anything contained in this Contract to the contrary notwithstanding, a termination under this Article 27 shall not waive any right or Claim to damages which Owner may have, and Owner may pursue any cause of action which it may have by law or under this Contract.

**27.12 Dispute Resolution.** The failure of the parties to agree on amounts due under Article 27 shall be a Claim to be resolved in accordance with Article 28.

## **ARTICLE 28. DISPUTE AVOIDANCE AND RESOLUTION**

**28.1 Cooperation and Communications.** The parties are fully committed to working with each other throughout the Project and agree to communicate regularly with each other at all times so as to avoid or minimize any Claims. Contractor shall disclose to and discuss with Owner any issues that may affect the cost or time of performance of the Work, whether or not such issues result in a Claim. To help effect the intent of this Section 28.1, senior representatives of Owner and Contractor shall participate in quarterly meetings to review, among other things, the status of the Project and any issues that may affect the costs or time of performance of the Work.

**28.1.1 Negotiations.** Contractor and Owner will first attempt, within fourteen (14) days of the initiation of a Claim, to resolve the Claim at the field level through best efforts and good faith negotiations between Authorized Contractor's Representative and Authorized Owner's Representative.

**28.1.2 Elevated Negotiations.** If a Claim cannot be resolved through the Authorized Contractor's Representative and the Authorized Owner's Representative pursuant to Section 28.1.1 above, then, upon the request of either party, Contractor and Owner shall appoint senior representatives to meet as soon as conveniently possible, but in no case later than fourteen (14) days after such a request is made, to attempt to resolve such Claim. Prior to any meetings between such representatives, the parties will exchange relevant information that will assist the parties in resolving the Claim and, if applicable, make available any independent expert opinion, pursuant to Section 28.1.3 below. All negotiations and discussions pursuant to this Section 28.1, including any opinions provided by any technical experts selected under Section 28.1.3 below, shall be deemed compromise and settlement negotiations, subject to all evidentiary rules under applicable Laws, Regulations and Ordinances.

**28.1.3 Independent Expert.** If a Claim involves an issue or dispute where the assistance of an independent expert may be helpful, the parties may, by mutual agreement, engage a jointly selected independent expert with technical or other appropriate expertise to assist them. The independent expert will, if agreed upon by the parties, review and render an advisory opinion within sixty (60) days of his/her retention, or a longer period if the parties mutually agree. The parties will share equally the costs of the independent expert. For the avoidance of doubt, any opinion from the independent expert shall be deemed part of the settlement process and shall not be admissible in any legal proceeding.

**28.1.4 Submission of Certified Claim.** If a Claim cannot be resolved to the mutual satisfaction of both parties within thirty-five (35) days of initiation of the Claim, regardless of whether or not Sections 28.1.2 or 28.1.3 have been complied with, then Contractor shall submit a Certified Claim as set forth in Section 28.2 regarding such Claim.

## **28.2 Certified Claim and Procedures.**

**28.2.1** Contractor shall submit a written certified claim ("Certified Claim") to Owner's Contracting Officer signed by a duly authorized officer of Contractor. The Certified Claim at a minimum shall include: (a) the nature of the relief sought; (b) a narrative that fully explains the facts and circumstances underlying the Certified Claim, including the basis of Owner's liability to Contractor; and (c) specific reference to or inclusion of all cost and schedule information (including as-built scheduling information), and other documentation fully supporting the Certified Claim seeking adjustment to the Contract Price or extension of time.

**28.2.2** The Certified Claim shall contain a certification that, to the best of the certifier's knowledge and belief: (a) the Certified Claim is made in good faith, and that the documents containing supporting information provided by Contractor are current, accurate, and complete as of the date of certification; (b) the amount of additional compensation and/or time of

performance requested accurately reflects a reasonable adjustment in the added cost and time of performance to which Contractor reasonably believes it is entitled; and (c) that there is supporting cost and schedule information that reflects the Work performed as of the date of certification. For the purposes of this Section 28.2.2:

(a) “current, accurate” means, as to each document, that it is: (i) the version of that document Contractor used in preparing and quantifying the Certified Claim; (ii) contains information Contractor used in preparing and quantifying the Certified Claim; and (iii) is a true copy of that document; and

(b) “complete” means that the documents submitted to Owner are all the documents Contractor used in preparing and quantifying the Certified Claim seeking adjustment of the Contract Price and/or the Scheduled Substantial Completion Date.

**28.2.3** Within thirty (30) days of receipt of the Certified Claim, Owner’s Contracting Officer shall issue a written decision to Contractor regarding the Dispute. This decision will be considered final and conclusive unless, within thirty (30) days from the date of receipt of such decision, Contractor furnishes a written request to Owner’s Contracting Officer for mediation of the issue(s) in accordance with Section 28.3.

**28.3 Mediation.**

**28.3.1** If the parties cannot resolve the Dispute in accordance with Sections 28.1 or 28.2, the parties agree to submit the Dispute to mediation. The mediation process shall be initiated within thirty (30) days of the submission, and the parties shall endeavor to conduct and complete the mediation within sixty (60) days after the appointment of the mediator. Such mediation shall be a “dispute resolution proceeding” within the meaning of Virginia Code § 8.01-576.4, and all communications and materials made in or in connection with the mediation are confidential in accordance with Virginia Code § 8.01-576.10. The parties shall mutually agree on the selection of a mediator who shall be a neutral as defined in Virginia Code § 8.01-0576.9, and shall share equally the costs of the mediator’s fee and other administrative fees of the mediation. If the parties are unable to agree upon a mediator, a mediator shall be appointed pursuant to the Construction Industry Arbitration Rules and Mediation Procedures of the American Arbitration Association. The parties agree to produce documents as may be required by the mediator to facilitate the mediation.

**28.3.2** In the event that the mediation fails, the mediator shall issue a certification of the failure of mediation to the parties. No later than ten (10) days after such certification, Owner’s Contracting Officer shall issue its written final decision to Contractor regarding Certified Claim.

**28.4 Legal Proceedings.**

**28.4.1** As to such portion of the Certified Claim that is denied by Owner, Contractor may institute a civil action for such relief as it claims to be entitled to under this



Contract. Contractor's compliance with Sections 28.2 through 28.3 above shall be a condition precedent to bringing a civil action.

**28.4.2** Contractor and Owner waive their respective rights to a trial by jury on any Claim or cause of action upon, arising under, arising out of or related to this Contract or other proceeding or litigation of any type brought by any of the parties against any other party whether with respect to contract Claims or actions, tort Claims, or otherwise. Contractor and Owner agree that any such Claim or cause of action shall be tried without a jury. Without limiting the foregoing, the parties further agree that their respective right to a trial by jury is waived by operation of this section as to any action, counterclaim or other proceeding which seeks, in whole or in part, to challenge the validity or enforceability of this Contract.

**28.4.3** The sole and exclusive jurisdiction and venue for any legal action between the parties arising out of or relating to this Contract shall be filed in and decided by a court of competent jurisdiction in the Commonwealth of Virginia.

**28.5** **False Certifications.** Any Certified Claim that is based on false statements or material misrepresentations shall entitle Owner to a full recovery of all costs and fees incurred by Owner in investigating, analyzing, negotiating, mediating and litigating such Claim, including attorney's and consultant's fees. This remedy is a contractual remedy and does not otherwise affect the other rights of Owner in law or in equity.

**28.6** **Continuance of Work During Dispute.** At all times during the term of this Contract, including during the course of and notwithstanding the existence of any Claim: (a) Contractor shall perform as directed by Owner, in a diligent manner and without delay, shall abide by Owner's decisions or orders, and shall comply with all applicable provisions of the Contract Documents; and (b) Owner shall perform its obligations under this Contract in a diligent manner and without delay. Records of the Work shall be kept in sufficient detail to enable payment in accordance with applicable provisions in the Contract Documents.

## **ARTICLE 29. MISCELLANEOUS PROVISIONS**

### **29.1** **Assignment.**

**29.1.1** Contractor may not, without Owner's prior written consent, voluntarily or involuntarily assign, convey, transfer, pledge, mortgage or otherwise encumber its rights or interests under this Contract or any other Contract Documents.

**29.1.2** Any transfer of the right or practical ability to control the policies and decisions of Contractor, whether due to transfer of partnerships or membership interests, beneficial interests or otherwise, shall constitute an assignment prohibited under Section 29.1.1 above without Owner's prior written consent.

**29.1.3** Owner may transfer and assign its interests in the Project, this Contract and any other Contract Documents to any other Governmental Person, as permitted by Laws, Regulations and Ordinances, provided that the successor or assignee has assumed all of Owner's obligations, duties and liabilities under this Contract and the other Contract Documents then in effect, and has provided Contractor with reasonable assurance of its legal and financial authority to honor and perform the same.

**29.1.4** If either party changes its name, such party agrees to promptly furnish the other party with written notice of change of name and appropriate supporting documentation.

**29.2** Notices.

**29.2.1** Whenever under the provisions of this Contract or the other Contract Documents it shall be necessary or desirable for one party to serve any notice, request, demand, report or other communication on another party, the same shall be in writing and shall not be effective for any purpose unless and until actually received by the addressee or unless served:

- (a) personally;
- (b) by independent, reputable, overnight commercial courier;
- (c) by facsimile transmission:
  - (i) where the transmitting party includes a cover sheet identifying the name, location and identity of the transmitting party, the phone number of the transmitting device, the date and time of transmission and the number of pages transmitted (including the cover page);
  - (ii) where the transmitting device or receiving device records verification of receipt and the date and time of transmission receipt and the phone number of the other device; and
  - (iii) where the facsimile transmission is immediately followed by service of the original of the subject item in the manner provided in subsections (a), (b) and (d) hereof; or
- (d) by deposit in the United States mail, postage and fees fully prepaid, registered mail, with return receipt requested, addressed as follows:

If to Contractor:

Hensel Phelps Construction Co.  
4437 Brookfield Corporate Drive  
Suite 207  
Chantilly, VA 20151  
Attn: [REDACTED]  
Project Director  
Fax: (703)802-1580

With a copy to:

Hensel Phelps Construction Co.  
4437 Brookfield Corporate Drive  
Suite 207  
Chantilly, VA 20151  
[REDACTED]  
Vice President/District Director  
Fax: (703)802-1580

If to Owner:

Metropolitan Washington Airports Authority  
1 Aviation Circle  
Washington, DC 20001-6000  
Attn: [REDACTED]  
Contracting Officer  
Fax: (703)572-0801

With a copy to:

General Counsel  
Metropolitan Washington Airports Authority  
1 Aviation Circle  
Washington, DC 20001-6000  
Fax: (703)417-3917

**29.2.2** Either party may, from time to time, by notice in writing served upon the other party as aforesaid, designate an additional and/or a different mailing address in the Commonwealth of Virginia or an additional and/or a different Person to whom all such notices, requests, demands, reports and communications are thereafter to be addressed. Any notice, request, demand, report or other communication served personally shall be deemed delivered upon receipt, if served by mail or independent courier shall be deemed delivered on the date of receipt as shown by the addressee's registry or certification receipt or on the date receipt at the appropriate address is refused, as shown on the records or manifest of the U.S. Postal Service or independent courier, and if served by facsimile transmission shall be deemed delivered on the date of receipt as shown on the received facsimile (provided the original is thereafter delivered as aforesaid).

**29.3 Binding Effect.** Subject to the limitations of Section 29.1, this Contract and any other Contract Documents shall be binding upon and shall inure to the benefit of the parties hereto and their respective legal representatives, successors and permitted assigns, and wherever a reference in this Contract or any other Contract Documents is made to any of the parties hereto, such reference also shall be deemed to include, wherever applicable, a reference to the legal representatives, successors and permitted assigns of such party, as if in every case so expressed.

**29.4 Relationship of Parties.**

**29.4.1** The relationship of Contractor to Owner shall be one of an independent contractor, not an agent, partner, joint venturer or employee, and Owner shall have no rights to

direct or control the activities of Contractor or any Contractor-Related Party, except to the extent set forth in this Contract or any other Contract Document.

**29.4.2** Officials, employees and agents of Owner shall in no event be considered employees, agents, partners or representatives of Contractor.

**29.5 Third-Party Beneficiary.** WMATA shall be deemed to be a third-party beneficiary of this Contract upon the Operational Readiness Date. Owner will include in Owner's agreements with WMATA that WMATA shall be bound by the exclusions and limitations of Contractor's liability as set forth in this Contract, including, but not limited to, the provisions of Article 26 establishing the Contractor's aggregate liability limits. Nothing contained in this Contract or in any of the other Contract Documents is intended or shall be construed as creating or conferring any rights, benefits or remedies upon, or creating any obligations of the parties hereto toward, any Person or Entity not a party to this Contract or the other Contract Documents, except as stated in this Contract with regard to WMATA. However, it is understood and agreed that Owner and WMATA are intended third-party beneficiaries of all Subcontracts. Contractor shall incorporate the obligations of this Section 29.5 into its respective Subcontracts.

**29.6 Waiver.**

**29.6.1** No waiver by any party of any right or remedy under this Contract or any other Contract Documents shall be deemed to be a waiver of any other or subsequent right or remedy hereunder or thereunder. The consent by one party to any act by the other party requiring such consent shall 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.

**29.6.2** No act, delay or omission done, suffered or permitted by one party or its agents shall be deemed to waive, exhaust or impair any right, remedy or power of such party under this Contract or any other Contract Document, or to relieve the other party from the full performance of its obligations hereunder and thereunder, except as specifically waived.

**29.6.3** No waiver of any term, covenant or condition of this Contract or any other Contract Document shall be valid unless in writing and signed by the obligee party.

**29.6.4** The acceptance of any payment or reimbursement by a party shall not: (a) waive any preceding or then-existing breach or default by the other party of any term, covenant or condition of this Contract or any other Contract Documents, other than the other party's prior failure to pay the particular amount or part thereof so accepted, regardless of the paid party's knowledge of such preceding or then-existing breach or default at the time of acceptance of such payment or reimbursement; or (b) continue, extend or affect (i) the service of any notice, any suit, arbitration or other legal proceeding or final judgment, (ii) any time within which the other party is required to perform any obligation or (iii) any other notice or demand.

**29.6.5** No custom or practice between the parties in the administration of the terms of this Contract or any other Contract Documents shall 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 herein or therein.

**29.7 Governing Law.** This Contract shall be governed and construed in accordance with the laws of the Commonwealth of Virginia applicable to contracts executed and to be performed within the Commonwealth of Virginia.

**29.8 Survival.** All covenants, agreements, representations and warranties made in or pursuant to this Contract and all other Contract Documents shall be deemed continuing and made at and as of the date of this Contract and all other Contract Documents and at and as of all other applicable times during the term hereof and thereof. All covenants, agreements, representations and warranties made in or pursuant to this Contract and all other Contract Documents shall survive the expiration or earlier termination of this Contract and all other Contract Documents, except as expressly set forth herein or therein, and shall not be waived by the execution and delivery of this Contract or any other Contract Documents, by completion of construction, by any investigation by Owner or by any other event except a specific written waiver by the party against whom waiver is asserted.

**29.9 Construction and Interpretation of Contract.**

**29.9.1** The language in all parts of this Contract or any other Contract Documents shall in all cases be construed simply, as a whole and in accordance with its fair meaning and not strictly for or against any party. Each party acknowledges and agrees that it has the requisite experience and sophistication to understand, interpret and agree to the particular language of the provisions hereof.

**29.9.2** If any term or provision of this Contract or any other Contract Document, the deletion of which would not adversely affect the receipt of any material benefit by either party hereunder, shall be held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Contract or any other Contract Document shall not be affected thereby and each other term and provision of this Contract or any other Contract Document shall be valid and enforceable to the fullest extent permitted by law. It is the intention of the parties to this Contract or any other Contract Documents, and the parties hereto agree, that in lieu of each clause or provision of this Contract or any other Contract Document that is illegal, invalid or unenforceable, the parties in good faith shall supply as a part of this Contract or any other Contract Document an enforceable clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible.

**29.9.3** Any references to any covenant, condition, obligation and/or undertaking “herein,” “hereunder” or “pursuant hereto” (or language of like import) mean, refer to and include the covenants, conditions, obligations and undertakings existing pursuant to the Contract Documents. All terms defined in the Contract Documents shall be deemed to have the same meanings in all appendices, riders, exhibits, addenda, attachments or other documents affixed to

or expressly incorporated by reference in this instrument, unless the context thereof clearly requires the contrary. Unless expressly provided otherwise, all references to Articles and Sections refer to the Articles and Sections set forth in this Contract. Unless otherwise stated in this Contract or any other Contract Document, words which have well-known technical or construction industry meanings are used in this Contract or any other Contract Document in accordance with such recognized meaning. All references to a subsection "above" or "below" refer to the denoted subsection within the Section in which the reference appears.

**29.9.4** As used in this Contract or any of the other Contract Documents and as the context may require, the singular includes the plural and vice versa, and the masculine gender includes the feminine and vice versa.

**29.9.5** This Contract, its exhibits and the other Contract Documents are intended to be complementary and consistent with each other and shall, to the maximum extent possible, be construed according to such intent.

**29.10 Counterparts.** This instrument may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

**29.11 Provisions Rendered Obsolete or Ineffective.** If any provisions of this Contract are rendered obsolete or ineffective in serving their purpose by change in law, passage of time, financing requirements or other future events or circumstances, the parties agree to negotiate in good faith appropriate amendments to or replacements of such provisions in order to restore and carry out the original purposes thereof to the extent practicable; *provided, however*, that neither party is obligated to agree to any amendment or replacement which would reduce its rights or enlarge its responsibilities under this Contract in any material respect.

**29.12 Explanations; Omissions, Misdescriptions, Inclusions without Limitation.** Should it appear that the Work to be done or any of the matters relative thereto is not sufficiently detailed or explained in the Contract Documents, Contractor shall apply to Owner in writing for such further written explanations as may be necessary and shall conform to the explanation provided. Contractor shall promptly notify Owner of all errors, omissions, inconsistencies or other defects (including inaccuracies and inconsistencies) which it may discover in the Contract Documents, provide written recommendations regarding changes or corrections to resolve any such error, omission or defect and obtain Owner's approval before proceeding with the design Work affected thereby. The foregoing shall not be construed as relieving Contractor from its obligations under the Contract to provide, for the Contract Price, what is required by, reasonably implied by, and reasonably inferable from the Contract Documents. The words "including," "includes" and "include" shall be deemed to be followed by the words "without limitation."

**29.13 Computation of Periods.** 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-Business Day, such act or notice may be timely performed on the next succeeding day which is a Business Day. Notwithstanding the

foregoing, requirements contained in the Contract Documents relating to actions to be taken in the event of an emergency and other requirements for which it is clear that performance is intended to occur on a non-Business Day, shall be performed as specified, even though the date in question may fall on a non-Business Day.

**29.14 Approvals.** In all cases where approvals, consents or determinations are required to be provided hereunder, such approvals or consents shall not be withheld unreasonably and such determinations shall be made reasonably except in cases where a different standard (such as, by way of example only, sole discretion) is specified. In cases where sole discretion is specified for an approval, consent, determination or other decision, the decision shall not be subject to dispute resolution hereunder.

**29.15 Correspondence.** Contractor shall copy Owner on all written correspondence pertaining to this Contract between Contractor and any Person or Entity other than Contractor's Subcontractors, consultants and attorneys.

**29.16 Headings.** The Article and Section headings in this Contract are for convenience of reference only and shall not be deemed to alter or affect the meaning or interpretation of any provisions hereof.

**29.17 No Limitation on Statutory Powers.** Nothing contained in this Contract or any other Contract Documents shall in any way limit the constitutional and statutory powers, duties and rights of elected officials of any Governmental Person.

**29.18 Not Used.**

**29.19 Limitation of Obligations and Liabilities.** Any and all obligations of Owner under this Contract, and any and all liabilities of Owner that may arise under this Contract, shall be limited to Owner's Dulles Corridor Enterprise Fund (which is used to finance the Dulles Toll Road's ongoing capital program and the construction of the Dulles Corridor Metrorail Project), and any claim based on any such obligation or liability of Owner shall be limited to the revenues and assets of the Dulles Corridor Enterprise Fund. Within its Dulles Corridor Enterprise Fund, Owner operates, maintains and improves the Dulles Toll Road and undertakes the construction of the Project. No obligation of Owner under this Contract, and no liability of Owner that may arise under this Contract, shall constitute an obligation or liability of, or give rise to a claim against, or create any recourse against Owner's Aviation Enterprise Fund (which is used to finance the operation, maintenance, improvements, operating expenses and other activities of Ronald Reagan Washington National Airport and Washington Dulles International Airport), or any of the revenues or assets of the Aviation Enterprise Fund.

**29.20 Labor and Right to Work Requirements.** Owner represents, and Contractor acknowledges, that the following requirements are imposed as a result of the January 16, 2013 Funding Agreement By and Between the Commonwealth of Virginia and the Metropolitan Washington Airports Authority Concerning the Provision and Use of \$150,000,000 of Commonwealth Funding for the Dulles Metrorail Project.

(a) Neither Contractor nor any Subcontractor, nor any agent of Contractor or any Subcontractor empowered to recruit employees on their behalf through a hiring hall or otherwise shall require any individual, as a condition to becoming an employee of Contractor or Subcontractor, (i) to be or become a member of a labor union or labor organization, or (ii) not to become a member of a labor union or labor organization;

(b) Contractor shall not discriminate against any Person and/or Entity that is working or seeking to work under a subcontract with Contractor based upon the affiliation of the Person and/or Entity with one or more labor unions or labor organizations or its lack thereof;

(c) Contractor shall not be required, in order to maintain this Contract, to become, or not become, a party to any agreement with one or more labor unions or labor organizations;

(d) Contractor shall not require any Person and/or Entity, in order to secure or maintain a subcontract with Contractor, to become, or not become, a party to, or otherwise adhere to, any agreement with one or more labor unions or labor organizations; and

(e) Contractor and Subcontractors are subject to the requirements set forth in, and shall comply with, Virginia's Right to Work Law, Title 40.1, Chapter 4, Article 3 (§§ 40.1-58 through 40.1-69, as amended) of the *Code of Virginia*, and are subject to all remedies for non-compliance set forth therein, in addition to any other remedies that may be available under the Laws, Regulations and Ordinances of the Commonwealth of Virginia; and

(f) Contractor shall require each of its Subcontractors to include the language contained in this Section 29.20 in its agreements with its lower-tier Subcontractors.


**29.21 Enrollment in E-Verify Program.** Contractor represents and affirms that as of the Effective Date it is enrolled in the E-Verify Program for employment verification operated by the U.S. Department of Homeland Security in partnership with the Social Security Administration and that it will continue to be enrolled in such program for the entire term of this Contract. Contractor shall require all Subcontractors to be similarly enrolled in the E-Verify Program.



IN WITNESS WHEREOF, the parties, intending to be legally bound, have executed this Contract on the dates set forth below.

“Owner”


METROPOLITAN WASHINGTON AIRPORTS  
AUTHORITY

By: Eric R. Carey   
Contracting Officer

Date: 7/29/14

“Contractor”

HENSEL PHELPS CONSTRUCTION CO.

By: William A. Thompson   
Vice President and District Manager

Date: 7/29/14

## EXHIBIT 1.1 DEFINITIONS

As used in the Contract to which this Exhibit is attached and in the other Contract Documents, the following terms shall have the meanings set forth below. References to Articles, Sections, Exhibits and Appendices shall mean Articles, Sections, Exhibits or Appendices of the Contract unless otherwise specified.

**Affidavit of Payment and Partial Lien Release** means an executed affidavit and release from Contractor as specified in Section 14.2.1(d).

**Affiliate** means: (a) any Person or Entity which directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with, Contractor or any of its members, partners or shareholders holding an interest in Contractor; and (b) any Person or Entity for which ten percent (10%) or more of the equity interest in such Person or Entity is held directly or indirectly, beneficially or of record by: (i) Contractor; (ii) any of Contractor's members, partners or shareholders that own ten percent (10%) or more of Contractor or Contractor's members or partners; or (iii) any Affiliate of Contractor under clause (a) of this definition. 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 and/or Entity, whether through voting securities, by contract, family relationship or otherwise.

**ARS** means the WMATA Adopted Regional System.

**Authorized Contractor's Representative** means any individual designated in writing by Contractor to act on behalf of Contractor.

**Authorized Owner's Representative, Owner's Authorized Representative or Owner Representative** means any individual designated in writing to act on or behalf of Owner's Contracting Officer.

**Baseline Schedule** is the schedule approved by Owner in accordance with Section 13.1.2.

**Books and Records** refer to those books, records, documents and other items discussed in Section 12.5.

**Business Day** means any day other than a Saturday, Sunday or other day on which The New York Stock Exchange or banks are authorized or required to close in New York, New York or the Virginia counties of Arlington, Fairfax or Loudoun.

**Certificate of Dynamic Testing Readiness** means the certificate issued by Owner in accordance with Section 17.3.2.

**Certified Claim** is defined in Section 28.2.1.

**Change in Law** means any of the following events:

(a) The enactment, adoption, promulgation, modification or repeal, after the Price Proposal Due Date, of any Laws, Regulations and Ordinances;

(b) With respect to Owner Regulatory Approvals obtained as of the Price Proposal Due Date, the imposition of any material condition on the issuance or renewal of any such Owner Regulatory Approval after the Price Proposal Due Date; or

(c) With respect to Owner Regulatory Approvals obtained as of the Price Proposal Due Date, any change, amendment to, repeal or revocation of any such Owner Regulatory Approval after the Price Proposal Due Date

Notwithstanding the above, none of the following shall be a Change in Law: (i) any Laws, Regulations and Ordinances enacted or adopted before the Price Proposal Due Date, but which do not become effective until after the Price Proposal Due Date; (ii) the general requirements contained in any Regulatory Approval at the time of application or issuance to comply with future Laws, Regulations and Ordinances; (iii) any change, amendment to, repeal, revocation, or imposition of any material condition to an Owner Regulatory Approval caused by Contractor's modification or change to the design concept for the Project included in the NEPA Approvals (excluding a modification or change in such design concept required by a Change Order); (iv) the creation of or change in any federal, state or local tax; (v) a change in Laws, Regulations and Ordinances relating to any Contractor-Related Party's corporate existence or the maintenance of its business; (vi) a change in Laws, Regulations or Ordinances affecting labor or employment matters; or (vii) any event identified in (a) through (c) above that was caused by a Contractor-Related Party's negligence, willful misconduct or failure to comply with its obligations under the Contract.

**Change Order** is defined in Section 19.2.1(b).

**Claim(s)** means any and all claims, disputes, disagreements, causes of action, demands, suits or proceedings.

**Clearance Train** is defined in the "Project Definitions" specification in the Division 1 Specifications.

**Code(s) and Standard(s)** means those codes, standards, criteria, manuals and other references contained in Section 1.5 of the Statement of Work, as such codes, standards, criteria, manuals, and other references may be updated or revised from time-to-time.

**Contract** means this agreement between Owner and Contractor.

**Contract Documents** is defined in Section 1.3.1.

**Contract Price** shall have the meaning set forth in Section 14.1.1.

**Contractor** means Hensel Phelps Construction Co., and its permitted successors and assigns.

**Contractor Background Data** is defined in Section 16.3.2.

**Contractor Event of Default** has the meaning set forth in Section 25.1.1.

**Contractor-Related Party** means: (a) Contractor; (b) any Subcontractor; (c) any other Person and/or Entity performing any of the Work; (d) any other Persons or Entities for whom Contractor may be legally or contractually responsible; and (e) any Affiliate, employees, agents, officers, directors, shareholders, representatives, consultants, successors, assigns and invitees of any of the foregoing.

**Contractor's Technical Proposal** means that document set forth in Appendix 4.

**Cooperative Agreements** mean those agreements set forth in Appendix 6.

**Cost Breakdown Structure** means the document specified in Section 14.1.4 that identifies dollar values for items of Work.

**Critical Path(s)** means the longest chain or chains of connected activities through the Project network in terms of time with the least amount of positive slack or the greatest amount of negative slack. Where multiple calendars are included in the Project Schedule, the longest path sort will be used to calculate the Critical Path(s) and Float.

**Day(s)** and **day(s)** mean calendar days, unless otherwise designated as Business Day(s).

**DBE** means Disadvantaged Business Enterprise.

**DCAA** means the Defense Contract Audit Agency

**Defect** means any failure of the Work or any component of the Work to conform to the requirements of the Contract Documents, including any breach of the warranty set forth in Article 11.

**Design Standard Change Proposal** is defined in Section 3.4.1.

**Design Professional** means any Person or Entity, including Contractor, employed or retained to perform design services for the Project.

**Deviation** means a deviation from the Project Technical Requirements and/or Code(s) and Standard(s).

**DIAAH** means the Dulles International Airport Access Highway.

**Disadvantaged Business Enterprise Subcontracting Plan** is the plan attached as Exhibit 23.2.1.

**Differing Site Conditions** is defined in Section 5.2.

**Directive Letter** means each letter issued by Owner pursuant to Section 19.2.4.

**Dispute** means a controversy, matter in question, or difference of opinion that remains unresolved following good faith negotiations between representatives of Owner and Contractor. Disputes may include such matters as Change Orders, interpretation of the Contract Documents, or costs and time for performance.

**Division 1 Specifications** means the document attached as Appendix 1.

**Draw Request** means the draw request form described in Section 14.2.1.

**Dulles Airport** means Washington Dulles International Airport.

**Dulles Corridor Metrorail Project Communications and Outreach Plan** means the Phase 2 Design-Build Communications and Outreach Plan, Revision 1, December 17, 2012, as may be amended from time-to-time.

**Dynamic Testing** is defined in the "Project Definitions" specification in the Division 1 Specifications.

**Dynamic Testing Readiness** shall have the meaning set forth in Section 17.3.1.

**Effective Date** means the date shown on the first page of the Contract.

**Environmental Management Plan** is defined in Section 014100 of the Division 1 Specifications.

**Equipment and Materials** shall mean all of the equipment, materials, machinery, apparatus, structures, supplies and other goods required by the terms of the Contract Documents to complete the Work and incorporated into the Project. Equipment and Materials shall not be construed to include any equipment, materials, machinery, apparatus, structures, supplies, or other goods or tools owned by Contractor or any Subcontractor that are used to complete the Work but are not contemplated under the Contract Documents to become incorporated into the Project.

**Equity Member(s)** mean Hensel Phelps Construction Co.

**Escrow Bid Documents** mean those documents delivered into escrow in accordance with the RFP.

**Excusable Delay** is defined in Section 13.2.

**Fairfax County** means Fairfax County, Virginia.

**FAR** means the Federal Acquisition Regulations.

**Final Acceptance** means the stage of completion of the Work when all of the events and conditions described in Section 17.6.1 have occurred.

**Final Acceptance Date** means the date on which Final Acceptance occurs.

**Final Acceptance Certificate** means a certificate executed by Owner and Contractor in accordance with Section 17.6.2.

**Final Design** means the portion of the Work which involves the Project Technical Requirements and Contractor's Technical Proposal being advanced to the Final Plans and Specifications.

**Final Plans and Specifications** mean the Issued for Construction documents described in the Division 1 Specifications.

**Float** or **Project Float** means the amount of time an activity can be delayed without affecting the Project Critical Path(s).

**Force Majeure Event** is defined in Section 13.4.1.

**Force Majeure Reserve** is defined in Section 13.4.3.

**FTA** means the Federal Transit Administration.

**Generally Accepted Accounting Principles** or **GAAP** means such accepted accounting practice as, in the opinion of the Accountant, conforms at the time to a body of generally accepted accounting principles.

**Geotechnical Evaluation Report** means that report dated January 7, 2013 and contained as an Appendix to the Statement of Work that is part of the Project Technical Requirements.

**GIS** means Geographic Information System.

**Governmental Person** means any federal, state, local or foreign government and any political subdivision or any governmental, quasi-governmental, judicial, public or statutory instrumentality, administrative agency, authority, body or entity.

**Hazardous Environmental Condition** means the presence of any Hazardous Substance on, in, under or emanating from the Site that is present at concentrations or in quantities that: (a) may present an imminent or substantial safety or health hazard for any Owner Indemnitee, Contractor-Related Party, the general public or the surrounding environment; or (b) are required to be removed or remediated pursuant to Laws, Regulations and Ordinances or in accordance with the requirements of any Governmental Person.

**Hazardous Substance** means, but is not limited to, any solid, liquid, gas, odor, heat, sound, vibration, radiation or other substance or emission which is or could be considered a contaminant, pollutant, dangerous substance, toxic substance, Hazardous Waste, solid waste, or hazardous material (including but not limited to any material that the Secretary of Transportation has designated as hazardous pursuant to Section 5103 of the Hazardous Materials Transportation Act, 49 U.S.C. §5101 et seq.) which is or becomes regulated by Laws, Regulations and Ordinances or which is classified as hazardous or toxic under Laws, Regulations and Ordinances.

**Hazardous Waste** means a waste that is (a) listed as a hazardous waste in 40 CFR Sections 261.31 to 261.33, (b) exhibits one of the following characteristics under 40 CFR 261.20 to 261.24: ignitability, corrosivity, reactivity or toxicity; or (c) is otherwise defined as a hazardous waste by Laws, Regulations and Ordinances.

**Key Personnel** means those individuals and positions identified in Exhibit 8.1.

**Laws, Regulations and Ordinances** means all applicable laws, codes, rules, ordinances, restrictions and regulations of the federal government or any state, regional or any local government (including those resulting from the initiative or referendum process) or quasi-government entity and judicial or administrative orders.

**Lien** means 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 under the Virginia Uniform Commercial Code).

**Liquidated Damages** means the liquidated damages to be paid under and in accordance with Section 26.1 of the Contract.

**Loudoun County** means Loudoun County, Virginia.

**Materials** is a term that is sometimes used in lieu of the term “Equipment and Materials” and encompasses materials, supplies or similar goods required by the terms of the Contract

Documents to complete the Work and incorporated into the Project. Materials shall not be construed to include any materials, apparatus or tools owned by Contractor or any Subcontractor that are used to complete the Work but are not contemplated under the Contract Documents to become incorporated into the Project.

**Maximum Payment Curve** means the curve established as described in Section 14.1.5.

**NEPA Approvals** means the following:

(a) Federal Transit Administration Amended Record of Decision Dulles Corridor Metrorail Project Fairfax and Loudoun Counties Virginia dated November 2006;

(b) Federal Aviation Administration Record of Decision Dulles Corridor Metrorail Project at Washington Dulles International Airport dated July 2005;

(c) Federal Transit Administration Finding of No Significant Impact for Dulles Corridor Metrorail Project Phase 2 Preliminary Engineering Design Refinements Fairfax and Loudoun Counties Virginia dated December 2012; and

(d) Federal Aviation Administration Finding of No Significant Impact/Record of Decision for Dulles Corridor Metrorail Project Phase 2 at Washington Dulles International Airport dated January 2013.

**Notice of Default** means a noticed issued by Owner or Contractor pursuant to Article 25.

**Notice of Proposed Change** means a notice issued by Owner concerning a possible Change Order, as specified in Section 19.2.2.

**Notice of Request for Change or Notice of RFC** means a notice issued by Contractor concerning a possible Change Order, as specified in Section 19.3.1.

**Notice of Termination** means a notice issued by Owner or Contractor to terminate the Contract pursuant to Articles 25 and 27.

**Notice to Proceed** means the notice issued by Owner pursuant to Section 1.5 directing Contractor to commence the entire Work.

**OCIP** means Owner Controlled Insurance Program, as defined in Section 22.1.

**Operational Readiness** means the readiness of the Project, as determined by WMATA based on Operational Readiness Testing, for WMATA safely to commence simulated rail service and final preparations for revenue operation.

**Operational Readiness Certificate** means a certificate issued in accordance with Section 17.5.2 to confirm the Operational Readiness Date.



**Operational Readiness Date** means the date when Operational Readiness has been achieved in accordance with Section 17.5.1.

**Operational Readiness Testing** means the testing of the Work conducted by WMATA after Substantial Completion to determine Operational Readiness.

**Overhead Markup** means all field, Project, and home office overhead, including, but not limited to: (a) field supervision and administration above the crew foreman level, such as general foremen, superintendents, assistant superintendents, engineers (except as specifically provided in Section 19.4.4(a)(ii)), purchasing agents, accountants, clerks, timekeepers, office managers, and all others on the field staff; (b) office supplies; (c) drinking water; (d) temporary heat, light and power; (e) field toilets; (f) costs of services; (g) small tools and expendable materials required for, or consumed in, the performance of the Work; (h) telephone system and charges; (i) facsimile machines, telephones, telegrams, and the charges associated therewith; (j) photographs; (k) photocopying; (l) postage; (m) tool breakage, repairs, replacement, blades, bits and parts; (n) insurance (except as specifically provided in Section 19.4.4(f)(i)); (o) cost of vehicles generally used for transporting either workmen, materials, tools or equipment to job location; (p) all taxes other than applicable business/professional/occupational license (BPOL) tax and sales and use tax; and (q) general and administrative expenses incurred at the home, branch, and/or district offices.

**Oversight Services** means those services and functions Owner has the right or obligation to perform or to cause to be performed under the Laws, Regulations and Ordinances or the Contract Documents in order to monitor, review, manage or administer the Contract or the work or performance of Contractor under the Contract, as more fully described in Section 4.2 of the Contract.

**Owner** means the Metropolitan Washington Airports Authority, its assignees and any other entity succeeding to its powers, authorities and responsibilities under the Contract.

**Owner Indemnitee** means and includes Owner, VDRPT, the Commonwealth Transportation Board, the Commonwealth of Virginia, Fairfax County, Loudoun County, WMATA, VDOT and TRIP II and all elected representatives, appointed officials, commissioners, officers, members, employees, authorized agents and authorized representatives of any of them.

**Owner Regulatory Approvals** has the meaning set forth in Exhibit 10.2.1.

**Owner's Contracting Officer** means the individual designated by Owner with the authority to enter into, administer, and/or terminate this Contract and make related determinations and findings.

**Package B** generally means the Rail Yard and Maintenance Facility for Phase 2, as more specifically detailed and identified within the Contract Documents.

**Performance and Payment Bonds** shall mean the bonds described in Section 22.2.

**Person and/or Entity** means any individual, public or private corporation, county, district, authority, municipality, political subdivision or other entity of the State or the United States of America, and any corporation, limited liability company, partnership, association, firm, trust, estate, or any other entity whatsoever.

**Phase 1** means the initial segment of the Dulles Corridor Metrorail Project, and generally consists of 11.7 miles of the Silver Line, five Metrorail stations (four in Tysons Corner and an interim terminus at Wiehle Avenue in Reston, Virginia), and other facilities.

**Phase 2** means the second segment of the Dulles Corridor Metrorail Project, and generally consists of the 11.4 mile extension of the Silver Line, from the interim terminus at Wiehle Avenue in Reston, Virginia through Dulles Airport to a terminus near Route 772 in eastern Loudoun County, six Metrorail stations (inclusive of the terminus near Route 772), and other facilities.

**Pre-Existing Hazardous Environmental Conditions** means those Hazardous Environmental Conditions existing at the Site as of the Effective Date.

**Price Proposal Due Date** means June 27, 2014.

**Product Data** means the illustrations, standard schedules, performance charts, instructions, brochures, diagrams, warnings, and other information furnished by Contractor to illustrate or explain the fabrication, assembly, installation, maintenance, or operation of the Equipment and Materials or some portion of the Work.

**Project** means: (i) all improvements constituting Package B and which may be provided by Contractor under the terms of the Contract; and (ii) all other improvements and other Work Product which may be provided by Contractor in accordance with the Contract Documents, including off-site improvements required by applicable Laws, Regulations and Ordinances and Regulatory Approvals.

**Project Record Documents** mean the complete set of full-size drawings, GIS data, technical reports, annotated specifications, calculations and shop drawings created during the course of the Project and marked-up by Contractor to show actual construction in the field.

**Project Schedule(s)** mean the Proposal Schedule, the Baseline Schedule, and updates to each as required by Section 013216 of the Division 1 Specifications.

**Project Technical Requirements** means the documents attached as Appendix 2.

**Proposal Schedule** is the schedule set forth in Appendix 5.

**Punch List** means the list of Work which remains to be completed after achievement of Substantial Completion, and shall be limited to minor incidental items of Work necessary to correct imperfections which have no adverse effect on the safety or operability of the Project.

**Record Deliverables** means the final, clean version of the drawings, GIS data, technical reports, annotated specifications, calculations, shop drawings, system software (including source codes) and other records created during the course of the Project that are complete in every detail to correctly depict the as-constructed or as-installed condition of the Project as described in the Division 1 Specifications.

**Recovery Schedule** is defined in Section 13.6.

**Regulatory Approvals** means all local, regional, state and federal agreements, studies, findings, permits, approvals, authorizations, certifications, consents, decisions, exemptions, filings, leases, licenses, registrations, rulings and other governmental authorizations required to be obtained or completed by a Governmental Person or under applicable Laws, Regulations and Ordinances prior to undertaking any particular activity contemplated by the Contract.

**Request for Change Order** means any request delivered by Contractor to Owner or by Owner to Contractor in accordance with Section 19.3.3.

**Retainage** is defined in Section 14.3.1(a).

**RFP** means the Request for Proposals issued by Owner on or about October 19, 2012, seeking the submission of technical and price proposals for the design and construction of the Project.

**RFQI** means the Request for Qualifications Information issued by Owner on or about November 12, 2013, soliciting interested parties to submit Qualifications Statements to serve as the design-builder for the construction of the Project.

**Scheduled Substantial Completion Date** is defined in Section 17.2.1.

**Separate Contractor(s)** means those Persons and/or Entities who contract with Owner, WMATA, VDOT, VDRPT, Fairfax County, Loudoun County, or TRIP II to perform work on or in the vicinity of the Site and/or directly related to the final development of the Project, including but not limited to Packages A and S of the Project and the Route 606 Reconstruction and Widening project being undertaken by VDOT.

**Silver Line** is the designation given by WMATA to the rail line and stations, of which Phase 2 will be a part, with termini at Largo Town Center in Maryland and Route 772 in eastern Loudoun County, Virginia.

**Site** means the location of the permanent Work, including the Project Right-of-Way and those areas that Owner has designated or may, from time to time, designate for Contractor's use in performance of the Work; provided that areas that Owner makes available to Contractor, at Contractor's option, for bonded storage of Equipment and Materials or for staging areas are not considered part of the Site except for the following purposes: For purposes of insurance, indemnification, safety and security requirements and payment for use of Equipment and Materials the term "Site" also includes any areas on which Utility Relocation Work is performed and any property being temporarily used by Contractor for storage of Equipment and Materials and/or construction Work.

**Spare Parts** means spare parts, equipment, components, special tools, test equipment and consumables required by the "Extra Stock Materials" Specification in the Division 1 Specifications.

**Spare Parts Payment Amount** means that portion of the Contract Price specified as such in Exhibit 14.1.1 for Spare Parts.

**State** means the Commonwealth of Virginia.

**Statement of Work** means the "Statement of Work" section of the Project Technical Requirements.

**Station** means a facility where passengers normally enter and leave the WMATA rail system, board and exit the trains. Station includes platforms, mezzanines, lobby areas, access corridors, and other facilities provided by the Project or used by WMATA passengers to access the train system. In addition, Station includes all ancillary areas and Equipment and Materials provided in the same location.

**Subcontract** means any agreement by Contractor with any contractor, vendor, supplier, consultant, or other Person or Entity to perform any part of the Work, including but not limited to the furnishing of Equipment and Materials, as well as any agreements between a Subcontractor and its lower tier Subcontractor(s).

**Subcontractor** means any Person or Entity of any tier that has entered into a Subcontract to perform any part of the Work.

**Substantial Completion** shall have the meaning set forth in Section 17.4.

**Substantial Completion Certificate** means a certificate issued by Owner in accordance with Section 17.4.2.

**Substantial Completion Date** means the date that Contractor achieves Substantial Completion in accordance with Section 17.4.

**Surety** is defined in Section 22.2.

**System Performance Testing** is defined in the “Project Definitions” Specification in the Division 1 Specifications.

**Time Impact Analysis** or **TIA** is defined in Section 13.3.2.

**TRIP II** means the Toll Road Investors Partnership II, the owner and operator of the Dulles Greenway.

**Uniform Act** is the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended.

**Utility** or **utility** means a public, private, cooperative, municipal and/or government line, facility or system used for the carriage, transmission and/or distribution of communications, cable television, electric power, telephone, telegraph, water, gas, oil, petroleum products, steam, chemicals, sewage, storm water (except: (a) roadway and alley catch basins and inlets; (b) connections to storm water mainlines and storm water quality and quantity control facilities; and (c) drainage systems serving stations and other buildings included in the Project) or any other similar commodity that directly or indirectly serves the public. The necessary appurtenances to each Utility facility shall be considered part of such Utility. Without limitation, any service line connecting directly to a Utility shall be considered an appurtenance to that Utility, regardless of the ownership of such service line.

**Utility Feed** is a new permanent Utility service connection to a Project facility.

**Utility Owner** or **utility owner** means the owner or operator of any Utility (including both privately held and publicly held entities, cooperative utilities, and municipalities and other governmental agencies).

**Utility Self-Performance Payments** means those payments made by Contractor to Utility Owners for the costs of: (a) the design and construction services for Columbia Gas of Virginia providing natural gas service to the Project; and (b) with Owner’s prior written approval, the design and/or construction of any other gas Utility that will not allow Contractor to perform design and/or construction services for such Utility required on the Project. For the avoidance of doubt, the Utility Self-Performance Payments shall not include any Overhead Markup or profit of a Contractor-Related Party.

**Utility Self-Performance Payment Amount** means that portion of the Contract Price specified as such in Exhibit 14.1.1.

**VDOT** means the Virginia Department of Transportation.

**VDRPT** means the Virginia Department of Rail and Public Transportation.

**Virginia Code** or **Code of Virginia** means the Code of Virginia of 1950, as amended.

**Warranty** or **Warranties** mean the warranties made by Contractor in Article 11.

**Warranty Period** shall have the meaning set forth in Section 11.2.

**WMATA** means the Washington Metropolitan Area Transit Authority, the ultimate owners of the Project and the entity responsible for operating and maintaining the Project after the Final Acceptance Date.

**Work** is defined in Section 2.1.

**Work Product** means all the data, information, documentation and other work product deliverable by or on behalf of Contractor and in any way related to the Project or Project Right of Way including, but not limited to, engineering documents, geotechnical soils and soil boring data, analyses, reports and records, the Right of Way Plans, property acquisition files, agreements and documents (including records of payment and related correspondence, title policies, parcel diaries and all documents described herein), engineers' and inspectors' diaries and reports, utility relocation plans and agreements, right of way record maps and surveys, GIS data, traffic and revenue studies, and other feasibility data, analyses, studies and reports, correspondence and memoranda relevant to design or construction decisions, contracting plans, air quality monitoring data, environmental reviews, studies and reports, mitigation studies and reports, data, assessments, studies and reports regarding Hazardous Substance investigations, testings, borings, monitoring and analyses, manifests regarding handling, storage or transportation of Hazardous Substances, correspondence and agreements relating to Regulatory Approvals, Change Orders, final quantities, pile driving records, records of accidents and traffic management, inspection reports, field and lab test records and reports, concrete pour records, surfacing depth check records, grade and alignment books, cross-section notes, drainage notes, photographs, false work and form plans, records of construction materials, and any other documents which can be reasonably described as technical or engineering documents.

**EXHIBIT 2.3.14  
FEDERAL REQUIREMENTS**

Contractor understands that the Project is financed in part with assistance provided by the Federal Transit Administration (“FTA”) and acknowledges that a condition to such assistance is the application of certain federal laws, regulations, policies, procedures, directives and ordinances to the Contract and Contractor (“Federal Requirements”). Contractor will comply with all Federal Requirements in effect as of the Effective Date of the Contract unless FTA issues a written determination to the contrary.

This Federal Requirements Exhibit is intended to identify certain specific Federal Requirements, with the understanding that what is identified herein is not to be deemed all-inclusive. Contractor agrees that it shall comply with all federal laws, regulations, policies, procedures, directives and ordinances, whether or not they are specifically mentioned in these Federal Requirements, and, through flow-down provisions in its Subcontracts, require its Subcontractors, as well as each of its lower-tier Subcontractors, to comply with such Federal Requirements to the extent mandated by the applicable Federal Requirement. Unless otherwise stated in a provision below, Contractor shall flow-down, and require all Subcontractors of any tier to flow-down, all provisions of these Federal Requirements to all Subcontractors at each tier.

For purposes of this Addendum, the following definitions apply:

- (a) “Contract” means the written agreement between MWAA and Contractor.
- (b) “Contractor” means a Person that MWAA has entered into a Contract for goods or services associated with the Project.
- (c) “Owner” means the Metropolitan Washington Airports Authority.
- (d) “Person” means any individual, public or private corporation, county, district, authority, municipality, political subdivision or other entity of the State or the United States of America, and any corporation, limited liability company, partnership, association, firm, trust, estate, or any other entity whatsoever.
- (e) “Project” means the project generally known as Phase 2 of the Dulles Corridor Metrorail Project Improvements project.
- (f) “Subcontract” means any agreement by Contractor with any contractor, vendor, supplier, consultant, or other Person to perform any part of the Work, including but not limited to

the furnishing of equipment and materials, as well as any agreements between a Subcontractor and its lower tier Subcontractor(s).

(g) “Subcontractor” means any Person of any tier that has entered into a Subcontract to perform any work on the Project.

**1. Fly America**

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 CFR Part 301-10, which provide that recipients and sub-recipients 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. 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. Contractor shall flow-down the requirements of this section to all Subcontracts that may involve international air transportation.

**2. Cargo Preference - Use of United States-Flag Vessels Requirements**

Pursuant to 46 U.S.C. §55305 and 46 C.F.R. Part 381, Contractor agrees:

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

(b) 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 paragraph (a) above to: (i) Owner through Contractor in the case of a Subcontractor’s bill-of-lading; and (ii) to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, D.C. 20590 and to Owner in the case of Contractor’s bill-of-lading, all as marked with appropriate identification of the Project.



(c) 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.

3. **Buy America**

(a) Contractor agrees to comply with 49 U.S.C. § 5323(j) and FTA regulations, "Buy America Requirements," 49 C.F.R. Part 661, and subsequent amendments to those regulations that may be promulgated. This requires that federal funds may not be obligated unless steel, iron and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. 661.7.

(b) Appropriate Buy America certifications in the following form shall be provided with the executed Contract and with each Change Request that includes steel, iron, and manufactured products. Owner will not approve such Change Request unless the completed Buy America certification is provided. If a Certificate of Non-Compliance is provided, the Change Request will be accepted only if Owner determines that an exception to the Buy America requirements applies:

**Certification requirement for procurement of steel, iron, or manufactured products.  
Certificate of Compliance with 49 U.S.C. 5323(j)(1):**

Contractor hereby certifies that it will meet the requirements of 49 U.S.C. 5323(j)(1) and the applicable regulations in 49 C.F.R. Part 661.5.

Date:

7/29/14

Signature:

[Redacted Signature]

Company Name:

Hensel Phelps Construction Co.

Title:

VICE PRESIDENT

**Certificate of Non-Compliance with 49 U.S.C. 5323(j)(1):**

Contractor hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(1) and 49 C.F.R. 661.5, but it may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(A), 5323(j)(2)(B), or 5323(j)(2)(D), and 49 C.F.R. 661.7.

Date: \_\_\_\_\_  
Signature: \_\_\_\_\_  
Company Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**Certification requirement for procurement of buses, other rolling stock and associated equipment.**

**Certificate of Compliance with 49 U.S.C. 5323(j)(2)(C):**

Contractor hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j)(2)(C) and the regulations at 49 C.F.R. Part 661.11.

Date: 7/24/14  
Signature: \_\_\_\_\_  
Company Name: Hensel Phelps Construction Co  
Title: Vice President

**Certificate of Non-Compliance with 49 U.S.C. 5323(j)(2)(C):**

Contractor hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11, but may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(A), 5323(j)(2)(B), or 5323(j)(2)(D), and 49 C.F.R. 661.7.

Date: \_\_\_\_\_  
Signature: \_\_\_\_\_  
Company Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**4. Seismic Safety Requirements**

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 CFR Part 41, and will certify to compliance to the extent required by the regulation. Contractor also agrees to ensure that all

work performed under this Contract, including work performed by any Subcontractor, is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the Project.

**5. Energy Conservation Requirements**

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 Energy Policy and Conservation Act.

**6. Clean Water Requirements**

(a) 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 *et seq.* Contractor agrees to report each violation to Owner and understands and agrees that Owner will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(b) Contractor shall flow-down the requirements of this Section 6 to all Subcontracts exceeding \$100,000.

**7. Lobbying**

(a) Contractor and all Subcontractors at each tier who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR Part 20, "New Restrictions on Lobbying." The language for the certification is set forth in Section 7(b) below. Each tier certifies to the tier above that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contracts on its behalf with non-federal funds with respect to that federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are to be forwarded from tier-to-tier up to Owner.

(b) **Certification for Contracts, Grants, Loans and Cooperative Agreements.**  
The certification referenced in Paragraph 7(a) above is as follows:

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 influencing or intending to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

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

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 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.

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.A. 3801, *et seq.*, apply to this certification and disclosure, if any.



Signature of Contractor's Authorized Official

Vice President

Name and Title of Contractor's Authorized Official

7/24/14

Date

**8. Access to and Retention of Records**

(a) Contractor agrees to permit Owner, the U.S. Secretary of Transportation, the FTA Administrator, the Comptroller General of the United States, or their duly authorized representatives, to inspect all any books, documents, papers, records, accounts and reports of Contractor which are directly pertinent to this Contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C.F.R. 633.17 to provide the FTA Administrator or his authorized representatives, including any PMO Contractor, access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at \$100,000.

(b) Where Owner enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, Contractor shall make available records related to the Contract to Owner, the U.S. Secretary of Transportation, the FTA Administrator, the Comptroller General of the United States, or their duly authorized representatives for the purposes of conducting an audit and inspection.

(c) Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

(d) Contractor agrees to maintain all books, documents, papers, records, accounts and reports required under this Contract, consistent with 49 CFR §18.39(i)(11), for a period of not less than three (3) years after the date of final payment under the Contract or termination or expiration of the Contract, except in the event of litigation or settlement of claims arising from the performance of the Contract, in which case Contractor agrees to maintain same until the U.S. Secretary of Transportation, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto.

(e) Contractor agrees to include this Section 8 in each Subcontract at each tier. It is further agreed that the clause shall not be modified, except to identify the Subcontractor who will be subject to its provisions.

**9. FTA Requirements**

(a) Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, which may be found on the FTA website, including without limitation those listed directly or by reference in the FTA Master Agreement (Form FTA MA(15)), as they

may be amended or promulgated from time-to-time during the term of the Contract. Contractor's failure to so comply shall constitute a material breach of the Contract.

(b) All contractual provisions required by the United States Department of Transportation, as set forth in FTA Circular 4220.1F, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in the Contract. Contractor shall not perform any act, fail to perform any act, or refuse to comply with any Owner requests which would cause Owner to be in violation of the FTA terms and conditions.

**10. Clean Air**

(a) 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 et seq. Contractor agrees to report each violation to Owner and understands and agrees that Owner will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(b) Contractor agrees to include these requirements in each Subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

**11. Recycled Products and Recovered Materials**

Contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. § 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

**12. Davis-Bacon and Copeland Anti-Kickback Acts**

Contractor agrees to comply with the Davis-Bacon Act, 40 U.S.C. § 3141 et seq., as supplemented by Department of Labor Regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction") and the Copeland Anti-Kickback Act (18 U.S.C. § 374 and 40 U.S.C. § 3145) as supplemented by Department of Labor Regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States"). The clause at 29 CFR § 5.5(a) is restated and incorporated below, conformed to designate "Owner", "Contractor" and "Subcontractor" in their respective capacity as the owner, contractor and subcontractor for the Project:

(1) Minimum wages - (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between Contractor or Subcontractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by Contractor and its Subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(A) Owner shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. Owner shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and Owner agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by Owner to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise Owner or will notify Owner within the 30-day period that additional time is necessary.

(C) In the event Contractor, the laborers or mechanics to be employed in the classification or their representatives, and Owner do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), Owner shall refer the questions, including the views of all interested parties and the recommendation of Owner, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise Owner or will notify Owner within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If Contractor does not make payments to a trustee or other third person, Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided, that the Secretary of Labor has found, upon the written request of Contractor, that the applicable standards of the Davis-Bacon



Act have been met. The Secretary of Labor may require Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) **Withholding** - Owner shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from Contractor under this contract or any other Federal contract with the same prime Contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by Contractor or any Subcontractor the full amount of wages required by the Contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the Contract, Owner may, after written notice to Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) **Payrolls and basic records** - (i) Payrolls and basic records relating thereto shall be maintained by Contractor during the course of the work and preserved for a period of three (3) years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR § 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship

programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to Owner for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee ( e.g. , the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. Contractor is responsible for the submission of copies of payrolls by all Subcontractors. Contractor and Subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to Owner for transmission to the Federal Transit Administration, Contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for Contractor to require its Subcontractor to provide addresses and social security numbers to Contractor for its own records, without weekly submission to Owner.

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by Contractor or Subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under section 5.5(a)(3)(ii) of Regulations, 29 CFR Part 5, the appropriate information is being maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR Part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR Part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject Contractor or Subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) Contractor or Subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If Contractor or Subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR § 5.12.

**(4) Apprentices and trainees - (i) Apprentices** - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate,

who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in Contractor's or Subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage

determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity - The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

**(5) Compliance with Copeland Act requirements** - Contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

**(6) Subcontracts** - Contractor and Subcontractor shall insert in any Subcontracts the clauses contained in 29 CFR §5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the Subcontractors to include these clauses in any lower tier Subcontracts. Contractor shall be responsible for the compliance by any Subcontractor or lower tier Subcontractor with all the contract clauses in 29 CFR 5.5.

**(7) Contract termination: debarment** - A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the Contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

**(8) Compliance with Davis-Bacon and Related Act requirements** - All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract.

**(9) Disputes concerning labor standards** - Disputes arising out of the labor standards provisions of this Contract shall not be subject to the general disputes

clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its Subcontractors) and Owner, the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) **Certification of eligibility** - (i) By entering into this contract, Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

**13. Contract Work Hours and Safety Standards**

Contractor shall comply with the Contract Work Hours and Safety Standard Act, 40 U.S.C. § 3701 et seq. The clause at 29 CFR 5.5(b) pertaining to Contract Work Hours and Safety Standard Act is restated and incorporated below, conformed to designate "Owner", "Contractor" and "Subcontractor" in their respective capacity as the owner, contractor and subcontractor for the Project:

(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 section Contractor and any Subcontractor responsible therefor shall be liable for the unpaid wages. 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 watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$10 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 this section.

(3) **Withholding for unpaid wages and liquidated damages** - Owner shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by Contractor or Subcontractor under any such contract or 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, which is held by the same Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or Subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) **Subcontracts.** Contractor or Subcontractor shall insert in any Subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the Subcontractors to include these clauses in any lower tier Subcontracts. Contractor shall be responsible for compliance by any Subcontractor or lower tier Subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

#### 14. **Employee Protections**

(a) **Activities Not Involving Construction** - Contractor agrees to comply, and assures the compliance of each Subcontractor at each tier of the Project, with the employee protection requirements for non-construction employees of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. §§ 3701 *et seq.*, in particular the wage and hour requirements of section 102 of that Act at 40 U.S.C. § 3702, and with U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Governing 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.

(b) **Activities Involving Commerce** - Contractor agrees that the provisions of the Fair Labor Standards Act, 29 U.S.C. §§ 201 *et seq.*, apply to employees performing Project work involving commerce.

**15. No Government Obligation to Third Parties**

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

(b) Contractor agrees to include the above clause in each Subcontract financed in whole or in part with federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the Subcontractor who will be subject to its provisions.

**16. Program Fraud and False or Fraudulent Statements and Related Acts**

(a) Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § § 3801 *et seq.* and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to the Project. Upon execution of the underlying 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 the underlying contract or the FTA assisted project for which this contract 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.

(b) Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on Contractor, to the extent the Federal Government deems appropriate.

(c) Contractor agrees to include the paragraphs (a) and (b) above in each Subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the Subcontractor who will be subject to the provisions.



**17. Debarment and Suspension**

(a) Contractor agrees to comply, and assures the compliance of each Subcontractor at each tier, with 49 U.S.C. § 5325(j), Executive Orders Nos. 12549 and 12689, "Debarment and Suspension," 31 U.S.C. § 6101 note, and U.S. DOT regulations, "Government wide Debarment and Suspension (Nonprocurement)," within 2 C.F.R. Part 1200, which adopts the provisions in 2 CFR 180.

(b) The Contract is a covered transaction for purposes of 2 CFR Part 1200 and 2 CFR 180. As such, Contractor is required to verify that none of the Contractor, its principals, as defined at 2 CFR 180.995, or affiliates, as defined at 2 CFR 180.905, are excluded or disqualified as defined at 2 CFR 180.935 and 180.940. Contractor is required to comply with 2 CFR 1200, Subpart C and 2 CFR 180, Subpart C.

(c) By entering into the Contract, Contractor certifies that it is in compliance with 2 CFR Part 1200, Subpart C and 2 CFR 180, Subpart C. If it is later determined that Contractor knowingly rendered an erroneous certification, in addition to the remedies available to Owner, the Federal Government may pursue available remedies, including, but not limited to, suspension and/or debarment.

**18. Privacy Act**

The following requirements apply to Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

(a) Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, Contractor agrees to obtain the express consent of the Federal Government before Contractor or its employees operate a system of records on behalf of the Federal Government. Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

(b) Contractor also agrees to include these requirements in each Subcontract to administer any system of records on behalf of the federal government financed in whole or in part with federal assistance provided by FTA.

**19. Civil Rights Requirements**

Contractor agrees to comply with all applicable civil rights laws and implementing regulations including, but not limited to the following requirements:

(a) Nondiscrimination: 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, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. §12132, and Federal transit law at 49 U.S.C. §5332, Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, Contractor agrees to comply with applicable Federal implementing regulations and any other implementing requirements FTA may issue.

(b) Equal Employment Opportunity: The following equal employment opportunity requirements apply to the Contract:

(1) Race, Color, Creed, National Origin, Sex: In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. §2000e, and Federal transit laws at 49 U.S.C. §5332, Contractor agrees to comply with all applicable equal opportunity requirements of U. S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor, " 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Contract. 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, creed, national origin, sex or age. Such action shall include, but not be limited to, the following: employment, upgrading, 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 FTA may issue.

(2) Age: In accordance with Section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. §§ 623 and Federal transit law at 49 U.S.C. § 5332, 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 FTA may issue.

(3) Disabilities: In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. §12112, Contractor agrees that it will comply with the requirements of U. S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, Contractor shall comply with the following regulations and any subsequent amendments thereto:

(i) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37;

(ii) U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. Part 27;

(iii) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB)/U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. Part 1192 and 49 C.F.R. Part 38;

(iv) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 35;

(v) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. Part 36;

(vi) U.S. General Services Administration (U.S. GSA) regulations, "Accommodations for the Physically Handicapped," 41 C.F.R. Subpart 101-119;

(vii) U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630;

(viii) U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 C.F.R. Part 64, Subpart F;

(ix) U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. Part 1194; and

(x) FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. Part 609; and

(xi) Any implementing requirements FTA may issue.

(4) Equal Employment Opportunity Requirements for Construction Activities. With respect to activities determined by the U.S. Department of Labor (U.S. DOL) to qualify as "construction," Contractor agrees to comply and assures the compliance of each third party contractor and each subrecipient or Subcontractor at each tier of the Project, all applicable equal employment opportunity requirements of U.S. DOL regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., which implements Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," at 42 U.S.C. § 2000(e) note, and also with any Federal Laws, Ordinances and Regulations affecting construction undertaken as part of the Project.

(5) Drug or Alcohol Abuse - Confidentiality and Other Civil Rights Protections. Contractor agrees to comply with the confidentiality and any other civil rights protections of the Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. §§ 1174 et seq., with the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended, 42 U.S.C. §§ 4581 et seq., and with the Public Health Service Act of 1912, as amended, 42 U.S.C. §§ 290dd-2, 290dd-3 and 290ee-3, and any subsequent amendments to these acts.

(6) Access to Services for Persons with Limited English Proficiency. Contractor agrees to comply with Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," 42 U.S.C. § 2000d-1 note, and U.S. DOT Notice, "DOT Guidance to Contractors on Special Language Services to Limited English Proficient (LEP) Beneficiaries," 66 Fed. Reg. 6733 et seq., January 22, 2001.

(7) Other Nondiscrimination Statutes. Contractor agrees to comply with all applicable requirements of any other nondiscrimination statute(s) that may apply to the Project.

**20. Rights In Data and Patent Rights**

(a) Rights in Data

(1) The term "subject data" used in this Section 20 means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the Contract. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to contract administration.

(2) The following restrictions apply to all subject data first produced in the performance of the Contract to which this Exhibit has been added:

(a) 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 the Federal Government, until such time as the Federal Government 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.

(b) In accordance with 49 C.F.R. § 18.34 and 49 C.F.R. § 19.36, 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 in subsections (2)(b)(1) and (2)(b)(2) of this clause below. As used in the previous sentence, "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.

1. Any subject data developed under that contract, whether or not a copyright has been obtained; and

2. Any rights of copyright purchased by Contractor using Federal assistance in whole or in part provided by FTA.

(c) When FTA awards Federal assistance for experimental, developmental, or research work, it is FTA's general intention to increase transportation knowledge available to the public, rather than to restrict the benefits resulting from the work to participants in that work. Therefore, unless FTA determines otherwise, if Contractor performs experimental, developmental, or research work required by the Contract, it agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of that 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 the Contract, is not completed for any reason whatsoever, all data developed under the Contract shall become subject data as defined in subsection (a) of this clause and shall be delivered as the Federal Government may direct. This subsection (c), however, does not apply to adaptations of automatic data processing equipment or programs for the Contractor's use whose costs are financed in whole or in part with Federal assistance provided by FTA for transportation capital projects.

(d) 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 the 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 that contract. 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.

(e) 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.

(f) 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 to which this Attachment has been added is exempt from the requirements of subsections (b), (c), and (d) of this clause, provided that Contractor identifies that data in writing at the time of delivery of the contract work.

(g) Unless FTA determines otherwise, Contractor agrees to include these requirements in each Subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

(3) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (i.e., a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), the Contractor agrees to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

(4) Contractor also agrees to include these requirements in each Subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

(b) Patent Rights. The following requirements apply to each contract involving experimental, developmental, or research work:

(1) General - If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under the contract to which this Attachment has been added, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, Contractor agree to take actions necessary to provide immediate notice and a detailed report to the party at a higher tier until FTA is ultimately notified.

(2) Unless the Federal Government later makes a contrary determination in writing, irrespective of Contractor's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), Contractor agrees to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

(3) Contractor also agrees to include the requirements of this clause in each Subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

## **21. Transit Employee Protective Provisions**

To the extent that FTA determines that transit operations are involved, Contractor agrees to carry out the transit operations work on the underlying contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this contract and to meet the employee protective requirements of 49 U.S.C. § 5333(b), and U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from the U.S. DOL to FTA applicable to the FTA Recipient's project from which Federal assistance is provided to support work on the underlying contract. Contractor agrees to carry out that work in compliance with the conditions stated in that U.S. DOL letter.

## **22. Environmental Requirements**

Contractor recognizes that many federal and state Laws, Regulations and Ordinances imposing environmental and resource conservation requirements may apply to the Project. Some, but not all, of the major federal Laws, Regulations and Ordinances that may affect the Project include: the National Environmental Policy Act of 1969, as amended, 42 U.S.C. §§ 4321 *et seq.*; the Clean Air Act, as amended, 42 U.S.C. §§ 7401 *et seq.* and applicable sections of 29 U.S.C.; the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1251 *et seq.*; the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §§ 6901 *et seq.*; and the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. §§ 9601 *et seq.* Contractor also recognizes that U.S. EPA, FHWA and other Federal agencies have issued, and in the future are expected to issue, regulations, guidelines, standards, orders, directives, or other requirements that may affect the Project. Thus, Contractor agrees to comply, and assures the compliance of each of its Subcontractors, with any such Federal requirements as the Federal Government may now or in the future promulgate. Listed below are environmental requirements of particular concern to FTA and Contractor. Contractor agrees that those laws and regulations may not constitute Contractor's entire obligation to meet all Federal environmental and resource conservation requirements.

(a) Environmental Protection. Contractor agrees to comply with all applicable requirements of the National Environmental Policy Act of 1969, as amended, 42 U.S.C. §§ 4321 *et seq.*, Executive Order No. 11514, as amended, "Protection and Enhancement of Environmental Quality," 42 U.S.C. § 4321 note; FTA statutory requirements at 49 U.S.C. § 5324(b); U.S. Council on Environmental Quality regulations imposing requirements for compliance with the National Environmental Policy Act of 1969, as amended, 40 C.F.R. Part 1500 *et seq.*; joint FHWA/FTA regulations, "Environmental Impact and Related Procedures," 23 C.F.R. Part 771 and 49 C.F.R. Part 622.



(b) Air Quality. Contractor agrees to comply with all applicable regulations, standards, orders, and requirements implementing the Clean Air Act, as amended, 42 U.S.C. §§ 7401 *et seq.* In addition:

(1) Contractor agrees to comply with the applicable requirements of the U.S. EPA regulations, "Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Act," 40 C.F.R. Part 51, Subpart T; and "Determining Conformity of Federal Actions to State or Federal Implementation Plans," 40 C.F.R. Part 93. To support the requisite air quality conformity finding for the Project, Contractor agrees to implement each air quality mitigation or control measure incorporated in the Project. Contractor further agrees that any Project identified in an applicable State Implementation Plan as a Transportation Control Measure will be wholly consistent with the design concept and scope of the Project described in the State Implementation Plan.

(2) U.S. EPA also imposes requirements implementing the Clean Air Act, as amended, that may apply to transit operators, particularly operators of large transit bus fleets. Accordingly, Contractor agrees to comply with the following U.S. EPA regulations to the extent they are applicable to the Project: "Control of Air Pollution from Motor Vehicles and Motor Vehicle Engines," 40 C.F.R. Part 85; "Control of Air Pollution from New and In-Use Motor Vehicles and New and In-Use Motor Vehicle Engines: Certification and Test Procedures," 40 C.F.R. Part 86; and "Fuel Economy of Motor Vehicles," 40 C.F.R. Part 600.

(3) Contractor agrees to comply with the notification of violating facility requirements of Executive Order No. 11738, "Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans," 42 U.S.C. § 7606 note.

(c) Use of Public Lands. Contractor agrees that it will not use in the Project any publicly owned land from a park, recreation area, or wildlife or waterfowl refuge of national, State, or local significance as determined by the Federal, State, or local officials having jurisdiction thereof, and will not use in the Project any land from a historic site of national, State, or local significance unless the Federal Government makes the findings required by 49 U.S.C. §303.

(d) Wild and Scenic Rivers. Contractor agrees to comply with the Wild and Scenic Rivers Act of 1968, as amended, 16 U.S.C. §§1271 *et seq.* relating to protecting components of the national wild and scenic rivers system.

(e) Coastal Zone Management. Contractor agrees to assure Project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972, as amended, 16 U.S.C. §§ 1451 *et seq.*

(f) Wetlands. Contractor agrees to comply with the protections for wetlands in accordance with Executive Order No. 11990, as amended, "Protection of Wetlands," 42 U.S.C. § 4321 note.

(g) Floodplains. Contractor agrees to comply with the flood hazards protections in floodplains in accordance with Executive Order No. 11988, as amended, "Floodplain Management" 42 U.S.C. § 4321 note.

(h) Endangered Species. Contractor agrees to comply with the protections for endangered species of the Endangered Species Act of 1973, as amended, 16 U.S.C. §§ 1531 *et seq.*

(i) Historic Preservation. Contractor agrees to foster compliance with the Federal historic and archaeological preservation requirements of section 106 of the National Historic Preservation Act, as amended, 16 U.S.C. § 470f; Executive Order No. 11593, "Protection and Enhancement of the Cultural Environment," 16 U.S.C. § 470 note; and the Archaeological and Historic Preservation Act of 1974, as amended, 16 U.S.C. §§ 469a *et seq.* as follows:

(1) In accordance with U.S. Advisory Council on Historic Preservation regulations, "Protection of Historic and Cultural Properties," 36 C.F.R. Part 800, Contractor agrees to consult with the State Historic Preservation Officer concerning investigations to identify properties and resources included in or eligible for inclusion in the National Register of Historic Places that may be affected by the Project, and agrees to notify FTA and Owner of any affected properties.

(2) Contractor agrees to comply with all Federal requirements to avoid or mitigate adverse effects on those historic properties.

(j) Environmental Justice. Contractor agrees to comply with the policies of Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," 42 U.S.C. § 4321 note.

(k) Mitigation of Adverse Environmental Effects. Should the Project cause or result in adverse environmental effects, Contractor agrees to take all reasonable measures to minimize those adverse effects, as required by 49 U.S.C. § 5324(b), and other applicable Federal laws and

regulations, including joint FHWA/FTA regulations, "Environmental Impact and Related Procedures," 23 C.F.R. Part 771 and 49 C.F.R. Part 622. Contractor agrees to comply with all environmental mitigation measures identified as commitments in applicable environmental documents (*i.e.*, environmental assessments, environmental impact statements, memoranda of agreement, and documents required by 49 U.S.C. § 303) and with any conditions imposed by the Federal Government in a finding of no significant impact or record of decision. Contractor agrees that those mitigation measures are incorporated by reference and made part of the Grant Agreement or Cooperative Agreement. Contractor also agrees that any deferred mitigation measures will be incorporated by reference and made part of the Grant Agreement or Cooperative Agreement as soon as agreement with the Federal Government is reached. Contractor understands and agrees that those mitigation measures agreed upon may not be modified or withdrawn without the express written approval of the Federal Government.

### **23. Disadvantaged Business Enterprises**

(a) The Contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of the Contract and shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this Contract. Contractor agrees to take the following measures to facilitate participation by disadvantaged business enterprises (DBE) in the Project:

(1) Contractor agrees and assures that it will comply with U.S. DOT regulations, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," 49 C.F.R. Part 26.

(2) Contractor agrees and assures that it shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any Subcontract supported with Federal assistance derived from U.S. DOT or FTA or in the administration of its DBE program or the requirements of 49 C.F.R. Part 26. Contractor agrees to take all necessary and reasonable steps set forth in 49 C.F.R. Part 26 to ensure nondiscrimination in the award and administration of all Subcontracts supported with Federal assistance derived from U.S. DOT. Each Subcontract Contractor signs with a Subcontractor must include the assurance in this paragraph (*see* 49 CFR 26.13(b)). Upon notification by U.S. DOT to Contractor of its failure to implement its approved DBE program, U.S. DOT may impose sanctions as provided for under 49 C.F.R. Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. § 1001, and/or the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801 *et seq.*

(b) Bidders/offerors are required to document sufficient DBE participation to meet the DBE goals or, alternatively, document adequate good faith efforts to do so, as provided for in 49 C.F.R. 26.53. Award of the Contract is conditioned on submission of the following prior to award:

- Contract;
- (1) The names and addresses of DBE firms that will participate in the Contract;
  - (2) A description of the work each DBE will perform;
  - (3) The dollar amount of the participation of each DBE firm participating;
  - (4) Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal;
  - (5) Written confirmation from the DBE that it is participating in the Contract as provided in Contractor's commitment; and
  - (6) If the contract goal is not met, evidence of good faith efforts to do so.

Contractor must present the information required above prior to contract award (see 49 C.F.R. 26.53(3)).

(c) Contractor is required to pay its Subcontractors performing work related to the Contract for satisfactory performance of that work no later than 30 days after Contractor's receipt of payment for that work from Owner. In addition, Contractor is required to return any retainage payments to those Subcontractors within 30 days after the Subcontractor's work related to this contract is satisfactorily completed.

(d) Contractor must promptly notify Owner, whenever a DBE Subcontractor performing work related to the Contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE Subcontractor to perform at least the same amount of work. Contractor may not terminate any DBE Subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of Owner.

#### **24. Seat Belt Use**

In accordance with Executive Order No. 13043, "Increasing Seat Belt Use in the United States," 23 U.S.C. § 402 note, Contractor is encouraged to adopt on-the-job seat belt use policies

and programs for its employees that operate company-owned, rented, or personally-operated vehicles and include this provision in its Subcontracts.

**25. Substance Abuse**

(a) Contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Part 655, produce any documentation necessary to establish its compliance with Part 655, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of Virginia, or Owner, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Part 655 and review the testing process. Contractor agrees further to certify its compliance with Part 655 annually before March 15 and to submit the Management Information System (MIS) reports annually before March 15 to Owner. To certify compliance Contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register.

(b) To the extent applicable, Contractor agrees to comply with the following Federal substance abuse regulations:

(1) Drug-Free Workplace. U.S. DOT regulations, "Governmentwide Requirements for Drug-Free Workplace (Financial Assistance), 49 C.F.R. Part 32, that implement the Drug-Free Workplace Act of 1988, 41 U.S.C. §§ 701 *et seq.*

(2) Alcohol Misuse and Prohibited Drug Use. FTA regulations, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations," 49 C.F.R. Part 655, that implement 49 U.S.C. § 5331.

**26. Protection of Sensitive Security Information**

To the extent applicable, Contractor agrees to comply with section 101(e) of the Aviation and Transportation Security Act, 49 U.S.C. § 40119(b), with U.S. Transportation Security Administration regulations, "Protection of Sensitive Security Information," 49 C.F.R. Part 1520, and with any other implementing regulations, requirements, or guidelines that the Federal Government may issue.

**27. Access for Individuals with Disabilities**

Contractor agrees to comply with 49 U.S.C. § 5301(d), which states the federal policy that elderly individuals and individuals with disabilities have the same right as other individuals

to use public transportation services and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement transportation accessibility rights for elderly individuals and individuals with disabilities. Contractor also agrees to comply with all applicable provisions of section 504 of the Rehabilitation Act of 1973, as amended, with 29 U.S.C. § 794, which prohibits discrimination on the basis of disability; with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 *et seq.*, which requires that accessible facilities and services be made available to individuals with disabilities; and with the Architectural Barriers Act of 1968, as amended, 42 U.S.C. §§ 4151 *et seq.*, which requires that buildings and public accommodations be accessible to individuals with disabilities.

**Attachment 1  
Wage Determination per Section 12(1) of Federal Requirements**

The following Wage Determinations are attached hereto:

1. General Decision Number: VA140051, Modification 2 04/11/2014 VA51 (5 pages)  
Construction Types: Heavy (Heavy and Sewer and Water Line)  
Counties: Loudoun and Warren Counties in Virginia
  
2. General Decision Number: VA140105, Modification 6 05/30/2014 VA105 (7 pages)  
Construction Type: Building  
County: Loudoun County in Virginia

General Decision Number: VA140051 04/11/2014 VA51

Superseded General Decision Number: VA20130062

State: Virginia

Construction Types: Heavy (Heavy and Sewer and Water Line)

Counties: Loudoun and Warren Counties in Virginia.

HEAVY CONSTRUCTION PROJECTS (Including Sewer and Water Lines)

Modification Number	Publication Date
0	01/03/2014
1	01/24/2014
2	04/11/2014

BRVA0001-003 07/01/2013

	Rates	Fringes
MASON - STONE.....	\$ 33.58	15.13

CARP0132-018 05/01/2013

	Rates	Fringes
CARPENTER, Includes Form Work....	\$ 26.81	8.13

ELEC0026-025 11/04/2013

LOUDOUN COUNTY

	Rates	Fringes
ELECTRICIAN.....	\$ 40.95	14.63+a

a. PAID HOLIDAYS: New Year's Day, Inauguration Day, Martin Luther King Jr.'s Birthday, Memorial Day, Independence Day, Labor Day, Veterans' Day, Thanksgiving Day, the day after Thanksgiving Day and Christmas Day.

ELEC0026-026 11/04/2013

WARREN COUNTY

	Rates	Fringes
ELECTRICIAN.....	\$ 27.71	3%+13.40+a

a. PAID HOLIDAYS: New Year's Day, Inauguration Day, Martin Luther King Jr.'s Birthday, Memorial Day, Independence Day, Labor Day, Veterans' Day, Thanksgiving Day, the day after Thanksgiving and Christmas Day.

ENGI0077-019 05/01/2013



	Rates	Fringes
POWER EQUIPMENT OPERATOR:		
35 ton Cranes and Above.....	\$ 32.89	8.45+a
Cranes Below 35 tons.....	\$ 32.40	8.45+a
Mechanic.....	\$ 34.34	8.45+a
Tower and Climbing Cranes...\$	32.89	8.45+a
Tower Cranes and Cranes		
100 tons and Over.....	\$ 33.96	8.45+a

a. PAID HOLIDAYS: New Year's Day, Inaugural Day, Decoration Day, Independence Day, Labor Day, Martin Luther King's Birthday, Veterans' Day, Thanksgiving Day, Friday after Thanksgiving and Christmas Day.

b. PREMIUM PAY:  
Tower crane and cranes 100-ton and over to receive \$1.00 per hour premium.

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LABO0710-010 04/01/2010

	Rates	Fringes
LABORER: Pipelayer.....	\$ 16.61	5.41

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PAIN0051-014 06/01/2013

	Rates	Fringes
GLAZIER		
Glazing Contracts \$2 million and under.....	\$ 24.30	9.61
Glazing Contracts over \$2 million.....	\$ 27.64	9.61

-----  
\* PLAS0891-006 02/01/2014

	Rates	Fringes
CEMENT MASON/CONCRETE FINISHER...\$	27.15	9.61

-----  
SUVA2010-052 09/03/2010

	Rates	Fringes
DIVER TENDER.....	\$ 22.53	3.98
DIVER.....	\$ 23.73	4.21
IRONWORKER, REINFORCING.....	\$ 22.45	11.85
IRONWORKER, STRUCTURAL.....	\$ 20.55	8.25
LABORERS		
Common or General.....	\$ 11.24	1.32
Flagger.....	\$ 7.39	0.20
Landscape.....	\$ 10.00	

POWER EQUIPMENT OPERATOR:

Backhoe.....	\$ 18.47	0.75
Bobcat/Skid Loader.....	\$ 11.40	
Bulldozer.....	\$ 17.54	
Excavator.....	\$ 17.79	
Loader.....	\$ 18.99	0.75
Trackhoe.....	\$ 12.75	1.24
Tugboat.....	\$ 19.00	

TRUCK DRIVER, Includes Dump  
Truck.....\$ 12.14 0.75

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of "identifiers" that indicate whether the particular rate is union or non-union.

Union Identifiers

An identifier enclosed in dotted lines beginning with characters other than "SU" denotes that the union classification and rate have found to be prevailing for that classification. Example: PLUM0198-005 07/01/2011. The first four letters , PLUM, indicate the international union and the four-digit number, 0198, that follows indicates the local union number or district council number where applicable , i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. The date, 07/01/2011, following these characters is the effective date of the most current negotiated rate/collective bargaining agreement which would be July 1, 2011 in the above example.

Union prevailing wage rates will be updated to reflect any changes in the collective bargaining agreements governing the rates.

0000/9999: weighted union wage rates will be published annually each January.

## Non-Union Identifiers

Classifications listed under an "SU" identifier were derived from survey data by computing average rates and are not union rates; however, the data used in computing these rates may include both union and non-union data. Example: SULA2004-007 5/13/2010. SU indicates the rates are not union majority rates, LA indicates the State of Louisiana; 2004 is the year of the survey; and 007 is an internal number used in producing the wage determination. A 1993 or later date, 5/13/2010, indicates the classifications and rates under that identifier were issued as a General Wage Determination on that date.

Survey wage rates will remain in effect and will not change until a new survey is conducted.

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### WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- \* an existing published wage determination
- \* a survey underlying a wage determination
- \* a Wage and Hour Division letter setting forth a position on a wage determination matter
- \* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations  
Wage and Hour Division  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage

payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

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END OF GENERAL DECISION

General Decision Number: VA140105 05/30/2014 VA105

Superseded General Decision Number: VA20130116

State: Virginia

Construction Type: Building

County: Loudoun County in Virginia.

BUILDING CONSTRUCTION PROJECTS (does not include single family homes or apartments up to and including 4 stories).

Modification Number	Publication Date
0	01/03/2014
1	01/24/2014
2	03/07/2014
3	04/25/2014
4	05/09/2014
5	05/16/2014
6	05/30/2014

\* ASBE0024-012 10/01/2013

	Rates	Fringes
ASBESTOS WORKER/HEAT & FROST INSULATOR.....	\$ 33.13	13.76

Includes the application of all insulating materials, protective coverings, coatings and finishes to all types of mechanical systems

\* ASBE0024-013 10/09/2013

	Rates	Fringes
ABATEMENT WORKER: ASBESTOS (Removal from Mechanical Systems).....	\$ 20.86	5.46

BOIL0045-004 10/01/2013

	Rates	Fringes
BOILERMAKER.....	\$ 32.36	27.62

BRDC0001-003 05/04/2014

	Rates	Fringes
BRICKLAYER.....	\$ 29.17	8.61

BRDC0001-004 05/01/2014

	Rates	Fringes
--	-------	---------

MASON - STONE.....\$ 34.18 15.63

BRDC0001-005 05/01/2014

Rates Fringes

TILE FINISHER.....\$ 21.48 9.08

BRDC0001-006 05/01/2014

Rates Fringes

TILE SETTER.....\$ 26.28 10.00

CARP0388-004 08/01/2010

Rates Fringes

CARPENTER (Including Drywall Hanging, Form Work, and Metal Stud Installation).....\$ 26.38 7.06

ELEC0026-034 11/04/2013

Rates Fringes

ELECTRICIAN.....\$ 40.95 3%+13.40

HVAC Temperature Controls, Alarms on New Construction or wherever Alarm System is installed in conduit

ELEC0026-038 09/01/2013

Rates Fringes

SOUND AND COMMUNICATION TECHNICIAN.....\$ 26.55 3%+7.77

Sound Technician, Low Voltage Wiring for Alarms does not include New Construction or Alarms installed in conduit

ELEV0010-006 01/01/2014

Rates Fringes

ELEVATOR MECHANIC.....\$ 40.49 26.785+a+b

a. PAID HOLIDAYS: New Year's Day, Memorial Day, Independence Day, Labor Day, Veterans' Day, Thanksgiving Day, Christmas Day and the Friday after Thanksgiving.

b. VACATIONS: Employer contributes 8% of basic hourly rate for 5 years or more of service; 6% of basic hourly rate for 6 months to 5 years of service as vacation pay credit.

ENGI0077-022 05/01/2013

	Rates	Fringes
Power equipment operators:		
35 ton cranes & above;		
tower & climbing cranes.....	\$ 32.89	8.45+a
Bulldozer.....	\$ 31.65	8.45+a
Excavator; Cranes (All		
Other).....	\$ 32.40	8.45+a
Roller.....	\$ 24.68	8.45+a
Tower cranes and cranes		
100 ton and over.....	\$ 33.96	8.45+a

a. PAID HOLIDAYS: New Year's Day, Inaugural Day, Decoration Day, Independence Day, Labor Day, Martin Luther King's Birthday, Veterans' Day, Thanksgiving Day, Friday after Thanksgiving and Christmas Day.

b. PREMIUM PAY:

Tower crane and cranes 100-ton and over to receive \$1.00 per hour premium over Group One.

-----  
IRON0005-008 06/01/2013

	Rates	Fringes
IRONWORKER, ORNAMENTAL AND STRUCTURAL.....	\$ 30.00	16.04

-----  
LABO0011-001 09/05/2011

	Rates	Fringes
LABORER: Mason Tender - Cement/Concrete.....	\$ 20.88	6.47

-----  
PAIN0051-029 06/01/2013

	Rates	Fringes
GLAZIER		
\$2 million and Under.....	\$ 24.30	9.61
Over \$2 million.....	\$ 27.64	9.61

-----  
PAIN0051-030 06/01/2013

	Rates	Fringes
PAINTER (Drywall Finishing/Taping, Brush and Roller, Spray).....	\$ 24.89	8.91

-----  
PLUM0005-013 08/01/2013

	Rates	Fringes
PLUMBER.....	\$ 38.17	16.25+a

a. PAID HOLIDAYS: New Year's Day, Martin Luther King's Birthday, Memorial Day, Independence Day, Labor Day, Veterans' Day, Thanksgiving Day and the day after

Thanksgiving and Christmas Day.

-----  
PLUM0602-003 08/01/2012

	Rates	Fringes
PIPEFITTER (Including HVAC Pipe and System Installation)....	\$ 37.62	18.07+a

a. PAID HOLIDAYS: New Year's Day, Martin Luther King's  
Birthday, Memorial Day, Independence Day, Labor Day,  
Veterans' Day, Thanksgiving Day and the day after  
Thanksgiving and Christmas Day.

-----  
ROOF0030-035 09/01/2012

	Rates	Fringes
ROOFER.....	\$ 26.90	10.18

-----  
SFVA0669-005 07/01/2013

	Rates	Fringes
SPRINKLER FITTER (Fire Sprinklers).....	\$ 30.68	18.07

-----  
SHEE0100-042 07/01/2013

	Rates	Fringes
SHEET METAL WORKER (Including HVAC Duct Installation).....	\$ 39.93	15.38+a

a. PAID HOLIDAYS: New Year's Day, Martin Luther King's  
Birthday, Memorial Day, Independence Day, Labor Day,  
Veterans Day, Thanksgiving Day and Christmas Day

-----  
SUVA2010-110 09/20/2010

	Rates	Fringes
BRICK POINTER/CAULKER/CLEANER....	\$ 17.28	0.00
CEMENT MASON/CONCRETE FINISHER...	\$ 18.85	3.78
LABORER: Common or General.....	\$ 12.20	1.97
LABORER: Concrete Worker.....	\$ 11.94	0.00
LABORER: Landscape.....	\$ 10.64	0.00
LABORER: Mason Tender - Brick...	\$ 10.90	2.35
LABORER: Pipelayer.....	\$ 15.47	2.27
OPERATOR: Backhoe.....	\$ 19.20	3.19



OPERATOR: Bobcat/Skid Steer/Skid Loader.....	\$ 15.62	2.40
OPERATOR: Forklift.....	\$ 17.93	7.28
OPERATOR: Loader.....	\$ 20.63	4.80
OPERATOR: Mechanic.....	\$ 18.23	1.59
TRUCK DRIVER: Dump Truck.....	\$ 13.25	1.80

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WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

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---

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interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

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U.S. Department of Labor  
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4.) All decisions by the Administrative Review Board are final.

=====

END OF GENERAL DECISION

**EXHIBIT 8.1**  
**KEY PERSONNEL**

<u>Position</u>	<u>Name</u>	<u>Company</u>
Project Director	[REDACTED]	Hensel Phelps Construction Co.
Construction Manager	[REDACTED]	Hensel Phelps Construction Co.
Systems Manager	[REDACTED]	Systra USA
Quality Manager	[REDACTED]	Hensel Phelps Construction Co.
Design Manager	[REDACTED]	Systra USA
Design-Construction Integrations Manager	[REDACTED]	Hensel Phelps Construction Co.
Safety Manager	[REDACTED]	Hensel Phelps Construction Co.
DBE Program Compliance Manager	[REDACTED]	Hensel Phelps Construction Co.

**EXHIBIT 10.2.1  
OWNER REGULATORY APPROVALS**

Issuing Governmental Person	Regulatory Approval
<b>Federal</b>	
Federal Transit Administration	<p>Federal Transit Administration Amended Record of Decision Dulles Corridor Metrorail Project Fairfax and Loudoun Counties Virginia, dated November 2006</p> <p>Federal Transit Administration Finding of No Significant Impact for Dulles Corridor Metrorail Project Phase 2 Preliminary Engineering Design Refinements Fairfax and Loudoun Counties Virginia, dated December 2012</p>
Federal Aviation Administration	<p>Federal Aviation Administration Record of Decision Dulles Corridor Metrorail Project at Washington Dulles International Airport, dated July 2005</p> <p>Federal Aviation Administration Finding of No Significant Impact/Record of Decision for Dulles Corridor Metrorail Project Phase 2 at Washington Dulles International Airport, dated January 2013</p> <p>Airport Layout Plan Amendment pursuant to Federal Aviation Administration Advisory Circular AC 150/5070-6B</p>
United States Army Corps of Engineers	United States Army Corps of Engineers (USACE) Department of the Army Permit (Section 404) NAO 2010-2277, dated June 15, 2011
<b>State</b>	
Virginia Department of Game and Inland Fisheries	Endangered and Threatened Species of Fish and Wildlife Permit pursuant to Title 29.1, Chapter 5 of the Code of Virginia, if required
Virginia Department of Historic Resources	Section 106 Memorandum of Agreement, dated October 2012
Virginia Department of Environmental Quality	<p>Virginia Department of Environmental Quality Virginia Water Protection Individual Permit 11-0912, dated June 10, 2011</p> <p>Consistency with Coastal Zone Management Act</p>

<b>Issuing Governmental Person</b>	<b>Regulatory Approval</b>
Virginia Marine Resources Commission	Virginia Marine Resources Commission (VMRC #11-0193) Permit, dated October 18, 2011 (for crossings of Broad Run and Horsepen Run)
<b>Local</b>	
Washington Metropolitan Transit Authority (WMATA)	Metrorail Adopted Regional System Approval

**EXHIBIT 10.2.4**  
**OWNER RESPONSIBILITY FOR REGULATORY APPROVAL CHARGES AND FEES**

<b>Governmental Person</b>	<b>Regulatory Approval(s)</b>
<b>U.S. Army Corps of Engineers</b>	Section 404 Permit <sup>1</sup>
<b>Virginia Department of Environmental Quality</b>	Virginia Water Protection Permit <sup>1</sup> Coastal Zone Management Act Consistency Determination
<b>Virginia Marine Resources Commission</b>	VMRC Permit <sup>1</sup>
<b>Virginia Department of Transportation (VDOT)</b>	Land Use Permits Design and Construction Reviews
<b>Virginia Department of General Services (DGS)</b>	Building Permits
<b>Airports Authority – Building Codes Department</b>	Building Permits
<b>Washington Metropolitan Area Transit Authority (WMATA)</b>	Design and Construction Reviews ARS Acceptance

<sup>1</sup> Owner is responsible for charges and fees for Regulatory Approvals issued prior to the Effective Date. Except as provided in Section 10.3 of the Contract, Contractor is responsible for charges and fees for any modifications or amendments to the issued Regulatory Approvals, or any new Regulatory Approvals required from these Governmental Persons after the Effective Date.

**EXHIBIT 14.1.1  
CONTRACT PRICE SCHEDULE**

[ATTACHED]



Metropolitan Washington Airports Authority

**PRICE SCHEDULE**

**Dulles Corridor Metrorail Project Phase 2**

R 2 (29-May-14)

NO.	DESCRIPTION	SCOPE ID	QTY	UNIT	UNIT PRICE	AMOUNT
<b>DESIGN BUILD PACKAGE B - RAIL YARD AND MAINTENANCE FACILITY</b>						
	Segment N99 Dulles Yard					
<b>TOTAL PRICE FOR BASE CONTRACT with ADD ALTERNATES 1 and 2</b>						<b>\$ 252,989,000</b>

**Metropolitan Washington Airports Authority**

**PRICE SCHEDULE SUPPLEMENT**

**Dulles Corridor Metrorail Project Phase 2**

**R 2 (29-May-14)**

SCOPE ID	SCOPE DESCRIPTION
<b>DESIGN BUILD PACKAGE B - RAIL YARD AND MAINTENANCE FACILITY</b>	
TPB	<p><b>Transportation Police Building (include but not limited to):</b></p> <ul style="list-style-type: none"> <li>o Clearing and grubbing, excavation and backfill for foundations including hauling and disposal;</li> <li>o Hauling and stockpiling of unsuitable or excess materials;</li> <li>o Foundations, walls, slabs, roofs, canopies, and weather protection for building;</li> <li>o Structural framing and architectural finishes for building;</li> <li>o Openings, doors and windows;</li> <li>o Interior finishes for wall, floor and ceiling;</li> <li>o Signage, interior and exterior;</li> <li>o Furnishings and equipment;</li> <li>o Stairs, miscellaneous metals, and elevators;</li> <li>o Mechanical, electrical, plumbing, fire protection, security and safety, communications, and associated wet and dry utilities for building; and</li> <li>o Design, construct, and commission the building to obtain LEED Silver Certification</li> </ul>
GHB	<p><b>Gate House Building (include but not limited to):</b></p> <ul style="list-style-type: none"> <li>o Clearing and grubbing, excavation and backfill for foundations including hauling and disposal;</li> <li>o Hauling and stockpiling of unsuitable or excess materials;</li> <li>o Foundations, walls, slabs, roofs, canopies, and weather protection for building;</li> <li>o Structural framing and architectural finishes for building;</li> <li>o Openings, doors and windows;</li> <li>o Interior finishes for wall, floor and ceiling;</li> <li>o Signage, interior and exterior;</li> <li>o Miscellaneous metals;</li> <li>o Furnishings and equipment; and</li> <li>o Mechanical, electrical, plumbing, fire protection, security and safety, communications, and associated wet and dry utilities for building</li> </ul>
TWF	<p><b>Train Wash Facility (include but not limited to):</b></p> <ul style="list-style-type: none"> <li>o Clearing and grubbing, excavation and backfill for foundations including hauling and disposal;</li> <li>o Hauling and stockpiling of unsuitable or excess materials;</li> <li>o Foundations, walls, slabs, roofs, and weather protection for building;</li> <li>o Structural framing and architectural finishes for building;</li> <li>o Openings, doors;</li> <li>o Interior finishes for wall, floor and ceiling;</li> <li>o Signage, interior and exterior;</li> <li>o Miscellaneous metals;</li> <li>o Furnishings and equipment; and</li> <li>o Mechanical, electrical, plumbing, fire protection, security and safety, communications, and associated wet and dry utilities for building</li> </ul>
SIB	<p><b>S&amp;I Maintenance Building (include but not limited to):</b></p> <ul style="list-style-type: none"> <li>o Clearing and grubbing, excavation and backfill for foundations including hauling and disposal;</li> <li>o Hauling and stockpiling of unsuitable or excess materials;</li> <li>o Foundations, walls, pits, slabs, elevated slabs, roofs, skylights, canopies, and weather protection for building;</li> <li>o Structural framing and architectural finishes for building;</li> <li>o Openings, doors and windows;</li> <li>o Interior finishes for wall, floor and ceiling;</li> <li>o Signage, interior and exterior;</li> <li>o Furnishings and equipment;</li> <li>o Stairs, miscellaneous metals, ramps, and elevators;</li> <li>o Mechanical, electrical, plumbing, fire protection, security and safety, communications, and associated wet and dry utilities for building; and</li> <li>o Design, construct, and commission the building to obtain LEED Silver Certification</li> </ul>

**Metropolitan Washington Airports Authority**

**PRICE SCHEDULE SUPPLEMENT**

**Dulles Corridor Metrorail Project Phase 2**

**R 2 (29-May-14)**

SCOPE ID	SCOPE DESCRIPTION
<b>DESIGN BUILD PACKAGE B - RAIL YARD AND MAINTENANCE FACILITY</b>	
MWB	<p><b>Maintenance of Way (MOW) Building (include but not limited to):</b></p> <ul style="list-style-type: none"> <li>o Clearing and grubbing, excavation and backfill for foundations including hauling and disposal;</li> <li>o Hauling and stockpiling of unsuitable or excess materials;</li> <li>o Foundations, walls, pits, slabs, elevated slabs, roofs, skylights, canopies, and weather protection for building;</li> <li>o Structural framing and architectural finishes for building;</li> <li>o Openings, doors and windows;</li> <li>o Interior finishes for wall, floor and ceiling;</li> <li>o Signage, interior and exterior;</li> <li>o Furnishings and equipment;</li> <li>o Stairs, miscellaneous metals, and elevators;</li> <li>o Mechanical, electrical, plumbing, fire protection, security and safety, communications, and associated wet and dry utilities for building; and</li> <li><del>o Design, construct, and commission the building to obtain LEED Silver Certification.</del></li> </ul>
WHB	<p><b>Warehouse Building (include but not limited to):</b></p> <ul style="list-style-type: none"> <li>o Clearing and grubbing, excavation and backfill for foundations including hauling and disposal;</li> <li>o Hauling and stockpiling of unsuitable or excess materials;</li> <li>o Foundations, walls, slabs, elevated slabs, roofs, canopies, and weather protection for building;</li> <li>o Structural framing and architectural finishes for building;</li> <li>o Openings, doors and windows;</li> <li>o Interior finishes for wall, floor and ceiling;</li> <li>o Signage, interior and exterior;</li> <li>o Furnishings and equipment;</li> <li>o Stairs and miscellaneous metals; and</li> <li>o Mechanical, electrical, plumbing, fire protection, security and safety, communications, and associated wet and dry utilities for building.</li> </ul>
VSF	<p><b>Vehicle Storage Facility (include but not limited to):</b></p> <ul style="list-style-type: none"> <li>o Clearing and grubbing, excavation and backfill for foundations including hauling and disposal;</li> <li>o Hauling and stockpiling of unsuitable or excess materials;</li> <li>o Foundations, walls, slabs, roof, and weather protection for building;</li> <li>o Structural framing and architectural finishes for building;</li> <li>o Openings, doors;</li> <li>o Interior finishes for wall, floor and ceiling;</li> <li>o Signage, interior and exterior;</li> <li>o Miscellaneous metals;</li> <li>o Furnishings and equipment; and</li> <li>o Mechanical, electrical, plumbing, fire protection, security and safety, communications, and associated wet and dry utilities for building.</li> </ul>
GCB	<p><b>Glycol Tanks and Fuel Stand (include but not limited to):</b></p> <ul style="list-style-type: none"> <li>o Clearing and grubbing, excavation and backfill for foundation and underground storage tanks including hauling and disposal;</li> <li>o Hauling and stockpiling of unsuitable or excess materials;</li> <li>o Foundations and pads;</li> <li>o Fuel stand and overhead canopy;</li> <li>o Underground and aboveground fuel storage tanks;</li> <li>o Piping, tank and piping leak detection and inventory control system, fueling system accessories, fuel dispensers and pumps; and</li> <li><del>o Mechanical, electrical, plumbing, fire protection, security and safety.</del></li> </ul>

**Metropolitan Washington Airports Authority**

**PRICE SCHEDULE SUPPLEMENT**

**Dulles Corridor Metrorail Project Phase 2**

R 2 (29-May-14)

SCOPE ID	SCOPE DESCRIPTION
<b>DESIGN BUILD PACKAGE B - RAIL YARD AND MAINTENANCE FACILITY</b>	
SDB	<b>Salt Dome (include but not limited to):</b> o Clearing and grubbing, excavation and backfill for foundations including hauling and disposal; o Hauling and stockpiling of unsuitable or excess materials; o Foundations, and pads; o Furnish and install pre-engineered wood structure; and o Mechanical, electrical, plumbing, fire protection, security and safety, communications, and associated wet and dry utilities.
STB	<b>Storage Bins (include but not limited to):</b> o Clearing and grubbing, excavation and backfill for foundations including hauling and disposal; o Hauling and stockpiling of unsuitable or excess materials; o Foundations, walls, slabs, roof, and weather protection for building; o Structural framing and architectural finishes for building; o Openings, doors; o Interior finishes for wall, floor and ceiling; o Signage, interior and exterior; o Miscellaneous metals; o Furnishings and equipment; and o Mechanical, electrical, plumbing, fire protection, security and safety, communications, and associated wet and dry utilities for building.
YTS	<b>Yard Tracks and Specialties (included but not limited to):</b> o Subgrade preparation and subballast; o Track drainage systems along tracks; o Associated wet and dry utilities; o Systems including train controls and signals, traction power distribution, communications; o Cable trough/walkways; o Signs along the track; o Furnishing, placing of track ballast; o Rails, ties, special trackwork; and o Direct fixation embedded and nit tracks.
STW	<b>Sitework (include but not limited to):</b> o Clearing and grubbing, excavation and backfill to subgrade of tracks, grading; o Hauling and stockpiling of unsuitable or excess materials; o Site retaining wall; o Site security fences and gates; o Gravel areas; o Primary power ductbanks and manholes along Old Ox Road from the mainline interface manhole to the Yard; o Primary power cables, ductbanks and manholes, feeder ductbanks, cabling, and grounding within Yard; o Site utilities including storm drains, waterlines, sanitary sewers, communication, gas, and power; and o Landscaping.
CPS	<b>Concrete Platforms, Boarding and Loading Platforms (include but not limited to):</b> o Clearing and grubbing, excavation and backfill for foundations including hauling and disposal; o Hauling and stockpiling of unsuitable or excess materials; o Foundations, walls, platform slabs, framing, roofs, canopies, weather protection; and o Stairs, ramps, miscellaneous metals; and o Power and lighting.
TPS	<b>Traction Power Substations (TPSS) (include but not limited to):</b> o TPSS facilities complete including clearing and grubbing, foundations, slabs, prefabricated building, screen walls, gates, fence, equipment; and o Jacking and boring under roadways where required, testing and commissioning, primary power cables, ductbanks and manholes, feeder ductbanks, cabling, and grounding.

**Metropolitan Washington Airports Authority**

**PRICE SCHEDULE SUPPLEMENT**

**Dulles Corridor Metrorail Project Phase 2**

**R 2 (29-May-14)**

SCOPE ID	SCOPE DESCRIPTION
<b>DESIGN BUILD PACKAGE B - RAIL YARD AND MAINTENANCE FACILITY</b>	
TCR	<b>Train Control Room Substations (TCR) (include but not limited to):</b> <ul style="list-style-type: none"> <li>o TCR facilities complete including clearing and grubbing, foundations, slabs, prefabricated building, equipment; and</li> <li>o Wet and dry utilities connections.</li> </ul>
Z	<b>Exterior Improvements to Yard Buildings, Tracks, TPSS, and TCR (include but not limited to):</b> Sidewalk, handicap ramps, hardscape, pedestrian walkways and canopies, asphalt parking lot, asphalt assembly area, concrete loading dock, curb and gutter, pavement marking, landscaping, associated wet and dry utilities, exterior signs, site lighting, and site furnishings.
R	<b>Roadway Construction including Entrance Road, Circulation Road, Emergency Access Road, and other permanent access roads (include but not limited to):</b> Full depth asphalt paving, full depth concrete paving, gravel SWM access roads, gravel service roads, associated wet and dry utilities, guardrail, delineators, pavement marking, curb and gutter, and traffic signs.
W	<b>Stormwater Management Facilities (SWM) At-grade or Underground (included but not limited to):</b> <ul style="list-style-type: none"> <li>o Clearing and grubbing, excavation and backfill including hauling and disposal;</li> <li>o Hauling and stockpiling of unsuitable or excess materials;</li> <li>o Storm pipes, storm structures, gabion forebay walls, rip rap;</li> <li>o Underground facilities including but not limited to stormfilters, and sandfilters; and</li> <li>o Landscaping.</li> </ul>
J	<b>Temporary Facilities and Service, Construction Administration and Management (include but not limited to):</b> <ul style="list-style-type: none"> <li>o Project expenses, utilities, office/trailer space, janitorial service, trash collection, travel and per diem, portable toilets, security etc.;</li> <li>o Quality assurance, quality control, safety, surveying staff;</li> <li>o Maintenance and protection of traffic for the project including temporary lane closures and allowance for maintaining traffic control devices;</li> <li>o Erosion and sediment control;</li> <li>o Structure monitoring and instrumentation; and</li> <li>o Contractor's management and supervision staff including administrative staff, office engineers, schedulers, cost control staff, expeditors, superintendents and purchasers, etc., based on the assumed project duration and crew-based costs.</li> </ul>
UR	<b>Utility Relocation (included but not limited to):</b> o Utility Relocation required to complete all scope of work within Contract Package B and to interface with the Contract Package A.
MOB	<b>Mobilization (included but not limited to):</b> <ul style="list-style-type: none"> <li>o Establishment of office, office trailers, and facilities;</li> <li>o Office services set-up (utilities, trash collections, power, communication, and etc);</li> <li>o Security;</li> <li>o Procedures, management plans, project website;</li> <li>o Transportation of contractor's personnel, equipment, and operating supplies to the site;</li> <li>o And etc.</li> </ul>
D	Engineering and Design
LP	Legal, permits, review fees, general and administrative expenses, and profit
BI	Premiums for performance and payment bonds and contractor's insurance not covered by OCIP
ST	Sales Taxes
SU	Project Wide Systems Acceptance and Startup
EW	Environmental Mitigation
CD	Closeout and Demobilization
SP	Spare Parts



**Metropolitan Washington Airports Authority**

**PRICE SCHEDULE SUPPLEMENT**

**Dulles Corridor Metrorail Project Phase 2**

**R 2 (29-May-14)**

SCOPE ID	SCOPE DESCRIPTION
<b>DESIGN BUILD PACKAGE B - RAIL YARD AND MAINTENANCE FACILITY</b>	
UT	<b>Utility Self Performance Payment Amount:</b> Payments made by Contractor to Utility Owners for the costs of: (a) the design and construction services for Columbia Gas of Virginia providing natural gas service to the Project; and (b) with Owner's prior written approval, the design and/or construction of any other gas Utility that will not allow Contractor to perform design and/or construction services for such Utility required on the Project.
<b>ADD ALTERNATES</b>	
WHE	Add Alternate 1 - Warehouse Building Expansion (All Costs)
HST	Add Alternate 2 - Track S-5 Hoists (All Costs)
<b>UNIT OF MEASURE</b>	
LS	Lump Sum
CR	Cost Reimbursable

**EXHIBIT 22.1.1(a)**  
**INSURANCE REQUIREMENTS**

1.1 **Overview.** This Project will be insured under an Owner Controlled Insurance Program (“OCIP”). Parties performing labor or services at the Site are eligible to enroll in the OCIP unless an Excluded Party. The OCIP will provide Enrolled Parties commercial general liability insurance, excess liability insurance, contractor’s pollution legal liability insurance and, if required, railroad protective liability insurance, all as summarily described below, in connection with the performance of the Work (“OCIP Coverages”).

1.2 **Enrolled Parties and Their Insurance Obligations.** OCIP Coverages shall cover Enrolled Parties. Enrolled Parties are: Owner, the OCIP Administrator, Contractor and eligible Subcontractors who enroll in the OCIP, and such other Persons and/or Entities as Owner in its sole discretion may designate (each such party who is insured under the OCIP is collectively referred to as an “Enrolled Party”).

Enrolled Parties shall obtain and maintain, and shall require each of its subcontractors to obtain and maintain, the insurance coverage specified in Section 1.8 (“Additional Insurance Required From Enrolled Parties and Excluded Parties”) and the OCIP Manual.

1.3 **Excluded Parties and Their Insurance Obligations.** The following “Excluded Parties” are ineligible for OCIP Coverages:

- (a) Hazardous Substances remediation, removal and/or transport companies and their consultants (this exclusion does not apply to OCIP Contractor’s Pollution Liability (“CPL”));
- (b) Architects, surveyors, engineers, and soil testing engineers, and their consultants (this exclusion does not apply to OCIP CPL for contracting activities On Site);
- (c) Vendors, suppliers, fabricators, material dealers, truckers, haulers, drivers and others who merely transport, pick up, deliver, or carry Equipment and/or Materials, construction equipment and supplies, materials, personnel, parts or equipment or any other items or persons to or from the Site (this exclusion does not apply to OCIP CPL);
- (d) Any Persons and/or Entities who do not perform labor or services at the Site; and
- (e) Any Persons and/or Entities not specifically identified in this Exhibit 22.1.1(a) or excluded by Owner in its sole discretion, even if otherwise eligible.

Excluded Parties and parties no longer enrolled in or covered by the OCIP shall obtain and maintain, and shall require each of its subcontractors to obtain and maintain, the insurance coverage specified in Section 1.8 (“Additional Insurance Required From Enrolled Parties and Excluded Parties”) and the OCIP Manual.

1.4 **OCIP Insurance Policies Establish OCIP Coverages.** The OCIP Coverages and exclusions summarized in this Exhibit 22.1.1(a) and the other Contract Documents are set forth in full in their respective insurance policy forms. The summary descriptions of the OCIP Coverages in this Exhibit 22.1.1(a) or the OCIP Manual are not intended to be complete or to alter or amend any provision of the actual OCIP Coverages. In the event any provision of this Exhibit 22.1.1(a), the OCIP Manual, the Contract Documents, or the summary below conflicts with the OCIP insurance policies, the provisions of the actual OCIP insurance policies shall govern.

1.5 **Summary of OCIP Coverages.** OCIP Coverages shall apply only to those operations of each Enrolled Party performed On-Site in connection with the Work and only to Enrolled Parties that are eligible for the OCIP. The OCIP will initiate at Notice to Proceed and expire at Final Acceptance with the exception of Warranty/Callback premises coverage and Completed Operations coverage. All OCIP coverages will be Project specific. The term "On-Site" shall mean Work performed at the Site, Work performed on property of the Owner, Work performed on adjacent to the Site, local offices dedicated to the Project, laydown areas, storage yards and other facilities dedicated to the Project and Work incidental to the Site. All locations to be included in the OCIP as "On Site" must be disclosed to Owner and OCIP Administrator and will be subject to underwriter approval. OCIP Coverages shall not apply to Excluded Parties, even if erroneously enrolled in the OCIP. An Enrolled Party's operations away from the Site, including product manufacturing, assembling, or otherwise, shall only be covered if such "off-site" operations are identified in writing to Owner and OCIP Administrator and are dedicated solely to the Project. OCIP Coverages shall not cover "off-site" operations until receipt by Contractor of written acknowledgment of such coverage from the OCIP Administrator. The OCIP shall provide only the following insurance to eligible Enrolled Parties, with the following being a summary only:

(1) **General Liability Insurance** equivalent to ISO Occurrence Form

Each Occurrence Limit

General Aggregate Limit for all Enrolled Parties

10 Years Products & Completed Operations Extension

Products & Completed Operations Aggregate

for all Enrolled Parties

This insurance is primary non-contributing for Enrolled Parties for all occurrences at the Site. The policy will provide Warranty/Callback premises coverage for a period of three (3) years.

The policy will contain a CG 2280 endorsement if commercially available.

The OCIP General Liability policy will not provide coverage for damage to the Project during the course of construction which is covered by the builders risk policy. In addition, the OCIP General Liability policy will not provide coverage for damage to the Owner's existing property.



- (2) **Excess Liability Insurance** (Follow Form Excess of General Liability)  
Combined Single Limit [REDACTED]  
General Aggregate **for all Enrolled Parties** [REDACTED]  
10 Years Products & Completed Operations Extension  
Products & Completed Operations Aggregate  
**for all Enrolled Parties** [REDACTED]

- (3) **Contractors' Pollution Legal Liability** [REDACTED]  
The policy will cover Contractor and Subcontractors. The policy will include an exclusion for claims arising from the failure to render professional services with a modification for the exclusion to not apply to claims caused by pollution conditions arising as a result of covered contracting operations that are conducted on site. In addition, the exclusion will not apply to claims alleging liability on the basis of improper supervision of Subcontractors performing covered operations or claims alleging liability on the basis of selection of construction means, methods and techniques in connection with covered operations.

- (4) **Railroad Protective if required when the Work is on or within 50 feet of a railroad or affects any railroad property.**

Each Occurrence Limit [REDACTED]  
Aggregate Limit: [REDACTED]

1.6 **Owner's Insurance Obligations.** Owner shall pay the costs of premiums for the OCIP Coverages. Owner will receive or pay, as the case may be, all adjustments to such costs, whether by way of dividends, retroactive adjustments, return premiums, other moneys due, audits or otherwise. Each Enrolled Party hereby assigns to Owner the right to receive all such adjustments. Owner assumes no obligation to provide insurance other than that specified in this Exhibit 22.1.1(a) and the OCIP insurance policies. Owner's furnishing of OCIP Coverages shall in no way relieve or limit, or be construed to relieve or limit, Contractor or any Contractor-Related Party of any responsibility, liability, or obligation imposed by the Contract Documents, the OCIP insurance policies, or by Laws, Regulations, and Ordinances, including without limitation any indemnification obligations which Contractor or any Contractor-Related Party has to Owner thereunder. Owner reserves the right at its option, without obligation to do so, to furnish other insurance coverage of various types and limits provided that such coverage is not less than that specified in the Contract Documents. All OCIP policies procured by Owner will be provided by carriers with a rating of not less than "A-VII" according to AM Best's Insurance Reports Key Rating Guide. Owner will maintain a property insurance policy providing coverage for damage to Owner's existing property.

**1.7 Contractor's OCIP Obligations.** Contractor shall:

- (1) Incorporate the terms of this Exhibit 22.1.1(a) in all subcontract agreements.
- (2) Submit OCIP enrollment forms within five (5) business days of execution of the Contract and maintain enrollment in the OCIP, and assure that all eligible Contractor-Related Parties submit OCIP enrollment forms and maintain enrollment in the OCIP within five (5) days of executing a contract with Contractor and, in all circumstances, prior to such Contractor-Related Party commencing Work at the Site.
- (3) Comply with all of the administrative, safety, insurance, and other requirements outlined in this Exhibit 22.1.1(a), the OCIP Manual, the OCIP insurance policies, or elsewhere in the Contract Documents.
- (4) Provide each of its Subcontractors with a copy of the OCIP Manual and assure that all Contractor-Related Parties comply with the provisions of the OCIP insurance policies, the OCIP Manual, this Exhibit 22.1.1(a), and the Contract Documents. The failure of Owner to include the OCIP Manual in the RFP or Contractor to provide each of its eligible Subcontractors with a copy of same, shall not relieve Contractor or any Contractor-Related Party from any of the obligations contained therein. A copy of the OCIP Manual will be provided thirty (30) days prior to the Notice to Proceed.
- (5) Accurately and fully complete the Insurance Enrollment Form located in the OCIP Manual and submit to Owner prior to commencement of the Work.
- (6) Acknowledge, and require all of its Subcontractors to acknowledge in writing, that Owner and the OCIP Administrator are not agents, partners or guarantors of the insurance companies providing coverage under the OCIP (each such insurer, an "OCIP Insurer"), that neither Owner nor OCIP Administrator are responsible for any claims or disputes between or among Contractor, Subcontractors, and any OCIP Insurer(s), and that neither Owner nor OCIP Administrator guarantees the solvency or the availability of limits of any OCIP Insurer(s). Any type of insurance coverage or limits of liability in addition to the OCIP Coverages and the coverage required under Section 1.8 of this Exhibit that Contractor or any Contractor-Related Party requires for its or their own protection, or that is required by applicable Laws, Regulations and Ordinances, shall be the sole responsibility and at the sole expense of the Contractor or applicable Contractor-Related Party and shall not be billed to Owner.
- (7) Cooperate fully with the OCIP Administrator and the OCIP Insurers, as applicable, in its or their administration of the OCIP.
- (8) Provide certificates of insurance within five (5) business days of Owner's or the OCIP Administrator's request.
- (9) Provide, within fifteen (15) business days of Owner's or the OCIP Administrator's request, all documents or information as reasonably requested of Contractor or any Contractor-Related Party. Such information may include but not be limited to, payroll records, insurance policies, declaration pages of coverages, underwriting data, prior loss history information, safety records or history, OSHA citations, or such other data or information as Owner, the OCIP Administrator, or OCIP Insurers may request in the administration of the OCIP, or as required by the OCIP Manual. The preceding obligation relative to insurance policies can be satisfied by making copies

of such policies available for Owner's or the OCIP Administrator's review at an agreeable location.

- (10) Pay to Owner a sum of up to \$5,000 of each occurrence, including court costs, attorney's fees and costs of defense for bodily injury or property damage to the extent losses are payable under the OCIP General Liability Policy ("General Liability Obligation"). The General Liability Obligation shall remain uninsured by Contractor and will not be covered by the OCIP Coverages.

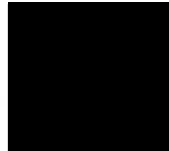
**1.8 Additional Insurance Required From Enrolled Parties and Excluded Parties.**  
Contractor shall:

- (a) Obtain and maintain, and shall require each of its Subcontractors to obtain and maintain, the insurance coverage specified in this Section 1.8 in a form and from insurance companies reasonably acceptable to Owner. The insurance limits may be provided through a combination of primary and excess policies, including the umbrella form of policy.
- (b) Each policy required under this Section, except the Workers' Compensation policy and Professional Liability policy, shall name Owner, Owner Indemnitees, their respective officers, agents and employees, and any additional entities as Owner may request as additional insureds. The additional insured endorsement shall state that the coverage provided to the additional insureds is primary and non-contributing with respect to any other insurance available to the additional insureds. Additional Insured wording for General Liability is to be provided via form CG 2010 11/85 or the equivalent forms (CG 2033 07 04 & CG 2037 07 04) which provide Completed Operations coverage.
- (c) Contractor shall provide certificates of insurance coverage to the OCIP Administrator as required by the OCIP Manual. These certificates are subject to the OCIP Administrator's approval for adequacy of protection. If requested by Owner Indemnitees, a copy of the actual policy(ies) with appropriate endorsement(s) and other documents shall be made available for Owner's or the OCIP Administrator's review at an agreeable location. Acceptance of a non-conforming certificate of insurance by Owner shall not constitute a waiver of any rights of the Owner.
- (d) All policies must be issued by companies authorized to do business in the Commonwealth of Virginia and having a current policyholder's management and financial size category rating of not less than "A- VII" according to AM Best's Insurance Reports Key Rating Guide (except for policies issued by Lloyds of London and approved foreign companies acceptable to the Commonwealth of Virginia and approved in writing by Owner), or of recognized financial responsibility and otherwise agreed by the parties and approved in writing by Owner.
- (e) All policies cannot be cancelled, suspended or lapsed without 30 day prior written notice provided to Owner by registered or certified mail.
- (f) The failure of the Owner at any time to enforce the insurance provisions, to demand such certificate or other evidence of full compliance with the insurance requirements, or to identify a deficiency from evidence that is provided shall not constitute a waiver

of those provisions nor in any respect reduce the obligations of the Contractor to maintain such insurance or to defend and hold the Owner harmless with respect to any items of injury or damage covered by this Agreement.

- (g) As to eligible and Enrolled Parties, the commercial general liability insurance and umbrella liability required by this Section shall only be for off-site activities or operations not insured under the OCIP coverages. All other coverages are for both On-Site and off-site activities.
- (1) Standard Commercial Automobile Liability Insurance covering all owned, non-owned and hired automobiles, trucks, and trailers with a combined single limit of not less than \$1,000,000.
- (2) Statutory Workers' Compensation Insurance and Employer's Liability insurance with statutory limits as required by law, including Federal Employers Liability Act & Maritime coverage, if appropriate, and Employer's Liability limits of not less than \$1,000,000 each accident/\$1,000,000 each employee/\$1,000,000 policy limit.
- (3) Commercial General Liability Insurance in a form providing coverage not less than the standard ISO Commercial General Liability insurance policy ("Occurrence Form"). The limits for Enrolled and Excluded Parties shall be:

Each Occurrence  
General Aggregate  
Products/Completed Operations Aggregate  
Personal/Advertising Injury Aggregate  
Products/Completed Operations  
Extension:



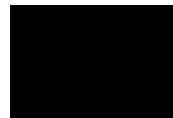
To the applicable statute of limitations

The general aggregate will reinstate annually. Defense expenses are in addition to the limits of liability.

- (4) Umbrella Liability must be on an Occurrence form and applies to bodily injury and property damage for operations (including explosion, collapse and underground coverage), independent contractors, products and completed operations for off-site activities or operations not insured under OCIP Coverages. Umbrella policies must schedule Employers Liability and Commercial Automobile Liability as underlying policies.

The following limits apply to Enrolled Parties:

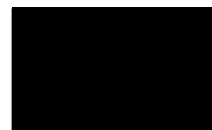
Each Occurrence Limit  
General Aggregate  
Products/Completed Operations Aggregate



The following limits apply to Excluded Parties:

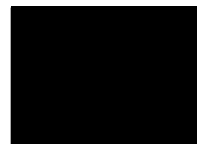
TIER 1 – For contracts with total values up to \$1,000,000

Each Occurrence Limit  
General Aggregate  
Products/Completed Operations Aggregate



TIER 2 – For contracts with total values in excess of \$1,000,000

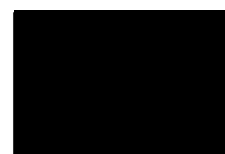
Each Occurrence Limit  
General Aggregate  
Products/Completed Operations Aggregate




Exceptions will be at the discretion of Owner, but in no event will a limit less than \$2,000,000 be considered or accepted.

The following limits apply to Contractor only:

Each Occurrence Limit  
General Aggregate  
Products/Completed Operations Aggregate



Once the total contract value falls into a higher tier due to change orders, the higher tier requirements will automatically apply to the Subcontractor.

- (5) If required by Owner, Aviation and/or Watercraft Liability and/or Marine Cargo Insurance, in form and with limits of liability and from an insuring entity reasonably satisfactory to the Owner. If this Insurance is required by Owner, premiums will be a reimbursable cost to Contractor subject to Owner's approval of an itemized cost breakdown.
- (6) Equipment Insurance covering all risk of physical damage to equipment provided for use at the Site by the Contractor and Subcontractor. Contractor and Subcontractor agree to waive and do hereby waive their rights of recovery against Owner, Contractor and other Subcontractors as to any damage or loss, which may occur to its equipment. Subcontractor will have its insurance company specifically agree to this waiver. Self-insurance may be allowed subject to the approval of Owner.
- (7) Professional Liability for Contractor Only:   
In the case where Contractor is not performing design Work, this coverage can be fully provided by the subcontracted lead Design Professional, or, in the alternative, this coverage can be provided through the combination of a professional liability policy provided by the subcontracted lead Design Professional and a Contractor's

Protective Professional Indemnity (or similar) policy provided by Contractor. Coverage can be provided either on a Project-specific basis or with a practice policy and must contain a 5 year extended reporting period to the extent commercially available.

- (8) Builders Risk Insurance - The Contractor shall provide and maintain a Builders' Risk Insurance policy from the Notice to Proceed until the Owner delivers the Final Acceptance Certificate covering all risk of direct physical loss or damage to property of every kind and description intended to become a permanent part of, or consumed in, the fabrication, assembly, installation, erection or alteration of the Project. The coverage limit shall be the Probable Maximum Loss (PML) that the Contractor determines for the Project, including the value of any Equipment and Materials, including Equipment and Materials that may be in storage (on or off the Site) or via inland transit (on any one conveyance). Such policy shall cover the value of the Work performed, as well as the value of any Equipment and Materials that may be in storage (on or off the site) or in transit (on any one conveyance). The policy shall cover the cost of removing debris, including demolition, as may be legally necessary by the operation of any law, ordinance or regulation, and for loss or damage to any owned, borrowed, leased or rented structures used to facilitate the Work and property of the Owner held in its care, custody and/or control. Such policy shall provide that, upon achievement of Substantial Completion, the Occupancy Clause in such policy is deleted and a Permission to Occupy endorsement is added. Such policy will cover the Contractor, as named insured, Owner, Owner Indemnitees and all Subcontractors performing On-Site Work and other eligible parties as additional named insureds as respects their On-Site activities. In addition, the Builders' Risk policy shall contain coverage provisions or endorsements that provide for the following:

- Earthquake, Flood and Windstorm, with a minimum sub-limit equal to [REDACTED]
- Pollutant Clean-up with a minimum sub-limit of [REDACTED]
- Expediting Expenses with a minimum sub-limit of [REDACTED]
- Professional Fees with a minimum sub-limit of [REDACTED]
- Debris removal sub-limit shall be a minimum of [REDACTED]
- The Owner and the Contractor shall be named as loss payee for the Work in order of precedence as their interest may appear;
- In the event the loss occurs at an occupied facility, the policy shall permit occupancy without the consent of the Insurance Company;
- Testing, Commissioning and Start-up;
- Waiver of Subrogation against all insureds;
- Coverage for resulting damage from error in design, defect in material or faulty workmanship equivalent to LEG 3;
- Contractor is responsible for payment of any deductible or self-insured retention until Substantial Completion;

- Owner will reimburse Contractor for any deductible, not to exceed \$100,000 per occurrence, required to be paid under the Builder's Risk policy following Substantial Completion, provided any such claim is not due to the negligence of a Contractor-Related Party;
- DSU may be required at a limit to be determined by Owner; and premium will be reimbursed to Contractor;
- Terrorism is to be included.

Contractor is to provide copies of quotations with premiums redacted and any applicable specimen policy forms to Owner thirty (30) days prior to Notice to Proceed and prior to policy being bound. Owner has the right to request amendments. If amendments result in additional premiums, they will be reimbursed to Contractor.

**1.9 Contractor's Failure to Procure or Maintain Required Insurance.** Contractor's failure to procure or maintain the insurance required by Section 1.8 and to assure all its Subcontractors maintain the required insurance through Final Acceptance and the applicable warranty period shall constitute a Contractor Event of Default, enabling Owner to exercise its rights to terminate or suspend Contractor's performance, or, at its discretion, procure or renew such insurance to protect the Owner's interests and pay any and all premiums in connection therewith, and withhold or recover all monies so paid from Contractor. In the case of commercial unavailability of the coverages required in Section 1.8 or any of the required terms Owner will work with the Contractor to find commercially obtainable alternative to the required coverages.

**1.10 Contractor Representations and Warranties to Owner.** Contractor represents and warrants, on behalf of itself and its Subcontractors, to Owner:

- (1) That all information they submit to Owner or the OCIP Administrator shall be accurate and complete.
- (2) That within thirty (30) days of policies or specimen policies being provided by the Owner, Contractor shall read and analyze such documents. Any reference or summary in the Contract, this Exhibit 22.1.1(a), the OCIP Manual, or elsewhere in any other Contract Document as to amount, nature, type or extent of OCIP Coverages and/or potential applicability to any potential claim or loss is for reference only. Contractor and Subcontractors have not relied upon said reference but solely upon their own independent review and analysis of the OCIP Coverages in formulating any understanding and/or belief as to amount, nature, type or extent of any OCIP Coverages and/or its potential applicability to any potential claim or loss. Copies of OCIP insurance policies will be available upon request. Actual policies or specimen policies will be provided to Contractor for its review thirty (30) days prior to the Notice to Proceed.

1.11 **Audits.** Contractor agrees that Owner, the OCIP Administrator, and/or any OCIP Insurer may audit Contractor's or any of its Subcontractor's books and records, insurance coverages, insurance cost information, or any other information that Contractor provides to Owner, the OCIP Administrator, or the OCIP Insurers to confirm their accuracy.

1.12 **Owner's Election to Modify or Discontinue OCIP.** Owner may, for any reason, modify the OCIP Coverages, discontinue the OCIP, or request that Contractor or any Subcontractor withdraw from the OCIP upon sixty (60) days written notice. Upon such notice, Contractor and/or Subcontractors, as specified by Owner in such notice, shall obtain and thereafter maintain at Owner's expense during the performance of the Work, all (or a portion thereof as specified by Owner) of the OCIP Coverages specified in Section 1.5. Such replacement coverage shall be consistent with the form, content, limits of liability, and financial strength of insurers as had been previously provided in the OCIP, where reasonably commercially available, and shall be subject to the provision of Section 1.8, paragraphs (a) through (f). Owner will have the right to request an itemization of insurance costs for their review and approval.

1.13 **Waiver of Subrogation.** Where permitted by Laws, Regulations and Ordinances, Contractor hereby waives all rights of recovery by subrogation because of deductible clauses, inadequacy of limits of any insurance policy, limitations or exclusions of coverage, or any other reason against Owner, the OCIP Administrator, the Owner Indemnitees, its or their officers, agents, or employees, and any other Person and/or Entity performing Work or rendering services on behalf of Owner in connection with the planning, development and construction of the Project. Contractor shall also require that all Contractor maintained insurance coverage related to the Work includes clauses providing that each insurer shall waive all of its rights of recovery by subrogation against Contractor together with the same parties referenced immediately above in this Section. Where permitted by Laws, Regulations and Ordinances, Contractor shall require similar written express waivers and insurance clauses from each of its Subcontractors. A waiver of subrogation shall be effective as to any Person and/or Entity even if such Person and/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) has an insurable interest in the property damaged. In addition, Owner hereby waives all rights of subrogation against Contractor with respect to General Liability provided under the OCIP with the exception of deductibles to be imposed on Contractor as outlined in Section 1.7, paragraph (10). Owner also waives all rights of subrogation against all Enrolled Parties from damage to the Owner's property.

1.14 **Duty of Care.** Nothing contained in this Exhibit 22.1.1(a) or the OCIP Manual shall relieve the Contractor or any Subcontractors of their respective obligations to exercise due care in the performance of their duties in connection with the Work and to complete the Work in strict compliance with the Contract Documents.

1.15 **Conflicts.** In the event of a conflict, the provisions of this Exhibit 22.1.1(a) shall govern, then the provisions of the Contract and its other related Contract Documents, then the provisions of the OCIP Manual.



1.16 **Safety.** Contractor shall be solely responsible for safety on the Project, and shall comply with the Contract Documents in establishing a safety program and maintaining all applicable safety standards.

1.17 **Conditions of Understanding and Other Insurance.** The amount and types of insurance coverages required herein shall not be construed to be a limitation of the liability on the part of the Contractor or any Subcontractors. Any type of insurance or any increase of limits of liability not described above which Contractor or a Subcontractor requires for its own protection or on account of statute shall be its own responsibility and at its own expense. The carrying of the insurance described shall in no way be interpreted as relieving the Contractor or Subcontractors of any responsibility or liability under the Contract Documents.

1.18 **Delivery of Binder and/or Certificates of Insurance.** On or before the Effective Date, and thereafter not less than thirty (30) days prior to expiration date of each insurance policy required in Section 1.8, Contractor shall deliver or cause to be delivered to Owner a binder or certificate of insurance from the broker, agent or carrier, in a form reasonably acceptable to Owner, stating the identity of all carriers, named and additional insureds, type of coverage, description of all endorsements, policy limits, deductibles, subrogation waiver and other essential policy terms. Contractor shall deliver to Owner, copies of insurance policies as they are available and requested by Owner. In addition, OCIP Administrator will deliver certificates to enrolled parties 30 days prior to the renewal of any of the OCIP policies.

**EXHIBIT 22.1.1(b)  
OCIP MANUAL**

[ATTACHED]

**EXHIBIT 22.2(a)**  
**FORM OF PERFORMANCE BOND**

BOND NO. 106088534  
BOND AMOUNT: \$252,989,000.00

**KNOW ALL MEN BY THESE PRESENTS, THAT:**

**WHEREAS**, the Metropolitan Washington Airports Authority ("Owner") has awarded to Hensel Phelps Construction Co., a corporation duly organized and existing under the laws of the State of Delaware ("Contractor") a design-build contract ("Contract") for the Dulles Corridor Metrorail Project Phase 2, Package B ("Project"); and

**WHEREAS**, one of the conditions of the Contract is that Contractor provide this duly executed instrument ("Bond").

**NOW THEREFORE**, We, the undersigned Contractor and Travelers Casualty and Surety Company, a corporation duly organized and existing under and by virtue of the laws of the State of Connecticut 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 TWO HUNDRED FIFTY-TWO MILLION NINE HUNDRED EIGHTY-NINE THOUSAND DOLLARS (\$252,989,000.00), lawful money of the United States of America, for the payment of which, well and truly be made to Owner, Contractor 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 Contractor shall at all times promptly, and faithfully perform the Contract and any alteration in or addition to the obligations of Contractor 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 Contractor arising out of or required under the Contract, and the obligations covered by this Bond specifically include Contractor's liability for liquidated damages as specified in the Contract.

4. In the event of an uncured Contractor Event of Default, Surety may promptly remedy such default or:

- (a) Arrange, with the consent of Owner, for Contractor to complete the Contract; 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 its right to complete the Contract and reimburse to Owner the amount of Owner's costs in completing the Work, including all outlay and expenses incurred in responding to the 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.

5. Should Surety not proceed promptly as provided in Paragraph 4, Surety shall be deemed in default of this Bond and Owner may, after having given seven (7) days written notice, pursue and enforce any and all remedies available to it under the Contract, this Bond or common law, including, but not limited to, completing the Contract and pursuing Surety for damages and any other relief to which it may be entitled against Surety.

6. No suit or action may be brought by Owner under this Bond after the expiration of three (3) years following the Substantial Completion Date.

7. 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, 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.

8. Contractor and Surety both agree to add, upon Owner's request and without additional premium or other costs, the Washington Metropolitan Area Transit Authority ("WMATA") as an additional obligee of this Bond, with WMATA to be afforded the same rights, and subject to the same limitations, as Owner under this Bond.

9. No final settlement between Owner and Contractor shall abridge the right of WMATA, as an additional obligee hereunder whose claim may be unsatisfied, under this Bond.

10. 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.

IN WITNESS WHEREOF, We have hereunto set our hands and seals on this \_\_\_\_ day of \_\_\_\_\_ 2014.

Correspondence or claims relating to this Bond should be sent to the Surety at the following address:

**Travelers Casualty and Surety Company  
One Tower Square  
Hartford, CT 06183**

**Hensel Phelps Construction Co.  
4437 Brookfield Corporate Drive, Suite 207  
Chantilly, VA 20151**

Name and Title

**Travelers Casualty and Surety Company**

By:

Attorney-in-Fact (certified copy of authority attached)

NOTE: Date of this Bond must not be prior to date of Contract. Surety on this Bond shall be one who is licensed to conduct business in the Commonwealth of Virginia, and named in the current list of Companies Holding Certificates of Authority as Acceptable Sureties on Federal bonds and as Acceptable Reinsuring Companies, as published in Circular 570 (amended) by the Audit Staff Bureau of Accounts, U.S. Treasury Department. All bonds signed by an agent must be accompanied by a certified copy of the authority to act for Surety at the time of the signing of this Bond.



POWER OF ATTORNEY

Farmington Casualty Company
Fidelity and Guaranty Insurance Company
Fidelity and Guaranty Insurance Underwriters, Inc.
St. Paul Fire and Marine Insurance Company
St. Paul Guardian Insurance Company

St. Paul Mercury Insurance Company
Travelers Casualty and Surety Company
Travelers Casualty and Surety Company of America
United States Fidelity and Guaranty Company

Attorney-In Fact No. 226237

Certificate No. 005845529

KNOW ALL MEN BY THESE PRESENTS: That Farmington Casualty Company, St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company are corporations duly organized under the laws of the State of Connecticut, that Fidelity and Guaranty Insurance Company is a corporation duly organized under the laws of the State of Iowa, and that Fidelity and Guaranty Insurance Underwriters, Inc., is a corporation duly organized under the laws of the State of Wisconsin (herein collectively called the "Companies"), and that the Companies do hereby make, constitute and appoint

Darlene Krings, William C. Bensler, Kelly T. Urwiller, Diane F. Clementson, Anthony P. Stimac, Royal R. Lovell, Russell D. Lear, Katherine E. Dill, K'Anne E. Vogel, Jennifer Winter, Steve J. Blohm, and Wesley J. Butorac

of the City of Greeley, State of Colorado, their true and lawful Attorney(s)-in-Fact, each in their separate capacity if more than one is named above, to sign, execute, seal and acknowledge any and all bonds, recognizances, conditional undertakings and other writings obligatory in the nature thereof on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

IN WITNESS WHEREOF, the Companies have caused this instrument to be signed and their corporate seals to be hereto affixed, this 28th day of March, 2014.

Farmington Casualty Company
Fidelity and Guaranty Insurance Company
Fidelity and Guaranty Insurance Underwriters, Inc.
St. Paul Fire and Marine Insurance Company
St. Paul Guardian Insurance Company

St. Paul Mercury Insurance Company
Travelers Casualty and Surety Company
Travelers Casualty and Surety Company of America
United States Fidelity and Guaranty Company



State of Connecticut
City of Hartford ss.

By: [Signature]
Robert L. Raney, Senior Vice President

On this the 28th day of March, 2014, before me personally appeared Robert L. Raney, who acknowledged himself to be the Senior Vice President of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company, and that he, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

In Witness Whereof, I hereunto set my hand and official seal.
My Commission expires the 30th day of June, 2016.



[Signature]
Marie C. Tetreault, Notary Public

This Power of Attorney is granted under and by the authority of the following resolutions adopted by the Boards of Directors of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company, which resolutions are now in full force and effect, reading as follows:

**RESOLVED**, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President, any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary may appoint Attorneys-in-Fact and Agents to act for and on behalf of the Company and may give such appointee such authority as his or her certificate of authority may prescribe to sign with the Company's name and seal with the Company's seal bonds, recognizances, contracts of indemnity, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking, and any of said officers or the Board of Directors at any time may remove any such appointee and revoke the power given him or her; and it is

**FURTHER RESOLVED**, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President may delegate all or any part of the foregoing authority to one or more officers or employees of this Company, provided that each such delegation is in writing and a copy thereof is filed in the office of the Secretary; and it is

**FURTHER RESOLVED**, that any bond, recognizance, contract of indemnity, or writing obligatory in the nature of a bond, recognizance, or conditional undertaking shall be valid and binding upon the Company when (a) signed by the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary and duly attested and sealed with the Company's seal by a Secretary or Assistant Secretary; or (b) duly executed (under seal, if required) by one or more Attorneys-in-Fact and Agents pursuant to the power prescribed in his or her certificate or their certificates of authority or by one or more Company officers pursuant to a written delegation of authority; and it is

**FURTHER RESOLVED**, that the signature of each of the following officers: President, any Executive Vice President, any Senior Vice President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Secretary, and the seal of the Company may be affixed by facsimile to any Power of Attorney or to any certificate relating thereto appointing Resident Vice Presidents, Resident Assistant Secretaries or Attorneys-in-Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and any such Power of Attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding on the Company in the future with respect to any bond or understanding to which it is attached.

I, Kevin E. Hughes, the undersigned, Assistant Secretary, of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company do hereby certify that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

*Kevin E. Hughes*  
Kevin E. Hughes, Assistant Secretary



To verify the authenticity of this Power of Attorney, call 1-800-421-3880 or contact us at [www.travelersbond.com](http://www.travelersbond.com). Please refer to the Attorney-In-Fact number, the above-named individuals and the details of the bond to which the power is attached.

**EXHIBIT 22.2(b)  
FORM OF PAYMENT BOND**

BOND NO. 106088534  
BOND AMOUNT: \$252,989,000.00

**KNOW ALL MEN BY THESE PRESENTS, THAT:**

**WHEREAS**, the Metropolitan Washington Airports Authority (“Owner”) has awarded to Hensel Phelps Construction Co., a corporation duly organized and existing under the laws of the State of Delaware (“Contractor”) a design-build contract (“Contract”) for the Dulles Corridor Metrorail Project Phase 2, Package B (“Project”); and

**WHEREAS**, one of the conditions of the Contract is that Contractor provide this duly executed instrument (“Bond”); and

**NOW THEREFORE**, We, the undersigned Contractor and Travelers Casualty and Insurance Company, a corporation duly organized and existing under and by virtue of the laws of the State of Connecticut 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 TWO HUNDRED FIFTY-TWO MILLION NINE HUNDRED EIGHTY-NINE THOUSAND DOLLARS (\$252,989,000.00), lawful money of the United States of America, for the payment of which, well and truly be made to Owner and Claimants, Contractor 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 Contractor shall: (a) make payments of all sums due to all persons and entities having a direct contract with Contractor, or a direct contract with a Subcontractor having a direct contract with Contractor, for supplying labor, material, and/or supplies used directly or indirectly by Contractor 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 Contractor’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.

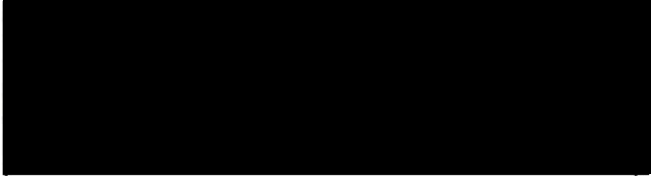
9. Contractor or Owner shall furnish a copy of this Bond or permit a copy to be made upon request by any person or entity who may be a Claimant as defined above.

**IN WITNESS WHEREOF**, We have hereunto set our hands and seals on this \_\_\_\_ day of \_\_\_\_\_ 2014.

Correspondence or claims relating to this Bond should be sent to the Surety at the following address:

**Travelers Casualty and Surety Company  
One Tower Square  
Hartford, CT 06183**

**Hensel Phelps Construction Co.  
4437 Brookfield Corporate Drive, Suite 207  
Chantilly, VA 20151**



Name and Title

**Travelers Casualty and Surety Company**

By: 

Attorney-in-Fact (certified copy of authority attached)

NOTE: Date of this Bond must not be prior to date of Contract. Surety on this Bond shall be one who is licensed to conduct business in the Commonwealth of Virginia, and named in the current list of Companies Holding Certificates of Authority as Acceptable Sureties on Federal bonds and as Acceptable Reinsuring Companies, as published in Circular 570 (amended) by the Audit Staff Bureau of Accounts, U.S. Treasury Department. All bonds signed by an agent must be accompanied by a certified copy of the authority to act for Surety at the time of the signing of this Bond.



POWER OF ATTORNEY

Farmington Casualty Company
Fidelity and Guaranty Insurance Company
Fidelity and Guaranty Insurance Underwriters, Inc.
St. Paul Fire and Marine Insurance Company
St. Paul Guardian Insurance Company

St. Paul Mercury Insurance Company
Travelers Casualty and Surety Company
Travelers Casualty and Surety Company of America
United States Fidelity and Guaranty Company

Attorney-In Fact No. 226237

Certificate No. 005845530

KNOW ALL MEN BY THESE PRESENTS: That Farmington Casualty Company, St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company are corporations duly organized under the laws of the State of Connecticut, that Fidelity and Guaranty Insurance Company is a corporation duly organized under the laws of the State of Wisconsin (herein collectively called the "Companies"), and that the Companies do hereby make, constitute and appoint

Darlene Krings, William C. Bensler, Kelly T. Urwiller, Diane F. Clementson, Anthony P. Stimac, Royal R. Lovell, Russell D. Lear, Katherine E. Dill, K'Anne E. Vogel, Jennifer Winter, Steve J. Blohm, and Wesley J. Butorac

of the City of Greeley, State of Colorado, their true and lawful Attorney(s)-in-Fact, each in their separate capacity if more than one is named above, to sign, execute, seal and acknowledge any and all bonds, recognizances, conditional undertakings and other writings obligatory in the nature thereof on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

IN WITNESS WHEREOF, the Companies have caused this instrument to be signed and their corporate seals to be hereto affixed, this 28th day of March, 2014.

Farmington Casualty Company
Fidelity and Guaranty Insurance Company
Fidelity and Guaranty Insurance Underwriters, Inc.
St. Paul Fire and Marine Insurance Company
St. Paul Guardian Insurance Company

St. Paul Mercury Insurance Company
Travelers Casualty and Surety Company
Travelers Casualty and Surety Company of America
United States Fidelity and Guaranty Company



State of Connecticut
City of Hartford ss.

By: [Signature]
Robert L. Raney, Senior Vice President

On this the 28th day of March, 2014, before me personally appeared Robert L. Raney, who acknowledged himself to be the Senior Vice President of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company, and that he, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

In Witness Whereof, I hereunto set my hand and official seal.
My Commission expires the 30th day of June, 2016.



[Signature]
Marie C. Tetreault, Notary Public

This Power of Attorney is granted under and by the authority of the following resolutions adopted by the Boards of Directors of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company, which resolutions are now in full force and effect, reading as follows:

**RESOLVED**, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President, any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary may appoint Attorneys-in-Fact and Agents to act for and on behalf of the Company and may give such appointee such authority as his or her certificate of authority may prescribe to sign with the Company's name and seal with the Company's seal bonds, recognizances, contracts of indemnity, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking, and any of said officers or the Board of Directors at any time may remove any such appointee and revoke the power given him or her; and it is

**FURTHER RESOLVED**, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President may delegate all or any part of the foregoing authority to one or more officers or employees of this Company, provided that each such delegation is in writing and a copy thereof is filed in the office of the Secretary; and it is

**FURTHER RESOLVED**, that any bond, recognizance, contract of indemnity, or writing obligatory in the nature of a bond, recognizance, or conditional undertaking shall be valid and binding upon the Company when (a) signed by the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary and duly attested and sealed with the Company's seal by a Secretary or Assistant Secretary; or (b) duly executed (under seal, if required) by one or more Attorneys-in-Fact and Agents pursuant to the power prescribed in his or her certificate or their certificates of authority or by one or more Company officers pursuant to a written delegation of authority; and it is

**FURTHER RESOLVED**, that the signature of each of the following officers: President, any Executive Vice President, any Senior Vice President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Secretary, and the seal of the Company may be affixed by facsimile to any Power of Attorney or to any certificate relating thereto appointing Resident Vice Presidents, Resident Assistant Secretaries or Attorneys-in-Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and any such Power of Attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding on the Company in the future with respect to any bond or understanding to which it is attached.

I, Kevin E. Hughes, the undersigned, Assistant Secretary, of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company do hereby certify that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

  
Kevin E. Hughes, Assistant Secretary



To verify the authenticity of this Power of Attorney, call 1-800-421-3880 or contact us at [www.travelersbond.com](http://www.travelersbond.com). Please refer to the Attorney-In-Fact number, the above-named individuals and the details of the bond to which the power is attached.

**EXHIBIT 22.2(c)**  
**FORM OF DUAL OBLIGEE RIDER**

This Rider is executed in relation to and shall be attached to and form a part of Performance Bond No. 106088534 (collectively referred to as "Bond") issued by Travelers Casualty and Surety Company ("Surety"), as Surety, on the \_\_\_ day of \_\_\_\_\_, 2014.

**WHEREAS**, on or about the 29<sup>th</sup> day of July, 2014, the Metropolitan Washington Airports Authority ("Owner" or "Primary Obligee") awarded to Hensel Phelps Construction Co. ("Contractor" or "Principal") a design-build contract ("Contract") for the Dulles Corridor Metrorail Project Phase 2, Package B ("Project"); and

**WHEREAS**, one of the conditions of the Contract was that Contractor provide the Bond; and

**WHEREAS**, a provision of the Contract and the Bond was that, upon request of the Primary Obligee, Contractor and Surety agreed to add, without additional premium, the Washington Metropolitan Area Transit Authority ("WMATA") as an additional obligee of the Bond, with WMATA to be afforded the same rights, and subject to the same limitations, as the Primary Obligee under the Bond.

**NOW THEREFORE**, the undersigned Contractor and Surety agree and stipulate that WMATA shall be added to the Bond as a named obligee (hereafter referred to as "Additional Obligee"), subject to the conditions set forth below:

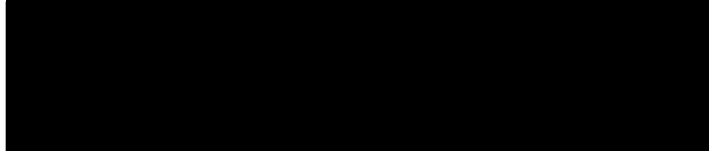
1. The aggregate liability of the Surety under the Performance Bond to any or all of the obligees (Primary Obligee and Additional Obligee), as their interests may appear, is limited to the penal sum of the Performance Bond; the Additional Obligee's rights hereunder are subject to the same defenses Contractor and/or Surety have against the Primary Obligee, and the total liability of the Surety shall in no event exceed the amount recoverable from the Contractor by either of the obligees under the Contract. At the Surety's election, any payment due under the Performance Bond may be made by joint check payable to one or more of the obligees.

2. Except as modified herein, the Bond shall be and remain in full force and effect.

IN WITNESS WHEREOF, We have hereunto set our hands and seals on this \_\_\_\_ day of \_\_\_\_\_ 2014.

**Hensel Phelps Construction Co.**

By:



Name and Title

AND

**Travelers Casualty and Surety Company**

By:



\_\_\_\_\_  
(of authority attached)





POWER OF ATTORNEY

Farmington Casualty Company
Fidelity and Guaranty Insurance Company
Fidelity and Guaranty Insurance Underwriters, Inc.
St. Paul Fire and Marine Insurance Company
St. Paul Guardian Insurance Company

St. Paul Mercury Insurance Company
Travelers Casualty and Surety Company
Travelers Casualty and Surety Company of America
United States Fidelity and Guaranty Company

Attorney-In Fact No. 226237

Certificate No. 005845531

KNOW ALL MEN BY THESE PRESENTS: That Farmington Casualty Company, St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company are corporations duly organized under the laws of the State of Connecticut, that Fidelity and Guaranty Insurance Company is a corporation duly organized under the laws of the State of Iowa, and that Fidelity and Guaranty Insurance Underwriters, Inc., is a corporation duly organized under the laws of the State of Wisconsin (herein collectively called the "Companies"), and that the Companies do hereby make, constitute and appoint

Darlene Krings, William C. Bensler, Kelly T. Urwiller, Diane F. Clementson, Anthony P. Stimac, Royal R. Lovell, Russell D. Lear, Katherine E. Dill, K'Anne E. Vogel, Jennifer Winter, Steve J. Blohm, and Wesley J. Butorac

of the City of Greeley, State of Colorado, their true and lawful Attorney(s)-in-Fact, each in their separate capacity if more than one is named above, to sign, execute, seal and acknowledge any and all bonds, recognizances, conditional undertakings and other writings obligatory in the nature thereof on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

IN WITNESS WHEREOF, the Companies have caused this instrument to be signed and their corporate seals to be hereto affixed, this 28th day of March, 2014.

Farmington Casualty Company
Fidelity and Guaranty Insurance Company
Fidelity and Guaranty Insurance Underwriters, Inc.
St. Paul Fire and Marine Insurance Company
St. Paul Guardian Insurance Company

St. Paul Mercury Insurance Company
Travelers Casualty and Surety Company
Travelers Casualty and Surety Company of America
United States Fidelity and Guaranty Company



State of Connecticut
City of Hartford ss.

By: [Signature]
Robert L. Raney, Senior Vice President

On this the 28th day of March, 2014, before me personally appeared Robert L. Raney, who acknowledged himself to be the Senior Vice President of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company, and that he, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

In Witness Whereof, I hereunto set my hand and official seal. My Commission expires the 30th day of June, 2016.



[Signature]
Marie C. Tetreault, Notary Public

This Power of Attorney is granted under and by the authority of the following resolutions adopted by the Boards of Directors of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company, which resolutions are now in full force and effect, reading as follows:

**RESOLVED**, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President, any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary may appoint Attorneys-in-Fact and Agents to act for and on behalf of the Company and may give such appointee such authority as his or her certificate of authority may prescribe to sign with the Company's name and seal with the Company's seal bonds, recognizances, contracts of indemnity, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking, and any of said officers or the Board of Directors at any time may remove any such appointee and revoke the power given him or her; and it is

**FURTHER RESOLVED**, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President may delegate all or any part of the foregoing authority to one or more officers or employees of this Company, provided that each such delegation is in writing and a copy thereof is filed in the office of the Secretary; and it is

**FURTHER RESOLVED**, that any bond, recognizance, contract of indemnity, or writing obligatory in the nature of a bond, recognizance, or conditional undertaking shall be valid and binding upon the Company when (a) signed by the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary and duly attested and sealed with the Company's seal by a Secretary or Assistant Secretary; or (b) duly executed (under seal, if required) by one or more Attorneys-in-Fact and Agents pursuant to the power prescribed in his or her certificate or their certificates of authority or by one or more Company officers pursuant to a written delegation of authority; and it is

**FURTHER RESOLVED**, that the signature of each of the following officers: President, any Executive Vice President, any Senior Vice President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Secretary, and the seal of the Company may be affixed by facsimile to any Power of Attorney or to any certificate relating thereto appointing Resident Vice Presidents, Resident Assistant Secretaries or Attorneys-in-Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and any such Power of Attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding on the Company in the future with respect to any bond or understanding to which it is attached.

I, Kevin E. Hughes, the undersigned, Assistant Secretary, of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company do hereby certify that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

  
Kevin E. Hughes, Assistant Secretary



To verify the authenticity of this Power of Attorney, call 1-800-421-3880 or contact us at [www.travelersbond.com](http://www.travelersbond.com). Please refer to the Attorney-In-Fact number, the above-named individuals and the details of the bond to which the power is attached.



**EXHIBIT 23.2**  
**DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION**

The U.S. Department of Transportation's Disadvantaged Business Enterprise (DBE) Program is applicable to certain airport contracts that involve U.S. Department of Transportation federal grants. This Contract is subject to the provisions below and 49 CFR Part 26 as amended.

**01 DBE PARTICIPATION**

- A. The Contractor agrees to make good faith efforts to achieve the DBE goal specified herein in accordance with provisions of this Contract and 49 CFR Part 26.
- B. The following DBE participation clauses apply to this Contract:
1. The DBE goal for this Contract is fourteen percent (14%) of the total Contract Price. DBE participation shall be computed as outlined in Section (01)(D) of this Exhibit. The Contractor shall promptly, using reasonable measures, all DBEs participating in this Contract, including itself if it is a DBE, to update their DBE certifications and notify the Owner immediately of any change in status that would affect their eligibility for DBE certification over the life of this Contract.
  2. The DBE goal may be met by subcontracts with DBEs at any tier, or by joint venturing with DBE(s). Only work performed by VUCP certified DBEs will be counted against the Contractor's achievement of the 14% DBE goal.
  3. Where a Subcontractor seeks to qualify as a DBE through subcontracting or through a joint venture the DBE Subcontractor(s) and/or the DBE joint venture partner(s) must be certified by the VUCP as DBEs prior to commencement of the Subcontract and must perform a commercially useful function as defined in this Exhibit and 49 CFR 26.55 as revised.
  4. When modifications to the Contract increase the Contract Price, the Contractor shall make good faith efforts under the circumstances to maintain the DBE participation of fourteen percent (14%) as to the entire Work. The Contractor must submit a revised Contract Participation Form (MWAA DBE Exhibit D) and Revised Letter(s) of Intent (MWAA DBE Exhibit E1), or other documentation acceptable to the Owner, which reflects changes in the DBE participation associated with the modifications to this Contract.
  5. The Owner discourages contractors from the practice known as "shopping the contract" when such practice results in a disparate impact on Subcontractors at any tier. Although contractors are expected to provide the Owner with the best value possible for the work performed, this expectation should not be construed to mean

that the Owner expects or condones any Subcontractor, including DBEs, to perform work at an unreasonably low price.

6. The Owner is committed to significant participation of minority and woman-owned business enterprises (MBEs and WBEs) in this Contract, and encourages Contractor to meet the DBE participation goal with significant participation by MBEs and WBEs who qualify as DBEs.

C. Where subcontracting is involved, the Owner may evaluate the amount of work subcontracted, the industry practices involved, and any other relevant factors in determining whether the DBE is performing a commercially useful function, as defined in this Exhibit and 49 CFR 26.55 as revised.

D. Computing DBE Participation

Owner and Contractor shall apply the following rules to determine whether DBE participation will meet this Contract's DBE goal (see Section (01)(B)(1) of this Exhibit and 49 CFR 26.55 and 26.87(j) as revised):

1. When a DBE participates in the Contract, only the value of the work actually performed by the DBE can be counted toward the DBE goal
2. Subject to the conditions in Section (01)(D)(4-11) below, and 49 CFR 26.55 as revised, Contractor can count the total value of the work that DBEs perform under a subcontract, provided that the DBE is performing a commercially useful function and is certified by the VUCP.
3. A Contractor, in a joint venture with a DBE, may count toward its DBE goal only that portion of the total dollar value of the contract work to be performed by the DBE joint venture partner, provided that the DBE joint venture partner is performing a commercially useful function as defined in this Exhibit, and provided further, that the joint venture is an eligible joint venture. The eligibility requirements are defined in Section (09)(C) of this Exhibit.
4. Once a subcontract has been awarded to a certified DBE, the DBE must remain certified until its work is complete on the project. The dollar value of work performed under this Contract by a firm after it has ceased to be certified as a DBE may not be counted toward DBE participation. *Exception:* If the DBE's ineligibility is caused solely by it having exceeded the DBE size standard during the performance of the contract, the participation may continue to count toward the contract goal.

5. The Owner will not credit the participation of a DBE Subcontractor toward the Contractor's DBE achievement until the amount being counted has been paid to the DBE.

Note: The following subsections discuss the Owner's approved methods of calculating DBE participation for certain types of subcontracts.

6. Contractor may count toward its DBE goal the total dollar value of subcontracts that DBEs at any tier will self-perform, provided that:
  - a. Each DBE Subcontractor is an eligible Subcontractor that has been certified as a DBE by the VUCPVUCP under the appropriate North American Industry Classification System (NAICS) code(s); and
  - b. Each DBE Subcontractor is performing a commercially useful function in the work of this Contract as defined in this Exhibit and 49 CFR 26.55 as revised.
7. Where Contractor obtains supplies or materials from a DBE manufacturer (i.e., a producer of goods from raw materials or one which substantially alters them before resale), Contractor count towards its DBE goal the total dollar value of DBE manufacturer subcontracts provided that:
  - a. The manufacturer has been certified as a DBE by the VUCP under the appropriate NAICS code(s); and
  - b. The DBE performs the commercially useful functions of a manufacturer as defined in 49 CFR 26.55.
8. Where Contractor obtains supplies or materials from a DBE regular dealer, Contractor may count towards its DBE goal sixty percent (60%) of the DBE regular dealer contracts provided that:
  - a. The regular dealer has been certified as a DBE by the VUCP under the appropriate NAICS code(s); and
  - b. The DBE performs the commercially useful functions of a regular dealer as defined in 49 CFR 26.55.
9. Where Contractor obtains materials or supplies from a DBE non-regular dealer, (i.e., a DBE broker, agent, packager, or manufacturer representative), Contractor may count only the broker, agent or packager fee plus transportation cost (usually not more than five percent (5%) of the total value of the subcontract) toward its DBE goal

provided that the DBE broker, agent or packager is certified under the appropriate NAICS code by the VUCP.

10. Where Contractor obtains the services of a DBE hauling/trucking firm, Contractor may count towards its DBE goal:
  - a. The full value of the transportation services provided by the DBE, provided that the DBE hauling/trucking Subcontractor is certified as a DBE by the VUCP under an appropriate NAICS code and performs the commercially useful functions of a hauling/trucking firm as defined by 49 CFR 26.55 .
  - b. The cost of materials/supplies may not be counted toward the total value of the hauling firm's subcontract unless the DBE hauling firm is also certified as a DBE regular dealer, and requirements in Sections (01)(D)(8) or (9) are met. The total subcontract value, the hauling/trucking fee, and the materials price shall be listed on MWAA DBE Exhibits D and E as separate line items.
11. Where Contractor leases or rents equipment from a DBE equipment rental firm, Contractor may count the total value of the rental/lease contract provided that:
  - a. The DBE equipment rental firm is certified as a DBE by the VUCP under the appropriate NAICS code(s); and,
  - b. the equipment is used for the performance of a distinct element of the Work; and,
  - c. the rental/lease cost(s) are not in excess of industry standard rates for leased or rented equipment; and,
  - d. the DBE equipment rental firm must actually own or control the equipment and maintain a yard or other facility where such equipment is stored.

## **02 CONTRACTOR'S CONFORMANCE WITH DBE PROVISIONS**

The following sections provide for the Contractor's conformance to this Contract.

### **A. Contract Participation Form**

In connection its Price Proposal related to this Contract, Contractor provided a Contract Participation Form (on Owner's form known as MWAA DBE Exhibit D) that listed Subcontractors that will participate in the Work during the period from Notice to Proceed through September 30, 2015. That form shall be the initial "Contract Participation Form" for the purpose of this Exhibit 23.2. On an annual basis beginning October 1, 2015 (and

each year thereafter during the Work) the Contractor shall submit (i) an updated Contract Participation Form that also lists Subcontractors that will participate for the period from October 1 of the submittal year through September 30 of the following year (and through the life of the Contract to the extent known by the Contractor) and provides all information called for by the form for each listed DBE Subcontractor, and (ii) Letters of Intent (all of which shall be on Owner's form known as MWAA DBE Exhibit E) as described in Section (04)(B) below for all listed DBE Subcontractors. Each annual Contract Participation Form must identify SBEs, MBEs and WBEs and Other Subcontractors, must be on MWAA DBE Exhibit D, and must be signed and dated by the Contractor's representative.

B. Letters of Intent

Together with each updated Contract Participation Form as described above, the Contractor shall submit original signed Letters of Intent (MWAA DBE Exhibit E) from each DBE Subcontractor added to the Subcontractor list in the updated Contract Participation Form. Each Letter of Intent shall be completely filled out, signed by the DBE Subcontractor and co-signed by the Contractor. A detailed description of the DBE Subcontractor's scope of work must be provided on the Letter of Intent form. If the DBE Subcontractor subcontracts any portion of the work to a non-DBE, it must be reported on the Letter of Intent (Exhibit E, Item G) and such portion will not be counted toward the DBE goal.

C. Offeror List

The Department of Transportation regulations under 49 CFR Part 26 require the Contractor to identify all firms (DBEs and non-DBEs) who attempted to participate as Subcontractors or suppliers on this federally assisted contract. On a monthly basis the Contractor must complete the Offeror List (MWAA DBE Exhibit L), including all firms, both DBEs and non-DBEs, that quoted to Contractor on potential subcontracts and supplies for the preceding month.

D. DBE Certification and Joint Venture Approvals:

1. All DBE Subcontractors must be certified by the VUCP as DBEs at time of submission of the applicable Exhibit D Form (or revised Exhibit D Form).
2. The Contractor shall submit a copy of the DBE certification letter (certification must be current) for all DBE Subcontractors listed on each Exhibit D.
3. All joint venture(s) between a non-DBE and a DBE must be formally approved by Owner pursuant to 49 CFR Part 26 as an eligible joint venture prior to submission of the joint venture as a DBE Subcontractor on an Exhibit D or Revised Exhibit Ds. The

definitions and qualifications for DBEs and eligible joint ventures are outlined in this Exhibit. The joint venture must submit the Application for Joint Venture Eligibility (MWAA DBE Exhibit G) at least 45 days before it is to be listed on the Exhibit D. The DBE joint venture partner must be certified as a DBE by the VUCP prior to submittal of the Application for Joint Venture Eligibility. The Application for Joint Venture Eligibility must clearly define the services to be performed by the DBE (the DBE must perform a commercially useful function as defined by 49 CFR 26.55 and the compensation must be reasonable and consistent with the services performed by the DBE).

4. All DBE Subcontractors shall keep their DBE certifications current and shall immediately notify the Owner if they become ineligible for DBE certification.

### **03 DBE SUBCONTRACTOR MANAGEMENT PLAN**

- A. Contractor's good faith efforts to achieve this Contract's DBE goals shall include implementation of the DBE Subcontractor Management Plan submitted by Contractor prior to award of this Contract. Beginning October 1, 2015 and each year thereafter for the duration of this Contract, the Contractor shall submit an annual update to the DBE Subcontractor Management Plan (such plan, as updated, is referred to as the "**DBE Subcontractor Management Plan**").
- B. The DBE Subcontractor Management Plan shall include at least the following:
  1. An explanation of how Contractor will implement and monitor the plan, including:
    - a. An organization chart showing lines of authority and relationship of the Contractor's DBE Compliance Manager to other Contractor management and project personnel.
    - b. Names and qualifications of the DBE Program Compliance Manager and support personnel in the DBE management department.
    - c. Resumes of personnel assigned to the DBE management department to demonstrate the experience/capability necessary to perform their work and the areas of responsibility and authority for the position to which the individual is assigned.
    - d. If a Subcontractor manages the DBE program management function, provide resumes of Subcontractor's personnel; and indicate how such personnel will perform their duties/responsibilities in relation to the Contractor's organization.
    - e. A flow chart indicating how compliance data will be transmitted to the DBE Program Compliance Manager from all contractors/Subcontractors to ensure timely, complete and accurate reporting.
    - f. Area(s) of responsibility and authority of each individual in the DBE management

department (job descriptions).

2. A detailed discussion of the strategies to be employed by the Contractor to achieve the Contract's 14% DBE goal and voluntary goals for participation of DBEs, SBE, MBEs and WBEs in all components of the Work, including Work added by modification of the Contract. This discussion should include:
  - a. To the extent known as the time of the applicable annual update, a list of the work elements that will be subcontracted to DBEs.
  - b. The Contractor's plan that identifies by month when the following activities will occur:
    - (1) Work to be performed by all DBE Subcontractors listed Contractor Participation Form including the type of work to be performed, the estimated percentage of work and the expected start and end date of the work.
    - (2) To the extent known, an estimate of all work planned to be performed by DBE Subcontractors throughout the life of the Contract, the expected DBE Subcontractor tier level of participation, and the projected start and end date of the applicable Work expected to be done by DBEs. The plan shall estimate the percentage amounts of each work category in order to allow the total to equal or exceed the 14% goal.
  - c. Where a DBE is a Subcontractor to a principal Subcontractor, the plan shall identify the principal Subcontractor.
3. Strategies to maintain applicable goals when modifications increase the Work should include internal procedures to: identify those work elements in the modification for which DBEs/MBEs/WBEs are available to perform the work or supply the materials; methods for coordinating the additional DBE/MBE/WBE participation with the appropriate tier Subcontractor, securing the revised Contract Participation Forms, New or Revised Letters of Intent and certification of non-certified DBEs as described in this Contract. Strategies should also include the process by which the Contractor will inform the Owner of Contractor's progress in implementing these strategies.
4. The DBE Subcontractor Management Plan must include a compilation of the information contained on all Contract Participation Forms (Exhibit D) and Letters of Intent (Exhibit E) for periods up to and including the applicable annual update.
5. The DBE Subcontractor Management Plan must describe in detail the policies, procedures and reporting mechanisms that the Contractor will adopt as part of normal business operations to ensure accurate and complete delivery of required reports to

Owner on DBE compliance. Contractor will provide to Owner on a monthly basis reports that:

- a. Identify all DBE/SBE/MBE/WBE/Other Subcontractors currently on-site, the date each began work, and estimated date for completion of their work. Reporting of DBE/SBE/MBE/WBE participation, at all tiers will be required.
  - b. Identify DBE/SBE/MBE/WBE/Other participation (payments to DBEs/SBEs/MBEs/WBEs) achieved to date both cumulatively and by subcontracting tier.
  - c. Calculate DBE/SBE/MBE/WBE/Other participation to date and compare to planned participation as reflected in the DBE Contract Participation Form(s) and their modifications, if applicable; identify current deficiencies in scheduled participation.
  - d. Define the steps that will be taken to correct deficiencies in meeting the planned goals when the reports to Owner indicate that a goal is not being met as scheduled; and submission of revised DBE Subcontract Management Plan schedules that reflect current deficiencies and the plan to make good faith efforts to correct same.
  - e. Identification of problems related to DBE/SBE/MBE/WBE participation and the method for resolving such problems.
6. The Contractor shall maintain records, on Owner's approved forms, of all Contractor's DBE subcontracting activities. These records shall include current DBE Subcontractor logs, the Owner's Invoice Attachment Form (Exhibit J), and evidence of payments to DBE Subcontractors, including but not limited to, copies of canceled checks and paid invoices.

Contractor's records must be sufficient to evidence its compliance with the terms of the Contract. Copies of these records will be available to the Equal Opportunity Programs Department to review. All records shall be verified by the Contractor's DBE Program Compliance Manager. The Contractor shall document any changes in DBE Subcontractors resulting from new DBE subcontracts, completion of existing DBE contracts, or approved substitution of a DBE Subcontractor.

- C. The annual update to the DBE Subcontractor Management Plan must be approved by Owner, as to whether the Plan complies with this Contract, within forty-five (45) days after submittal. Prior to approval, the Contractor shall meet with the Contracting Officer, his/her representative and the Owner's Equal Opportunity Programs Department to discuss the Contractor's DBE Subcontractor Management Plan. The meeting shall



develop a mutual understanding of the details of the updated Plan, including forms to be used for recording the Contractor's good faith efforts to meet its DBE goals, and voluntary MBE/WBE participation goal, administration of the Plan and the relationship between the Contractor's DBE Management Department and the Owner's Equal Opportunity Programs Department.

- D. The Contractor must submit each Contract Participation Form (MWAA DBE Exhibit D) and Invoice Attachment Form (MWAA DBE Exhibit J) using MS Excel forms supplied by Owner and fully and correctly completed by the Contractor as to all DBE Subcontractors designated.

#### 04 SUBSTITUTIONS

The Owner expects contractors to achieve DBE participation using the firm(s) specified on the submitted Contract Participation Form(s) (MWAA DBE Exhibit D). On occasion it may be necessary to substitute other firms to achieve the DBE participation. No substitution may occur without the Owner's prior written approval. The Owner will approve a proposed substitution if it determines that the Contractor has acted in good faith in attempting to meet the DBE participation achievement and if the Owner concurs that the substitution is necessary based on good cause. The Contractor shall ensure that Subcontractors comply with this Section as to their DBE Subcontractors designated in the most recent DBE Subcontractor Management Plan. Contractor shall insert the provisions of this Section into all its Subcontracts. The following are some examples of when substitution may be necessary:

- A. Death or physical disability, of the named DBE prime contractor, DBE Subcontractor, or DBE partner(s) of the joint venture is an individual.
- B. Dissolution, if a corporation or partnership.
- C. Bankruptcy, insolvency or the lack of credit adequate worthiness.
- D. Inability to furnish the required performance and payment bond.
- E. Inability to obtain, or loss of, a license necessary for the performance of the particular category of work.
- F. Failure or refusal to execute the Subcontract in accordance with the terms of an offer negotiated between the Contractor or Subcontractor ("hiring contractor") and the proposed DBE Subcontractor for whom substitution is sought, but only where the Contracting Officer can ascertain with reasonable certainty the terms of such offer and that the hiring contractor has not acted in bad faith or in a discriminatory manner. In the absence of any other factors, such a failure or refusal by either the hiring contractor or the proposed DBE Subcontractor will be considered an unusual situation only if the hiring

contractor had obtained an enforceable commitment and an executed Letter of Intent (MWAA DBE Exhibit E) from the proposed DBE Subcontractor.

- G. Failure to comply with the terms and conditions of its Subcontract or joint venture agreement.
- H. Voluntary decision by the DBE Subcontractor to not participate in the Work prior to signing the Letter of Intent.
- I. The Owner determines that a named DBE is unlikely to perform a commercially useful function or is unable to perform work of the nature and scope claimed for it and the Owner finds that the Contractor acted in good faith with respect to its decision to propose that DBE.

## **05 SUBCONTRACTOR COMPLIANCE**

- A. To the extent necessary to comply with its obligations to make good-faith efforts to reach this Contract's DBE goals, the Contractor shall require its Subcontractors, in soliciting offers for their own Subcontractors, to use good-faith efforts to comply with the DBE percentage goals of this Contract.
- B. The Owner's Equal Opportunity Programs office will assist Contractor and its Subcontractors in identifying VUCP certified DBE firms. The Owner does not warrant or guarantee the performance capability of any firms listed in the VUCP DBE Directory. The Owner's Equal Opportunity Programs Office may be contacted at (703) 417-8625, or at the following address: Metropolitan Washington Airports Authority, Equal Opportunity Programs, 1 Aviation Circle, Washington, DC 20001-6000.

## **06 COMPLIANCE**

### **A. Compliance Reviews**

- 1. The Owner will conduct compliance reviews to determine whether the named DBE Subcontractors on the most recent Contract Participation Form performed the work as assigned, and at least at the agreed price that was identified on the form. Specifically, compliance reviews verify: (1) the participation of the listed DBE Subcontractors; (2) the scope of work for each listed DBE Subcontractor; (3) whether the DBE Subcontractor is performing a commercially useful function, and (4) whether the DBE Subcontractor has been paid at least the agreed price shown by the form. The Owner may use the Invoice Attachment Form, or other appropriate information, to verify the participation of each DBE Subcontractor identified on the most recent Contract Participation Form.

2. The Owner is committed to equitable treatment and meaningful utilization of, and timely payment and return of retainage to, DBE Subcontractors in accordance with the applicable subcontract and legal requirements.
- B. By accepting this Contract, the Contractor agrees to the following requirements:
1. The Contractor shall submit a completed Invoice Attachment Form (MWAA DBE Exhibit J) with each monthly invoice. The Contractor is responsible for the accuracy of all information reported. Lack of inclusion of a completed Invoice Attachment Form with each monthly invoice may result in delay in payment.
  2. The Contractor shall allow the Owner access to Contractor's records relating to the Contract, including but not limited to, subcontracts, payroll records, and tax information and accounting records, for the purpose of ascertaining compliance with Contractor's obligations under this Exhibit 23.2.
  3. The Contractor shall maintain a detailed record of every non-compliance issue and corrective action taken. Examples of non-compliance issues are found below in Section (06)(C) of this Exhibit.
- C. The Contractor may be found to be in non-compliance if the Contractor fails to make good faith efforts to fulfill the DBE participation commitment contained in the most recent Contract Participation Form (MWAA DBE Exhibit D) and applicable Letter(s) of Intent (MWAA DBE Exhibit E). The following may be examples of non-compliance:
1. The terms of a Subcontract with a DBE Subcontractor do not agree with the Contract Participation Form and/or Letter of Intent.
  2. A firm other than the DBE Subcontractor listed on the Contract Participation Form is performing the same subcontract work listed on MWAA DBE Exhibit D, unless the substitution was authorized by the Owner. The Invoice Attachment Form may be used by the Owner to monitor the activities of DBEs and to identify incidence of non-compliance.
  3. The Contractor is purchasing supplies or materials that the Contractor represented to the Owner would be supplied by a DBE Subcontractor.
  4. The Contractor requires the DBE Subcontractor to perform additional or different work than was agreed in the Letter of Intent and the formal contract between the Contractor and the DBE Subcontractor, without additional compensation as appropriate, and without filing a Revised Letter of Intent (MWAA DBE Exhibit E1) with the Owner.

5. The Contractor is paying the DBE Subcontractor less than the agreed price of the Subcontract as defined in the Letter of Intent, or in the Revised Letter of Intent (MWAA DBE Exhibit E1) without cause.
  6. The Contractor is not paying the DBE Subcontractor in accordance with the payment provisions of their Subcontract.
  7. The Contractor fails to submit Invoice Attachment Form with his/her invoice submittal, and other documents requested for the purpose of conducting a post-award compliance review.
  8. The Contractor's payments to a DBE Subcontractor do not meet the applicable DBE dollar commitment made in the Contract Participation Form.
  9. The Contractor fails to accurately report payments to DBE Subcontractor(s) on the Invoice Attachment Form (MWAA DBE Exhibit J).
  10. The Contractor or a non-DBE Subcontractor shares employees, equipment or office space with a DBE Subcontractor and/or requires deductions/payments from the DBE Subcontractor before or after payment is made to the DBE Subcontractor, without prior knowledge and consent of the Owner's Equal Opportunity Programs Office.
- D. If the Contractor is found to be in non-compliance, the Owner may treat the non-compliance as a default under the Contract if corrective action acceptable to Owner is not taken within forty-eight (48) hours (or such other time period deemed appropriate by the Contracting Officer) after notification by the Contracting Officer.
- F. Post Award Substitution: The Owner shall permit the Contractor to remove, terminate, or make substitutions for DBE Subcontractors identified in the most recent Contract Participation Form when the Contractor shows good cause. Such removal/termination/substitution requires the consent and approval of the Owner's Equal Opportunity Programs Office (EOP). To initiate the termination, substitution, removal or replacement process with such a DBE Subcontractor, the Contractor or Subcontractor who has contracted with the DBE Subcontractor must do the following:

1. Before transmitting to EOP its request to terminate and/or substitute a DBE Subcontractor, the initiating contractor must give notice in writing to the DBE Subcontractor and EOP. The notice must include its request to terminate and/or substitute, replace and/or remove the DBE Subcontractor, the reason for the request and all documentation to support its claim. The initiating contractor must submit a copy of the notice and support documentation to EOP at the time the original letter is sent to the DBE Subcontractor.
2. The initiating contractor must give the DBE Subcontractor at least five (5) business days to respond to the notice and provide the EOP with reasons, if any, why it objects to the proposed termination of its DBE Subcontract and why the EOP should not consent to the initiating contractor's requested action.
3. EOP will then open a formal investigation inclusive of review of all documentation, conduct interviews and site visits, if necessary. The initiating contractor carries the burden of proof to demonstrate good cause for the termination and/or substitution.
4. If EOP determines the initiating contractor has good cause to terminate the DBE Subcontractor, EOP will provide written consent. If EOP finds that good cause does not exist to terminate the DBE Subcontractor, EOP will provide a written denial of the request to terminate/replace the DBE and will immediately request a corrective action plan from the DBE Subcontractor.
5. For purposes of good cause to remove, replace, terminate or replace a DBE Subcontractor, the following circumstances should exist: (1) failure or refusal to execute a written Subcontract without good cause, (2) failure or refusal to perform the work of its Subcontract in a way consistent with normal industry practice and the initiating contractor has not acted in bad faith, (3) failure to meet the initiating contractor's reasonable bonding or insurance requirements, (4) insolvency, bankruptcy or credit unworthiness that creates a risk for the Subcontract, (5) ineligibility to work on a public works project because of suspension or debarment proceedings, (6) a determination that the DBE Subcontractor is not a responsible contractor, (7) voluntary withdrawal from the Work by written notification that has been verified, (8) ineligibility to receive DBE participation credit for the type of work to be performed, (9) other documented good cause that compels the replacement of the DBE Subcontractor.
6. If the initiating contractor is authorized to replace/remove/terminate the DBE Subcontractor, the initiating contractor must make good faith efforts to replace the DBE with another certified DBE and shall not self-perform the work/services.

7. The Contractor shall ensure that its Subcontractors comply with this Section and shall insert the provisions of this Section into all Subcontracts that include Work counted toward the Contractor's DBE goals..

## **07 SMALL BUSINESS ENTERPRISE (SBE) PARTICIPATION**

The U.S. Department of Transportation's DBE Program also seeks the utilization of small business concerns in its federally-assisted contracts. Contractor is strongly encouraged to take active steps to maximize the participation of small, minority (MBE) and women-owned (WBE) businesses in this Contract. The Owner's Small Business Enterprise (SBE) Program will promote, monitor and measure the inclusion of small businesses in this contract.

While this Contract has no specified SBE contract goal, the Contractor and all Subcontractors will make voluntary efforts to promote the participation of SBEs in the Work. The Contractor shall submit a completed Invoice Attachment Form (MWAA DBE Exhibit J) with each monthly invoice.

Eligible Small/MBE/WBE participation may include participation by a Small/MBE/WBE Equity Member of the Design-Builder and the Design-Builder's Subcontractors, subconsultants, suppliers and manufacturers (regardless of tier) that provide a commercially useful function as defined by 49 CFR Part 26. Small/MBE/WBE participation will not be considered when determining attainment of the Contract's established DBE goal.

Methods that may be employed to encourage SBE participation are outlined in clauses B-D below in this Section.

### **A. Eligibility**

Eligible Small businesses must meet applicable size standards of 49 CFR 26. All DBE firms will qualify as small businesses. The Owner may accept federal government certifications (i.e., 8(a), SDB, HUB Zone, and Woman-owned Small Businesses) and small business certifications under programs administered by state and local government entities, provided such firms meet the appropriate size standards of the DBE program. An SBE may be required to submit documentation proving its eligibility/continued eligibility including a copy of their federal income tax returns, for the last three years, at any time during its participation in the Program.

### **B. Opportunities**

The Contractor and its Subcontractors will examine the reasonableness and feasibility of establishing small business goals for Subcontracts issued by Contractor under this Contract.

C. Unbundling

The Contractor and its Subcontractors will examine the reasonableness and feasibility of unbundling contracts to promote participation by DBE and SBE firms. The Contractor and its Subcontractors, where feasible, may “unbundle” projects or separate large contracts into smaller contracts which may be more suitable for small business participation.

D. Set asides

The Contractor and its Subcontractors, where feasible, may elect to establish a percentage of subcontract awards to be set aside for participation by small businesses. For the purposes of this paragraph a “set-aside” is the reserving of a contract or a portion of a contract exclusively for participation by small businesses. A small business set-aside will be open to all small businesses regardless of the owner’s gender, race or geographic location. This set aside, if any, is in addition to the DBE contract goals and does not apply to the established fourteen (14%) DBE goal.

**08 NONDISCRIMINATION (49 CFR 26.7)**

The Owner will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR Part 26 on the basis of race, color, sex, or national origin.

In administering its DBE program, the Owner will not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the DBE program with respect to individuals of a particular race, color, sex, or national origin.

In accordance with 49 CFR Part 26 this Contract includes the following assurance:

The Contractor, sub-recipient or Subcontractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this Contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as the Owner deems appropriate.

The Contractor shall ensure that all Subcontractors comply with this Section and shall insert the provisions of this Section in all Subcontracts.

**09 DEFINITIONS**

A. “Commercially Useful Function”

1. In accordance with 49 CFR 26.55 as revised, a DBE is considered to perform a commercially useful function when it:
    - a. Is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved;
    - b. is responsible, with respect to materials and supplies used on the contract, for negotiating price, ordering materials, and installing (where applicable) and paying for the material itself; and
    - c. when the amount of work performed, when compared to industry practices, is commensurate with the amount the DBE is to be paid under the contract and the DBE credit claimed for its performance of the work.
  2. The following factors should be used in determining whether a DBE trucking company is performing a commercially useful function:
    - a. The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting DBE goals.
    - b. The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.
    - c. If the DBE leases additional trucks, said lease agreements must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased trucks from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.
- E. “DBE Subcontractor Management Plan” is defined in Section (03)(A) of this Exhibit.
- F. “Disadvantaged Business Enterprise” (DBE) is defined as a for-profit small business concern that is (1) at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged, or, in the case of a corporation in which at least 51 percent of the stock of which is owned by one or more such individuals; (2) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it, and (3) who meets all other certification requirements of 49 CFR Part 26.




- D. “Joint Venture” shall mean an association of two or more businesses to carry out a single business enterprise for profit for which purpose they combine their property, capital, efforts, skills, and/or knowledge.
  
- E. “Minority Business Enterprises and Women Business Enterprises” (MBE/WBE). The Owner is committed to achieving significant participation of minority and women-owned businesses in its contracting opportunities. To be considered a minority or women-owned business enterprise, the business concern must be at least 51 percent owned and controlled by one or more minority (African American, Hispanic American, Native American, Asian-Indian American, Asian Pacific American) or female individuals. The firm's management and daily business operations must be controlled by one or more of the qualifying individuals who own it.


**EXHIBIT 24.1  
DESIGNATED REPRESENTATIVES**

The following are the initial representatives of the Parties:

**Owner:**

  
Contracting Officer  
Metropolitan Washington Airports Authority  
1 Aviation Circle  
Washington, DC 20001-6000  
Fax: (703)572-0801

**Contractor:**

  
Vice President/District Director  
Hensel Phelps Construction Co.  
4437 Brookfield Corporate Drive  
Suite 207  
Chantilly, VA 20151  
Fax: (703)802-1580