

AMENDED AND RESTATED DESIGN-BUILD CONTRACT

Dulles Corridor Metrorail Project

Dated as of July 25, 2008

by and between

THE METROPOLITAN WASHINGTON AIRPORTS AUTHORITY

and

DULLES TRANSIT PARTNERS, LLC
a Virginia Limited Liability Company

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AMENDED AND RESTATED DESIGN-BUILD CONTRACT

THIS AMENDED AND RESTATED DESIGN-BUILD CONTRACT (“Contract”) is made and entered into this 25th day of July, 2008 (“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) Dulles Transit Partners, LLC, a Virginia limited liability company (“Contractor”), with an address of 1595 Spring Hill Road, Suite 600, Vienna, Virginia 22182-2228.

RECITALS

A. On or about June 11, 2004, the Virginia Department of Rail and Public Transportation, a department of the Commonwealth of Virginia (“VDRPT”), and Contractor entered into a Comprehensive Agreement to Develop the Dulles Corridor Rapid Transit Project concerning the development, design and construction of the Dulles Corridor Metrorail Project (the “Comprehensive Agreement”).

B. The Comprehensive Agreement identified significant benefits of entering into an agreement with Contractor, including, among other things: (1) reducing the design, procurement and construction cycle times to shorten the overall Project’s duration, thereby enabling the public to benefit from the completed project earlier than would be available under other delivery systems; (2) reducing the likelihood of cost increases associated with change orders; (3) generating Project cost savings through lower costs of capital, lower development costs and lower construction escalation costs; (4) creating a design that reflects innovation by the construction team; and (5) enabling Contractor to provide a firm fixed price and schedule for the Project earlier, and with less preliminary engineering, than under other methods of procurement and before the stakeholders make a commitment to pay.

C. On or about December 20, 2005, Owner submitted a proposal to the Commonwealth of Virginia proposing that the Dulles Toll Road be transferred to Owner in consideration of Owner operating the Dulles Toll Road and using toll revenues as a non-federal source of funding to construct the Project and for other transportation improvements in the Dulles Corridor.

D. On or about March 24, 2006, the Commonwealth of Virginia, acting by and through its Secretary of Transportation, entered into a Memorandum of Understanding with Owner, wherein it was agreed, among other things, that: (1) the Dulles Toll Road would be transferred to Owner; (2) the Comprehensive Agreement would be assigned to Owner; and (3) the Commonwealth of Virginia, through the Virginia Department of Transportation (“VDOT”) and VDRPT, would continue to provide services and support to the Project.

E. On or about December 29, 2006, the Commonwealth of Virginia and Owner entered into a Transfer Agreement.

F. On or about January 18, 2007, pursuant to Section 8.1 of the Comprehensive Agreement, Contractor submitted a Fixed Price Proposal to Owner for the Work.

G. Pursuant to Section 8.2 of the Comprehensive Agreement, Owner and Contractor jointly reviewed the Fixed Price Proposal, and negotiated in good faith to reach agreement on all terms associated with the Work.

H. During the course of such negotiations, the parties agreed that certain Subcontracts are subject to future uncertain price variation due to the level of design as of the Final Fixed Price Proposal Pricing Date, schedule for implementation, and market conditions for such Subcontracts. Consequently, the Contract Price and the Project Schedules include allowances that have been determined by Owner for the price and schedule of such Subcontracts, with such allowances to be reconciled pursuant to this Contract.

I. As a result of such negotiations, Contractor submitted a Final Fixed Price Proposal on March 27, 2007.

J. Owner and Contractor reached an agreement on all terms associated with the Work as of June 19, 2007, which resulted in the execution of the Design-Build Contract on such date ("Original Contract").

K. Owner and Contractor, effective November 15, 2007, entered into a supplement to the CA ("CA Supplement") governing the performance of the Utility Relocation Work, as contemplated by the Comprehensive Agreement and the Original Contract.

L. Owner and Contractor have executed twelve (12) change orders to the Original Contract, as follows: (a) Change Orders 1 through 11, each dated January 28, 2008; and (b) Change Order 12, dated February 25, 2008.

M. The Original Contract required that the Final Design Notice to Proceed and the Utility Relocation Notice to Proceed be issued on or before August 1, 2007, and that the Full Notice to Proceed be issued on or before February 15, 2008, and that if such notices to proceed were not issued by such dates, there would be certain adjustments to the Contract Price and the Scheduled Substantial Completion Date.

N. Because the Final Design Notice to Proceed, the Utility Relocation Notice to Proceed, and the Full Notice to Proceed were not issued by the dates required in the Original Contract, Owner and Contractor entered into a series of agreements under the Comprehensive Agreement and CA Supplement (the "Interim Agreements"). These Interim Agreements authorized Contractor to perform certain work on the Project and amended the Original Contract by, among other things, addressing the impact on the Contract Price and Scheduled Substantial Completion Date. The Interim Agreements are as follows: (a) August 8, 2007 Agreement, which covered the period from August 1, 2007 to October 31, 2007; (b) Second Interim Agreement, dated November 9, 2007, which covered the period from November 1, 2007 to January 31, 2008; (c) Third Interim Agreement, dated February 1, 2008, which covered the period from February 1,

2008 to February 28, 2008; (d) Fourth Interim Agreement, dated March 1, 2008, which covered the period from March 1, 2008 to March 31, 2008; (e) Fifth Interim Agreement, dated April 1, 2008, which covered the period from April 1, 2008 to April 30, 2008; (f) Sixth Interim Agreement, dated May 8, 2008, which covered the period from May 1, 2008 to May 31, 2008; (g) Seventh Interim Agreement, dated May 30, 2008, which covered the period from June 1, 2008 to June 30, 2008; and (h) Eighth Interim Agreement, dated June 30, 2008, which covered the period from July 1, 2008 to July 31, 2008.

O. Section 2.6.2(d) of the Original Contract specified that if the Final Design Notice to Proceed was not issued on or before February 1, 2008 through no fault of Contractor or any Subcontractor, then the Contract Price and Scheduled Substantial Completion Date would be subject to good faith renegotiation. As a result of this date (as extended by agreement through the agreements set forth in Recital N above) not being met, the parties conducted a renegotiation.

P. Owner and Contractor reached an agreement on the renegotiated provisions to the Original Contract, and this Contract is the product of such negotiations and agreement.

Q. This Contract, including without limitation the Contract Price, Scheduled Substantial Completion Date, fully incorporates all terms, conditions and remedies set forth in Change Orders 1 through 12.

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

**ARTICLE 1.
DEFINITIONS; CONTRACT DOCUMENTS;
AUTHORIZATION TO PROCEED WITH WORK;
ACCEPTANCE OF PRELIMINARY DESIGN AND PROJECT SITE**

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

1.2 Recitals. Recitals A through Q are hereby incorporated by reference herein.

1.3 Contract Documents and Order of Precedence.

1.3.1 The Contract Documents are comprised 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) Plans and Specifications to be developed in accordance with the terms of this Contract; and (c) Final Baseline Schedule to be developed in accordance with the terms of this Contract.

Exhibit 1.1	Definitions
Exhibit 2.3.15	Federal Requirements
Exhibit 2.5.2	Maximum Cash Flow and Work Plan from August 1, 2008 through March 1, 2009)
Exhibit 2.7.3	Area Need Dates for Construction
Exhibit 6.3(a)	Special Provisions for Rights of Entry to WMATA Property
Exhibit 6.3(b)	Original Contract – Special Provisions for Rights of Entry to WMATA Property
Exhibit 8.1	Key Personnel
Exhibit 14.1.1	Contract Price Schedule
Exhibit 14.1.3	Price Adjustment for Changes in Certain Equipment and Materials
Exhibit 14.1.6(a)	List of Allowance Items and Related Computations
Exhibit 14.1.6(b)	Allowance Item Procurement Procedures
Exhibit 14.1.6(c)	Scope Descriptions of Allowance Items
Exhibit 15.2.8	Contractor's Price Summary and Certifications
Exhibit 22.5.1	Form of Performance and Payment Bond
Exhibit 22.6	Executed Guaranty Agreements
Exhibit 23.2	DBE Subcontracting Plan
Exhibit 24.1	Designated Representatives
Appendix 1	Division 1 Specifications, Revision 6, dated April 27, 2007
Appendix 2	Basis of Design Report, Revision 6, dated April 26, 2007
Appendix 3	PE Plans and Specifications, dated February 28, 2006
Appendix 4	Utilities Report, Revision 4, dated April 10, 2007

Appendix 5	Original Initial Baseline Schedule and Narrative, Revision 5, dated March 25, 2007
Appendix 6	Permitting Plan (including Owner Regulatory Approvals), dated January 2007
Appendix 7	ROW Acquisition Plan, dated February 2007
Appendix 8	Amended Record of Decision, dated November 17, 2006
Appendix 9	Division of Responsibilities – WMATA Systems
Appendix 10	Initial Baseline Schedule – Proposed Final Baseline Schedule and Narrative, dated June 25, 2008

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 and Appendix 8.
- (e) Appendix 3.
- (f) Appendix 10 and Appendix 5.
- (g) Appendix 4; Appendix 6; and Appendix 7.
- (h) Appendix 9.
- (i) The Plans and Specifications to be developed in accordance with the terms of this Contract.
- (j) The Final Baseline Schedule to be developed in accordance with the terms of this Contract.

Unless otherwise specified by Owner any reference in the Contract Documents to a described publication 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 Effective Date of the Original Contract. Referenced standards and Regulatory Approvals obtained by Owner which constitute Contract requirements shall have the same order of precedence as the Contract Document which references them.

1.3.3 The Contract Documents (with the sole exception of: (a) the Initial Baseline Schedule, which has been developed after the Effective Date of the Original Contract; and (b) the Plans and Specifications and the Final Baseline Schedule, each of which will be developed after the Effective Date of the Original Contract), set forth the full and complete understanding of the Parties relating to the subject matter hereof as of the Effective Date of the Original Contract and supersede any and all negotiations, agreements and representations made or dated prior thereto. Subsequent to the Effective Date of the Original Contract, 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 for Contractor, pursuant to Article 19, to seek adjustments for disputed work.

1.3.4 Effect of Comprehensive Agreement. The Parties acknowledge that the Comprehensive Agreement will remain in effect throughout the performance of this Contract, and that certain work related to the Project, including services associated with Utility Relocations, Right-of-Way acquisitions, and Phase 2 Development Work, will be performed by Contractor under the Comprehensive Agreement. Although the Contract Documents and the Comprehensive Agreement are intended to be read in harmony, the parties acknowledge that provisions contained in the Contract Documents are not identical to, and may be in conflict with, provisions of the Comprehensive Agreement. For the avoidance of doubt, if there is any conflict between provisions of the Contract Documents and the Comprehensive Agreement, the Contract Documents shall govern with respect to those subject matters covered by this Contract, including but not limited to disputes associated with the Work.

1.4 Authorization to Proceed with Work.

1.4.1 When Owner determines to proceed with all or a portion of the Work, Owner shall issue to Contractor a Notice to Proceed with respect thereto in accordance with Sections 2.5 through 2.8 hereof. The Notice to Proceed shall specify the scope of Work authorized. Contractor has no obligation to commence any portion of the Work unless and until Owner issues a Notice to Proceed with respect thereto.

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

1.5 Meaning of Defined Terms. Unless provided otherwise, defined terms used herein shall apply, as appropriate, only to those portions of the Project authorized to proceed hereunder or pursuant to a Change Order as described above.

1.6 Acceptance of Preliminary Engineering and Site Conditions.

1.6.1 Contractor agrees that it has carefully evaluated the feasibility 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 has reasonable grounds for believing and does affirmatively believe 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 of the Original Contract, reviewed the Geotechnical 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 of the Original Contract, and that Contractor shall not be entitled to any Change Order in connection therewith except as specifically permitted under this Contract.

1.7 Phase 2 Development and Design-Build Work. Contractor has, as of the Effective Date of the Original Contract, performed certain Phase 2 Preliminary Engineering and Development Work under the Comprehensive Agreement, and may continue after the Effective Date of the Original Contract to perform under the Comprehensive Agreement additional Phase 2 Development Work. The Phase 2 Design-Build Work is not currently part of the Work required under this Contract, and Contractor represents that the Contract Price does not reflect any expectations that Contractor will be awarded any of the Phase 2 Design-Build Work. Owner has the right, but not the obligation, to initiate discussions with Contractor regarding the possible amendment of this Contract to include Phase 2 Design-Build Work (“Phase 2 Amendment”) if Owner determines, in its sole discretion, that it is in Owner’s best interests to consider awarding a design-build contract for Phase 2 to Contractor. Any Phase 2 Amendment shall be based upon terms and conditions mutually agreed upon by the parties, which terms and conditions shall include, among other things, conditions associated with notices to proceed for the Phase 2 Work. The requirements of the Parties with respect to the submission of a Phase 2 Fixed Price Proposal for the Phase 2 Design-Build Work, the negotiation of a Phase 2 Amendment, and the execution of a Phase 2 Amendment are as set forth in Article VIII of the Comprehensive Agreement. Notwithstanding anything to the contrary in the Comprehensive Agreement or in this Contract, Contractor hereby acknowledges that Owner has the right, in its sole discretion, to determine the delivery system, procurement approach and contracting methodologies for Phase 2.

ARTICLE 2.
CONTRACTOR AND OWNER RESPONSIBILITIES; NOTICES TO PROCEED

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, demonstration, and testing services, 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 Required Design Standards (collectively referred to herein as the "Work").

2.2 Standards of Performance.

2.2.1 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.

2.2.2 Owner and Contractor accept the relationship of trust and confidence established between Contractor and Owner by this Contract, as part of the owner-contractor relationship. As part of this relationship, the parties agree to disclose to each other any issues that may give rise to significant cost or schedule impacts on the Project. Such issues shall be discussed at the regular weekly progress meetings, as well as at the quarterly meetings between senior representatives of the parties in accordance with Section 28.1.

2.2.3 The standard of care for services performed by Contractor under the Comprehensive Agreement for Utility Relocations or Right-of-Way acquisitions shall be as defined in the Comprehensive Agreement.

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) 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 the Project Right-of-Way limits and other 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 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, integrity, 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 Owner. Contractor shall be responsible for the professional quality, technical accuracy, completeness, and coordination of the Work, it being understood that Owner will rely upon such professional quality, technical accuracy, completeness, and coordination in utilizing the Work for construction and implementation 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 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 generally 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 2.3.15. 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 other than Owner Regulatory Approvals required in connection with the Project, except as provided otherwise in Sections 10.2 and 10.3.

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 Owner will have responsibility for and oversight of the development and execution of the Communications and Outreach Plan, which shall include the direction of all public messages in relation to the Project. Contractor will provide ongoing strategic support across all elements of communications and outreach and play a lead role in executing elements of the program linked most closely to construction activities, such as coordination with property owners and tenants in the direct impact area. Owner and Contractor will execute activities as

outlined in the *Communications & Outreach Plan for Phase I Design/Build*. For the avoidance of doubt, any public communications by Contractor shall be undertaken with prior approval from Owner's Communications Office.

2.3.8 Contractor shall supervise and be responsible to Owner for acts and omissions of Contractor's and Subcontractor's Persons, including, employees, agents, and officers, as though all such Persons were directly employed by Contractor.

2.3.9 Contractor waives any right it may have to file or enforce any mechanics liens. 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.

2.3.10 Each of Owner, WMATA, VDOT, VDRPT and Fairfax County have reserved their respective rights to perform or permit other or additional work, and to contract with other Persons to do so, on or near the Site; provided that Contractor may have the right to receive appropriate relief as provided in Section 2.3.11.

(a) Contractor shall cooperate with such other Persons to the extent reasonably necessary for the performance by such other Persons of their work, and shall cause Contractor-Related Parties to so cooperate. If other separate contracts are awarded by Owner, WMATA, VDOT, VDRPT, Fairfax County or other Governmental Persons which materially affect the Work, 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 Persons. Owner shall make commercially reasonable efforts to require that such other Persons are subject to and comply with similar obligations. Potential projects include the Capital Beltway (I-495) HOT Lanes Project as well as any other projects undertaken in the Dulles Corridor by VDRPT, VDOT, WMATA and Fairfax County.

(b) Promptly after the Effective Date, Contractor and Owner will use their commercially reasonable efforts to enter into coordination agreements with the other Persons with current or anticipated construction projects in the Dulles Corridor. 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, regardless of whether required to do so by a coordination agreement, that it will attend and participate in coordination meetings with other Persons relating to such projects, as Owner may, in its sole discretion, require in an effort to avoid and/or mitigate cost and time impacts to the Project.

2.3.11 If Contractor asserts that any other Persons described in Section 2.3.10 have 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: (a) Contractor satisfies the requirements of Articles 13 and 19 herein; (b) Contractor has not breached any applicable coordination agreement with such other contractor; and (c) Contractor has exercised commercially reasonable efforts to avoid

and/or mitigate such hindrance or interference. If any portion of a project is located within the limits of a municipality, military installation, or other federally-owned property, Contractor shall cooperate with the appropriate officials and agents in the prosecution of the Work to the same extent as it does with Owner.

2.3.12 Contractor shall comply with the requirements of the Contract Documents concerning impacts on neighboring communities and businesses.

2.3.13 Until achievement of Substantial Completion, Contractor shall be responsible for supplying temporary power associated with the Work, and shall be precluded from using permanent power in lieu of temporary power. Contractor shall have no responsibility for permanent power, including but not limited to that necessary for testing, commissioning and pre-revenue operations, the cost of which shall be borne by Owner.

2.3.14 Contractor shall design and construct all elements of the Work to interface with and be compatible with the ARS. All elements of the Work shall be designed and installed to be dimensionally, operationally, electrically, and mechanically compatible within and between Project elements.

2.3.15 In performing the Work, Contractor shall comply with the requirements set forth in Exhibit 2.3.15 (Federal Requirements).

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, Fairfax County, Virginia and other Governmental Persons that have responsibilities on the Project, provided, however, that 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 or Comprehensive Agreement, including but not limited to Contractor's duties relative to Regulatory Permits, Utility Relocations and Right-of-Way acquisition.

2.4.3 Owner shall acquire, or cause to be acquired, Project Right-of-Way in accordance with the ROW Acquisition Plan, as such plan may be updated from time-to-time. For the avoidance of doubt, the Parties agree that the Property Acquisition Schedule set forth in Appendix B of the ROW Acquisition Plan has been superseded by the property acquisition dates set forth in Appendix 10 hereto.

2.4.4 Owner shall perform its obligations for Utility Relocations in accordance with the Comprehensive Agreement and the CA Supplement.

2.4.5 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 the 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.

2.4.6 If Contractor meets its burden of proving that Owner has failed to fulfill an obligation of this Contract, 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 herein.

2.5 Limited Notices to Proceed and Services to be Performed under the Comprehensive Agreement.

2.5.1 Performance of Specified Work. Owner may issue, prior to issuance of the Full Notice to Proceed, one or more Limited Notices to Proceed authorizing Contractor to commence certain portions of the Work. The parties further agree that certain portions of the Work associated with the design and construction management of the Project may be performed through task orders issued under the Comprehensive Agreement or the CA Supplement. Prior to the issuance of a Limited Notice to Proceed, or any task order under the Comprehensive Agreement or the CA Supplement, the parties shall agree upon the scope, compensation due Contractor, timing for payment, and schedule for such Work.

2.5.2 Continuation of the Work through Interim Agreements. Contractor's agreement to the provisions of Sections 2.8 below is based upon the assumption that the continuation of design, utility relocation, right-of-way services and other construction management work will be the subject of Interim Agreements, with related task orders, to be executed under the Comprehensive Agreement or the CA Supplement to support issuance of a Full Notice to Proceed on or before March 2, 2009. An Interim Agreement, with related task orders, shall be issued that is effective for the time period August 1, 2008 through October 31, 2008, and another Interim Agreement, with related task orders, shall be issued that is effective for the time period November 1, 2008 through March 1, 2009. The funding requirements and agreed work plans for such Interim Agreements are set forth in Exhibit 2.5.2, and Contractor and Owner acknowledge and agree that the monthly and aggregate amounts set forth in such exhibit represent the required financial commitments that Owner shall have with respect to the continuation of Contractor's work under either this Contract, the Comprehensive Agreement, or the CA Supplement from August 1, 2008 through March 1, 2009.

2.6 Commencement of Final Design Work.

2.6.1 Performance under the Comprehensive Agreement. Owner has already authorized Contractor, and shall continue to authorize Contractor, to advance the design work in accordance with the Project Schedule through task orders issued under the Comprehensive Agreement, as set forth in Section 2.5 above. Such design services performed under such task orders shall be performed in accordance with the standards of performance of this Contract, including but not limited to Sections 2.2.1 and 2.2.2 hereof. Contractor further agrees that the in-progress design review obligations and procedures of this Contract are applicable to the services performed under such task orders in the same manner as if such services were being performed under the this Contract, including but not limited to those procedures enumerated in Sections 3.1.1 and 3.1.2 below. For the avoidance of doubt, Owner

shall also have the right to issue Limited Notices to Proceed under Section 2.5 above for Final Design services.

2.6.2 Final Design Notice to Proceed. Owner shall have the right, but not the obligation, to issue Contractor a Final Design Notice to Proceed prior to issuing Contractor a Full Notice to Proceed. If issued, the Final Design Notice to Proceed shall serve as an authorization by Owner for Contractor to perform all Final Design under this Contract.

2.7 Commencement of Utility Relocations.

2.7.1 Performance under the Comprehensive Agreement and CA Supplement. Owner has already authorized Contractor, and shall continue to authorize Contractor, to perform Utility Relocation Work through task orders issued under the Comprehensive Agreement and/or CA Supplement as set forth in Section 2.5 above.

2.7.2 Utility Relocation Notice to Proceed. Owner shall have the right, but not the obligation, to issue a Utility Relocation Notice to Proceed in accordance with the CA Supplement. If issued, the Utility Relocation Notice to Proceed shall serve as an authorization by Owner for Contractor to perform all Utility Relocation Work in accordance with the CA Supplement.

2.7.3 Area Need Dates for Construction Activities. Exhibit 2.7.3 sets forth "Area Need Dates" for the commencement of certain construction Work areas. These dates are premised upon the Utility Relocation work being performed in accordance with Section 2.5 and the Full Notice to Proceed being issued on or before the date set forth in Section 2.8.1 below. If the Full Notice to Proceed is issued after such date, then the Area Need Dates shall be extended by the same number of days set forth in Section 2.8.2(c).

2.8 Commencement of Construction.

2.8.1 Full Notice to Proceed. Upon Contractor's receipt from Owner of the Full Notice to Proceed, Contractor shall immediately commence construction of the Work, provided, however, that Owner shall not have the right to issue a Full Notice to Proceed until: (a) a Full Funding Grant Agreement has been executed by Owner and the FTA; and (b) Owner has obtained, or caused to be obtained, the FHWA Approval to Use Highway Right-of-Way for Rail. Unless the parties mutually agree otherwise, Owner shall issue the Full Notice to Proceed on or before March 2, 2009. Contractor shall have no right to commence construction of the Work until Contractor has received the Full Notice to Proceed or as otherwise authorized by Owner.

2.8.2 Delays to Full Notice to Proceed. If the Full Notice to Proceed is not issued by Owner until after March 2, 2009, through no fault of Contractor or any Subcontractor, then, as Contractor's sole and exclusive remedy for any increased costs, impacts, delays and disruptions due to the delayed issuance, Contractor shall be entitled to the following:

- (a) The Contract Price (excluding: (a) the scheduled value for items indexed for inflation and subject to price adjustment under Section 14.1.3; (b) amounts to be paid under a Limited Notice to Proceed; (c) Allowance Prices; and (d) the scheduled value for Final Design) shall be increased at a four percent (4.00%) annualized rate (i.e., 0.01096%

per day), based on the number of days between March 2, 2009 and issuance of the Full Notice to Proceed.

(b) The Contract Price shall be further increased for the daily cost of Contractor's on-site Project staff between March 2, 2009 and the date of issuance of the Full Notice to Proceed, provided, however, that such cost will be reduced by the proceeds received by Contractor for such Project staff for work performed under the Comprehensive Agreement, CA Supplement Limited Notice to Proceed, Final Design Notice to Proceed, or any other agreement with Owner, during this time period.

(c) The Scheduled Substantial Completion Date shall be extended by the number of days between March 2, 2009 and the issuance of the Full Notice to Proceed.

(d) Notwithstanding the above, if Owner determines that the Full Notice to Proceed will not be issued on or before June 1, 2009, or if the Full Notice to Proceed is not issued by Owner on or before June 1, 2009, through no fault of Contractor or any Subcontractor, the Contract Price and Scheduled Substantial Completion Date shall be subject to good faith renegotiation, in accordance with the following protocol:

(i) Owner shall direct Contractor in writing to provide a proposal, with Owner identifying those assumptions upon which the proposal is to be based.

(ii) Contractor shall promptly furnish its proposal after receipt of Owner's directive.

(iii) If the parties do not reach agreement on a revised Contract Price and Scheduled Substantial Completion Date within thirty (30) days of the date Owner receives Contractor's proposal, Owner may terminate this Contract in accordance with Section 2.8.3.

2.8.3 Termination Prior to Full Notice to Proceed. Owner, at its sole discretion and for its convenience, shall have the right to terminate this Contract prior to issuance of the Full Notice to Proceed by providing written notice to Contractor. Upon termination of this Contract pursuant to this Section 2.8.3, Contractor shall be entitled to recover, as its sole and exclusive remedy for all costs and damages due for Work performed or to be performed under this Contract, amounts due for the Work performed pursuant to any Limited Notices to Proceed that may have been issued pursuant to Section 2.5 above, as well as amounts due under task orders issued under the Comprehensive Agreement or CA Supplement. In the event that Owner has issued a Final Design Notice to Proceed prior to issuing Full Notice to Proceed, this Section 2.8.3 shall not be applicable, and Owner's right to terminate the Contract for convenience shall be as set forth in Section 2.8.4 below.

2.8.4 Termination After Final Design Notice to Proceed or Full Notice to Proceed. Upon and following issuance of either Final Design Notice to Proceed or Full Notice to Proceed, Owner, at its sole discretion and for its convenience, shall have the right to terminate this Contract for convenience under Article 27. For the avoidance of doubt, this Section 2.8.4 shall not be construed to abrogate the respective rights of Owner and Contractor under Article 12

(Termination and Suspension) of the Comprehensive Agreement or Article 24 (Termination and Suspension) of the CA Supplement.

**ARTICLE 3.
PLANS AND SPECIFICATIONS**

3.1 In-Progress Design Review.

3.1.1 Owner is entitled to review and comment on all Draft Plans and Specifications for compliance with the requirements of the Contract Documents in accordance with the design review process set forth in Section 01112A of Division 1. 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 Preliminary Engineering Plans and Specifications, including any Deviation conditionally approved that is included therein or that is not in compliance with the requirements of the Contract Documents subject to any Deviation previously approved in writing by Owner.

3.1.2 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. 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.

3.2 Status of Design at Commencement of Work.

3.2.1 Owner shall not be responsible for Contractor's reliance on any of the documentation or information provided by Owner or other Persons. Contractor shall have full responsibility in accordance with the Contract Documents for the design of the Work. Contractor represents that the Preliminary Engineering Work presents a feasible concept for the Work which can and shall be used as the basis for the design to be furnished by Contractor.

3.2.2 Owner makes no representation or warranty to any Contractor-Related Party or any other Person that the information contained in the Preliminary Engineering Plans and Specifications is correct, sufficient, complete or accurate. Contractor assumes responsibility for the sufficiency, completeness, and accuracy of the information contained in the Preliminary Engineering Plans and Specifications, notwithstanding the fact that Owner approved the Preliminary Engineering Plans and Specifications. Such approval is solely for the purpose of indicating that Owner has completed its review of the Preliminary Engineering Plans and Specifications.

3.2.3 The parties acknowledge that Contractor has performed additional engineering and professional services under the Comprehensive Agreement since the completion of the Preliminary Engineering Plans and Specifications. Contractor assumes responsibility for the sufficiency, completeness and accuracy of such services, notwithstanding the fact that Owner may have reviewed and/or approved the work product developed by Contractor through such services.

3.3 Preliminary Engineering Work and Phase 1 Development Work.

3.3.1 Although Owner reviewed and commented on the Preliminary Engineering Work and the Phase 1 Development Work, Contractor understands and agrees that such work was prepared solely by Contractor. The parties therefore agree that Owner shall not be responsible or liable in any respect, and 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, its employees, agents, officers or Subcontractors or any other Persons for whom Contractor may be legally or contractually responsible, by reason of any use of any information resulting from the Preliminary Engineering Work and the Phase 1 Development Work or any action or forbearance in reliance thereon.

3.3.2 Contractor further acknowledges and agrees that Contractor is capable of conducting and is obligated hereunder to conduct any and all studies, analyses and investigations it deems advisable to verify or supplement said information, and that any use of said information is entirely at Contractor's own risk and at its own discretion.

3.3.3 Contractor acknowledges that it has evaluated the Required Design Standards for the purpose of identifying any deficiencies and that all such deficiencies (if any) have been or are being resolved through Deviations granted or conditionally approved by Owner prior to the Final Fixed Price Proposal Pricing Date.

3.4 Contractor Proposed Changes to Required Design Standards.

3.4.1 During Final Design, Contractor may propose a change to the Required Design Standards 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 Required Design Standard;
- (b) itemization of the specific portion of the relevant Required Design Standards 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 it 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 a Change Order permitting it to suspend the related Work until final approval by Owner of the proposed change to the Required Design Standard is granted, which Change Order Owner may grant or deny in its sole discretion. A 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, subject to Section 3.4.5.

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 Required Design Standards:

- (a) is equivalent in safety with the relevant Required Design Standards;
- (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 savings resulting from the proposed change, if any. 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 Required Design Standard and ensuring that any affected Work is performed in compliance with the Contract Documents.

3.4.5 If Contractor believes that a change to the Required Design Standards is necessary due to alleged deficiencies in the Required Design Standards that could not have been identified by Contractor during the engineering services Contractor performed pursuant to the Comprehensive Agreement prior to the Final Fixed Price Proposal Pricing Date, Contractor shall submit a request for an appropriate Change Order in accordance with Article 19.

**ARTICLE 4.
PROJECT 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 jobsite safety. 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 employees of Contractor and Subcontractors performing the Work and other persons (including employees and agents of Owner, WMATA, VDOT or VDRPT) 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) Contractor, its Subcontractors, Owner, WMATA, VDOT, VDRPT and their other contractors 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 employees and personnel over whom it exercises day-to-day direction will comply with Contractor's safety procedures.

4.1.3 Security. Until the Substantial Completion Date, Contractor is responsible for the security of the Site.

4.1.4 Adjoining Property. Contractor shall ensure that all of its activities and the activities of its employees, agents, officers and Subcontractors and all other Persons for whom Contractor may be legally or contractually responsible are undertaken in a manner that will reasonably minimize the effect on surrounding property and the public.

4.1.5 Protection of Existing Structures, Utilities and Improvements. Contractor shall protect and preserve all existing structures, utilities and improvements on or adjacent to the Project 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

by Contractor. 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 its failure to perform the Work in accordance with the Contract Documents.

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 Persons, or by any failure of any Person to take such action. Subject to Section 4.2.2(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.

4.2.2 Inspection and Testing.

(a) Contractor shall perform whatever inspection, sampling and testing it deems appropriate in order to ensure 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) The QA Manager shall be responsible for inspecting and testing in accordance with the Quality Assurance and Control Inspection Program developed under Section 01470 of Division 1.

(c) During the construction of the Project and until the Final Acceptance Date, Owner shall designate one or more qualified Persons to perform Oversight Services and to provide necessary coordination with Contractor. Such Persons 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 such Persons not less than two (2) Business Days prior notice of and opportunity to participate in any meetings described in the Quality Assurance and Control Inspection Program developed under Section 01470 of Division 1.

(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, which shall have the right to reject Work which does not conform with the Contract Documents. Contractor shall not be entitled to any additional compensation or time so long as any such inspection and testing reasonably conforms to the most recent Monthly Updated Schedule. 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) 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 timely notice of when and where tests, inspections and approvals are to be made so Owner may observe such procedures.

(f) 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 inspection, testing 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 of such special testing, inspection or approval, provided Contractor satisfies the requirements of Articles 13 and 19 herein.

(g) 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 Persons 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 to the Critical Path(s) occasioned thereby and, if applicable, recovery of any such delay, shall be the 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 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 herein.

4.2.3 Owner Delegation of Oversight. Contractor has been advised that Owner intends to have certain of its oversight responsibilities performed by Carter & Burgess Inc., as well as other potential third parties, each of whom will be acting as agents of Owner. The Owner may, by specific delegation, grant limited contractual authority to such agents, and will advise Contractor in writing of such authority.

4.3 Division of Responsibilities. The parties shall, within thirty (30) days after the approval of the Final Baseline Schedule, develop a more comprehensive Division of Responsibilities that outlines their respective duties and responsibilities.

ARTICLE 5. DIFFERING SITE CONDITIONS

5.1 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 Contract Documents in existence as of the Final Fixed Price Proposal Pricing Date; 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 Contract Documents as such Contract Documents were in existence as of the Final Fixed Price Proposal Pricing Date. The term “Differing Site Conditions” excludes: (1) conditions of which Contractor had actual or constructive knowledge as of the Final Fixed Price Proposal Pricing Date, including conditions which were or should have been discovered through prudent and generally accepted engineering practices in connection with Contractor’s Preliminary Engineering Work under the Comprehensive Agreement; (2) conditions that should have been discovered through a reasonable site investigation performed in accordance with prudent and generally accepted engineering practices; (3) errors or deficiencies in the Contract Documents prepared by Contractor, including the Geotechnical Report and the Utilities Report attached as Appendix 4 to this Contract; (4) Hazardous Substances, including also contaminated soils and groundwater (which Hazardous Substances are governed by Article 6); (5) conditions caused by a Force Majeure Event; and (6) conditions (excluding man-made conditions) that come into existence after the Final Fixed Price Proposal Pricing Date. Contractor shall not be precluded from asserting that a condition constitutes a Differing Site Condition by virtue only of the fact that the asserted difference is a difference in the extent of the condition.

5.2 Duty to Investigate. Contractor acknowledges that it has 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, and (v) the character of the Equipment and Materials and facilities needed preliminary to and during performance of the Work. 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, the Contract Documents in existence as of the Final Fixed Price Proposal Pricing Date, or from other exploratory work done by or on behalf of Contractor, whether pursuant to the Preliminary Engineering Work or otherwise. Any failure of Contractor to take the actions described and acknowledged in this Article 5 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.

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 may 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.

5.4.1 Subject to Section 5.4.2, 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 Contractor satisfies the requirements of Articles 13 and 19 herein. 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.

5.4.2 Owner and Contractor agree to share equally the risk of the first aggregate Twelve Million Dollars (\$12,000,000) of increased cost associated with Differing Site Conditions for which Contractor would otherwise be entitled to monetary relief, including but not limited to the cost of delay. Consequently, Contractor will receive fifty percent (50%) of Change Order amounts for Differing Site Conditions until the total aggregate amounts received by Contractor for such Change Orders reaches a total of Six Million Dollars (\$6,000,000). Thereafter, Contractor will be entitled to receive one hundred percent (100%) of the value of Change Order amounts for Differing Site Conditions. For the avoidance of doubt, Contractor's assumption of the above-referenced financial risk shall not impact Contractor's rights to seek appropriate time extension relief for any Differing Site Conditions.

**ARTICLE 6.
PROJECT RIGHT-OF-WAY AND RIGHTS OF ENTRY
ONTO WMATA AND VDOT PROPERTY**

6.1 Right-of-Way Acquisition Plan and ROW Acquisition Schedule.

6.1.1 Owner has approved the acquisition of certain parcels as shown in the approved Right-of-Way Acquisition Plan for Phase 1 set forth in Appendix 7. The parties have agreed that the services to be performed by Contractor to support Right-of-Way acquisition will be conducted through the Comprehensive Agreement.

6.1.2 Each party shall promptly notify the other if it becomes aware of any anticipated delay in the ROW Acquisition Schedule. In such event, Contractor shall promptly determine whether the delay impacts the Critical Path(s) and, if so, to what extent it might be possible to avoid such delay through alternative construction methods or otherwise. Contractor and Owner shall promptly meet to determine and agree upon the best course of action.

6.2 Changes in Project Right-of-Way Limits. Owner's prior written consent is required for any changes in the Project Right-of-Way limits shown on the Preliminary Engineering and/or Right-of-Way Plans.

6.3 Rights-of-Entry for WMATA. Exhibit 6.3(a) contains the WMATA Right of Entry Permit between WMATA and Owner, identifying what are anticipated to be the requirements associated with the right of entry of Owner and Contractor-Related Parties onto WMATA property. Exhibit 6.3(b) contains WMATA's Real Estate Permit, as previously set forth in Exhibit 6.3 in the Original Contract. The Parties acknowledge and agree that, prior to the Effective Date: (a) Contractor has notified Owner that Exhibit 6.3(a) contains WMATA requirements that are revised from those set forth in Exhibit 6.3(b), and that such revisions could give rise to relief under Articles 13 and/or 19 herein; (b) the Parties have yet to negotiate and resolve the above-referenced issues; and (c) that the inclusion of Exhibit 6.3(a) into this Contract is not to be construed as impacting any rights that the Parties may have to assert their respective positions relative to these issues, including the right of Owner to assert that Contractor has no entitlement to contractual relief from such items. It is further agreed that Contractor will not be required to contract directly with WMATA, and that Owner will be designated as the Permittee on such Permit. Contractor confirms that it: (w) has reviewed the Permit; (x) will provide Owner with necessary Work Product in accordance with the Project Schedule to support Owner's obligations as a Permittee; (y) will comply with those requirements of such Permit applicable to Contractor's work on WMATA property (e.g., safety, time restrictions and work rules), exclusive of the insurance obligations set forth in such Permit; and (z) shall, upon the request of Owner, execute a letter to Owner acknowledging (w) through (z) above.

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

**ARTICLE 7.
UTILITY RELOCATION**

7.1 Utility Relocation Understanding and Processes.

7.1.1 Contractor performed a preliminary survey of Utilities likely to be impacted by the Work, and the results of that survey are incorporated into the Preliminary Engineering. A list of all known Utilities relating to the Work has been compiled, based on such survey, and is set forth on Appendix 4.

7.1.2 The parties have agreed that the services to be performed by Contractor for the Utility Relocations, including but not limited to the design, procurement, interface with Utilities, direct construction and construction management of subcontractors, will be conducted through and in accordance with the CA Supplement.

7.1.3 It is agreed that Contractor's obligations under this Contract include having Contractor's project management team for the Work manage the interface with Contractor's management team for the Utility Relocation in an effort to efficiently integrate work activities and mitigate the potential for delays. Contractor shall promptly notify Owner if it becomes aware of any anticipated delays in the Utility Relocation work, or if Contractor's Utility Relocation work will interfere with or delay the Work hereunder. In such event, Contractor shall promptly determine whether the delay impacts the Critical Path(s) and, if so, to what extent it might be possible to avoid such delay through alternative construction methods or otherwise. Contractor and Owner shall promptly meet to determine and agree upon the best course of action.

7.1.4 Contractor shall be responsible for coordinating the Work of its Subcontractors with the work being performed on Utility Relocations.

**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 previously identified by Contractor, 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 key person. Upon Owner's request, Contractor shall document the time commitment for each key person to Owner's satisfaction.

8.2.2 If: (a) Contractor removes or replaces any Key Personnel at the direction of Owner; or (b) such individual 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 personnel, which replacement individual shall be subject to Owner's review and written consent.

8.3 Key Personnel Financial Interests. Contractor shall cause each of the Key Personnel to disclose in writing to Owner any financial interest which he or she has or may obtain either directly or through family members in any commercial real estate parcel, improvement or leasehold interest that involves the Project Right-of-Way.

**ARTICLE 9.
HAZARDOUS SUBSTANCES**

9.1 Hazardous Substance Investigations.

9.1.1 Contractor shall review the Phase 1 Environmental Site Assessment reports prepared by Owner and, if additional studies or analyses are recommended, Contractor shall develop the minimum standards and cost estimates for such further studies and analyses for review and approval of both minimum standards and cost estimates by Owner. The minimum standards shall also include an analysis of naturally occurring asbestos containing soils identified on the Fairfax County Real Properties Identification Maps (Soils 1961). If Owner elects to have Contractor proceed with such additional studies or analyses, the performance and costs of such additional studies or analyses shall be directed and paid for by Owner pursuant to a Change Order.

9.1.2 Contractor shall submit a summary of results from each study and analysis to Owner. The deliverables shall include a narrative summary, site diagrams, results in tabular form, and recommendations.

9.1.3 An asbestos inspection shall be conducted on each structure located on all acquired Project Right-of-Way in accordance with Section 9.2.4 below.

9.2 Hazardous Substances Management.

9.2.1 If Hazardous Substances are discovered that create an imminent or substantial safety, environmental or health hazard for Owner, Contractor, any Subcontractor, the general public, or the surrounding environment, Contractor shall suspend the performance of the Work to the extent required to avoid such safety or health hazard until action sufficient to protect the interests of those affected is taken. Upon encountering Hazardous Substances, Contractor shall immediately notify Owner, which will then arrange for the Hazardous Substances to be disposed of.

9.2.2 Owner shall contract directly with other contractors selected by Owner for the containment, management, mitigation disposal and remediation of Hazardous Substances ("CMMR Services"). Contractor shall assist Owner in developing the scope of work for CMMR Services and shall provide detailed quantity estimates of materials for bid quantity sheets to be included in Owner's request for bids or proposals for CMMR Services. Contractor shall not be responsible for directing the means and methods of a CMMR Contractor in carrying out its work. Contractor shall be responsible for scheduling and coordinating its Work with the work performed by a CMMR Contractor.

9.2.3 Contractor will not undertake the responsibility to dispose of Hazardous Substances. Contractor shall, however, be responsible for the scheduling and coordination of all activities related to the CMMR Contractor's work and any related requirements of Owner to mitigate costs and delays to the Project; provided, however, that Contractor shall not be responsible for directing the means and methods of the CMMR Contractor in carrying out its work, nor be responsible for the efficacy of the CMMR Contractor's work. Contractor's costs in performing these services shall be included in the Contract Price. Contractor shall not be entitled

to a Change Order for impacts on Contractor's cost or time of performance arising from the performance of the CMMR Services by a CMMR Contractor relating to Pre-Existing Hazardous Substances identified in the report, studies, and analyses described in Section 9.1.1 above. Subject to Section 9.2.5, Contractor shall be entitled to an appropriate Change Order for the impact on Contractor's cost or time of performance caused by the discovery and remediation by Owner or a CMMR Contractor of any Hazardous Substances (other than Pre-Existing Hazardous Substances), provided Contractor satisfies the requirements of Articles 13 and 19 herein. Contractor's indemnifications set forth in Sections 21.1(e) and (f) shall apply to Contractor's acts and omissions in carrying out its responsibilities under this Section 9.2.3., but will not apply to acts or omissions of a CMMR Contractor. Owner shall have the right to a Change Order decreasing the Contract Price in an agreed upon amount in the event that Contractor or Owner determines that any work included in the Work (e.g., demolition or excavation) shall be undertaken by a CMMR Contractor rather than by Contractor.

9.2.4 Asbestos inspections required by Section 9.1.3 above shall be conducted by CMMR Contractor(s). Contractor shall coordinate such inspections and receive copies of inspection reports and estimates for asbestos abatement, and shall submit such reports and estimates to Owner for review and approval.

9.2.5 Contractor shall be solely responsible for the containment, management, mitigation, disposal and remediation of Hazardous Substances that: (a) were brought or caused to be brought to the Site by an act or omission of Contractor or any Subcontractor in the performance of the Work; or (b) were handled, treated or stored at the Site by Contractor or any Subcontractor 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 such Hazardous Substances.

9.2.6 In addition to the provisions of Section 9.1, should work be conducted by the CMMR Contractor or any other Person related to petroleum underground or above ground storage tanks, the work will be performed pursuant to Article 9 of the State Water Control Law, Virginia Code Section 62.1-44.34:8-9 and Article 11 of the State Water Control Law, Virginia Code Section 62.1-44.34:14-23, and their respective regulations (9 Va. Admin. Code Section 25-580-10 et. seq. and 9 Va. Admin. Code Section 25-120-10 et. seq.) will be conducted in accordance with said requirements and with fees not to exceed the rate schedule established by the State Department of Environmental Quality.

9.2.7 Owner shall pursue available reimbursement from the Virginia Petroleum Storage Tank Fund ("VPSTF") for eligible activities by preparing all applications for fund reimbursement for formal submittal by Owner. All funds received from the VPSTF shall be deposited with Owner.

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

10.1 Obligation to Comply with Laws, Regulations and Ordinances and Regulatory Approvals.

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 execution of this Contract and applicable to the Work. 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, including, but not limited to, survey work, wetland and other impact mitigation, water and air quality analyses and any applicable Section 7 consultation and commitments required by the Endangered Species Act of 1973, 16 U.S.C. § 1531 et seq.

10.1.2 To the extent there is a change in Regulatory Approvals (other than Regulatory Approvals relating to Contractor's corporate existence or the maintenance of its business) or other Laws, Regulations and Ordinances (other than Laws, Regulations and Ordinances related to Contractor's corporate existence or the maintenance of its business, including, but not limited to, gross receipt taxes, social security, Medicare, and other payroll-related taxes) which increase the cost and/or time of performance, such change shall be deemed a Change in Law hereunder, and Contractor shall be entitled to an appropriate Change Order, provided Contractor satisfies the requirements of Articles 13 and 19 herein.

10.2 Obligation to Obtain Regulatory Approvals.

10.2.1 Contractor shall be responsible for obtaining Regulatory Approvals, except for Owner Regulatory Approvals, from local Governmental Persons and others, when required, provided that Owner will use reasonable efforts to expedite critical Regulatory Approvals from such entities, if and as requested by Contractor. Approvals by third parties will be subject to the terms and conditions of any cooperative interagency agreements and applicable Laws, Regulations and Ordinances.

10.2.2 Contractor has no reason to believe that any Regulatory Approval required to be obtained by Contractor as of the Effective Date of the Original Contract 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. 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 Contractor Regulatory Approval cannot be obtained in accordance with the applicable Project Schedule, not due to Contractor's fault, then Contractor shall be entitled to an appropriate Change Order, provided Contractor satisfies the requirements of Articles 13 and 19 herein.

10.2.3 If any Regulatory Approvals required to be obtained by Contractor under Section 10.2.5 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 Owner shall review all submissions from Contractor regarding environmental Regulatory Approvals within fifteen (15) days after receipt thereof and shall issue written comments to Contractor within such fifteen (15) day period.

10.2.5 Contractor shall obtain all Regulatory Approvals required for the Work in accordance with applicable laws, other than Owner Regulatory Approvals. Contractor shall deliver to Owner, promptly after Contractor's receipt, a copy of each such Regulatory Approval.

10.3 Payment for Regulatory Approvals. Except as otherwise provided herein, Contractor shall pay all charges and fees and shall not be entitled to any time extension incident to obtaining any modifications to Regulatory Approvals (except for Owner Regulatory Approvals) and all new Regulatory Approvals and for any changes in the Work arising therefrom. If a modification to a Regulatory Approval or a new Regulatory Approval (other than Regulatory Approvals relating to the corporate existence or maintenance of the business of Contractor) is necessitated by a Change Order, a Force Majeure Event, a Differing Site Condition, or a Change in Law, and if such modification changes the Work, Contractor shall be entitled to an appropriate Change Order, provided Contractor satisfies the requirements of Articles 13 and 19 herein. With respect to existing, known Regulatory Approvals, to the extent the failure to obtain Regulatory Approvals is due to reasons other than the fault of Contractor, Contractor shall be entitled to an appropriate Change Order, provided Contractor satisfies the requirements of Articles 13 and 19 herein.

ARTICLE 11. WARRANTIES

11.1 Warranties.

11.1.1 Contractor warrants to Owner that:

- (a) the Work shall meet all of the requirements of the Contract Documents; and
- (b) 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 or WMATA 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 additional 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 thereby 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, subject to the liability limitation period set forth in Section 26.2.4 below. 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 Division 1 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, for no less than the period identified in Section 26.2.4 below: (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: (a) shall be written so as to survive all inspections, tests and approvals hereunder, and (b) 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 Notwithstanding the first sentence of Section 11.3.1, Contractor's obligations with respect to Subcontractors performing Allowance Items shall be to use commercially reasonable efforts to obtain the representations, warranties, guarantees and obligations set forth in the first sentence of Section 11.3.1, and to consult with Owner, pursuant to the Allowance Item procurement processes in Section 14.1.6, as to the viability of obtaining such representations, warranties, guarantees and obligations. Notwithstanding anything to the contrary in this Contract, Contractor's obligations for representations, warranties and guarantees with respect to the Allowance Items shall be co-extensive with and limited to those provided by Subcontractor performing the Allowance Work.

11.3.3 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 11.3.3 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 for the account 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.

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 (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 plantings, seedings and soddings furnished under the Contract Documents and shall protect new tree growth and other vegetative growth against injury, replacing all dead plants requiring replacement as specified in the Contract Documents throughout an establishment period that shall commence at initial planting and shall end two (2) years after the planting date.

ARTICLE 12.
PRICING DOCUMENTS, RECORDS AND REPORTS

12.1 Provision and Maintenance of Pricing Documents Under Comprehensive Agreement. The Pricing Documents delivered into escrow prior to execution of this Contract in accordance with Section 8.5 of the Comprehensive Agreement 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 disputes arising under this Contract and in connection with negotiations of Change Orders, as specified in the Comprehensive Agreement.

12.2 Subcontractor Pricing Documents.

12.2.1 Unless otherwise agreed to in writing by Owner, Contractor shall require and cause each Major Subcontractor whose Subcontract price equals or exceeds Five Million Dollars (\$5,000,000) to submit to Contractor a copy of all documentary information used in determining its Subcontract price, immediately prior to executing the Subcontract, to be held in the same manner as the Pricing Documents. The documentary information from each such Subcontractor shall be clearly labeled to show the Subcontractor to which the documentary information pertains, and shall include a non-redacted copy of the Subcontract setting forth the price of the Subcontract. Contractor shall deliver such documentary information, including the non-redacted copy of the Subcontract, into escrow not later than three (3) days after it is received from the Subcontractor. Such documentary information, including the non-redacted copy of the Subcontract, shall be available during business hours for joint review by Contractor and Owner (subject to the requirements set forth in Section 8.5 of the Comprehensive Agreement) for any reason, including in connection with negotiations of price adjustments and Change Orders, verification of Subcontractor invoices included with Draw Requests, the resolution of disputes, including Subcontractor pass-through disputes, investigation of Claims against any bond or the Retainage, and review for completeness as described in Section 8.5(c) of the Comprehensive Agreement.

12.2.2 Contractor shall use best efforts, to the extent commercially practicable, to award Subcontracts on the basis of adequate competition, which the parties agree is through Contractor obtaining competitive proposals from two (2) or more qualified competitors. Each Subcontract awarded without adequate price competition, or which is not based on established catalogue or market prices of commercial items sold in substantial quantities to the public, or prices set by Laws, Regulations and Ordinances and which is in an amount in excess of Five Hundred Thousand Dollars (\$500,000), shall include a representation and warranty from the Subcontractor, for the benefit of Contractor and Owner, stating that the documents provided to Contractor constitute all the documentary information used in establishing its Subcontract price, and agreeing to provide a sworn certification in favor of Contractor and Owner together with each supplemental set of documentary information, stating that the information contained therein is current, accurate and complete. Each Subcontract that is not subject to the foregoing requirement shall include a provision requiring the Subcontractor to preserve all documentary information used in establishing its Subcontract price and to provide such documentation to Contractor and/or Owner in connection with any Claim made by such Subcontractor. The foregoing shall in no way be deemed a limitation on Owner's discovery rights with respect to such documents. For the purposes of this Section 12.2.2:

(a) "current, accurate" means, as to each of the documents provided to Contractor, that it is: (i) the version of that document Subcontractor used in establishing its Subcontract price; (ii) contains information Subcontractor used in establishing its Subcontract price; and (iii) is a true copy of that document; and

(b) "complete" means that the documents submitted to Contractor are all the documents Subcontractor used in establishing its Subcontract price.

12.3 Maintenance of Books and Records.

12.3.1 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.

12.3.2 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 12.3.1 above.

12.3.3 Contractor shall require each Subcontractor to comply with the requirements applicable to Contractor set forth in this Section 12.3.

12.4 Public Records.

12.4.1 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.

12.4.2 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 Owner's disclosure policy or any applicable Laws, Regulations or Ordinances.

12.5 Reporting Requirements.

12.5.1 Not later than 30 days after the end of each month, Contractor shall prepare and deliver to Owner the following reports, in a form reasonably satisfactory to Owner:

(a) a written narrative report on the progress of design, permitting, acquisition, Utility Relocations and construction of the Work and Project Right-of-Way since the immediately preceding report, or, if there was no preceding report, from the inception by Contractor of such Work, describing in reasonable detail all significant activities concerning design, Regulatory Approvals, new contracts and Subcontracts with Subcontractors identifying the parties, scope and, for Work thereunder to be paid on a time and materials basis, amount, construction and construction progress and discovery and correction of defects. Such report shall include a discussion of the Project Schedule and Contractor's compliance therewith (which shall be in addition to the schedule reporting requirements contained elsewhere in the Contract Documents), of any new or continuing delays, material matters which may affect the future performance of Contractor's obligations under the Contract Documents, and the causes thereof and a summary of all new changes to the Plans and Specifications. Such report also shall describe any damage or destruction and restoration work and revenue information (such as but not limited to insurance awards) relating to any such occurrence; and

(b) a written narrative report of any disputes with Contractor or Claims, actions or assertions against Contractor, the Project or Project Right-of-Way by any Governmental Person, any general contractor, any architect or engineer, any Subcontractors or any other Person, or of Lien claims or stop notices filed or threatened to be filed by any Person. Such report shall include but not be limited to a description of the nature of the dispute, Claim, action, assertion, Lien or notice, the amount in dispute or claimed, copies of any Lien notice, stop notice, complaint, demand or other pertinent documents which Owner requires, availability of insurance and insurance defense, and actions taken and contemplated to defend against, settle or remove the dispute, Claim, action, assertion, Lien or notice.

12.5.2 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 Day before commencement thereof, any planned work (other than emergency repairs) to repair or remedy such damage or destruction.

12.5.3 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.

12.5.4 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 Related Party.

12.5.5 Subject to the limitations set forth in Section 12.1 and 12.6, 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.

12.6 Access to and Audit of Books and Records.

12.6.1 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 such audit rights and allow Owner such access to and the right to copy such Books and Records as Owner may request, but only as necessary and appropriate in connection with Work to be performed on a reimbursable cost basis, issuance of Change Orders (other than all or a portion of Change Orders issued on a lump-sum basis), and the resolution of Claims.

12.6.2 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.

12.6.3 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.

12.6.4 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 Persons to permit adequate evaluation of the information Contractor submitted with any Change Order, along with the computations and projections used therein.

12.6.5 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.

12.6.6 Contractor shall make Pricing Documents available for audit and inspection to Owner at Contractor's office, at all reasonable times, without charge, and shall allow Owner to make copies of such documents (at no expense to Contractor).

12.6.7 Contractor shall require each Subcontractor to comply with the requirements applicable to Contractor set forth in this Section 12.6.

12.7 Price Reduction for Failure to Furnish Pricing Documents or Other Documents.

12.7.1 If any price, including profit or fee, negotiated in connection with the Contract, or any cost reimbursable under the Contract, was increased by any significant amount because of the items set forth in the following Subparagraphs (a) through (c), and, in respect of the relevant document which Contractor has not furnished, a reasonably prudent Person would have found such document significant in negotiating the Fixed Price Proposal and/or Final Fixed Price Proposal, then such price or cost shall be reduced accordingly and the Contract shall be modified to reflect the reduction.

(a) Contractor furnished Pricing Documents that were not current, accurate, and complete as certified in its Contractor's Pricing Certification; or

(b) A document exists in the folders on Contractor's document server, as identified in Section 12.7.2 below, that had not been furnished to Owner by Contractor prior to May 1, 2007; or

(c) As to the following documents, Contractor failed, prior to May 1, 2007, to: (i) furnish such documents to Owner in the Pricing Documents; or (ii) include such documents in the folders on Contractor's document server as described in Subparagraph (b) above:

(i) all documents Contractor considered in establishing its Fixed Price Proposal and Final Fixed Price Proposal;

(ii) all documents generated by Contractor's Project team located in Contractor's Vienna, Virginia, Project office in connection with its Fixed Price Proposal, Final Fixed Price Proposal and/or in connection with Contractor's negotiations with Owner; or

(iii) all documents Contractor received from any Person seeking to be considered as a Subcontractor on the Project.

12.7.2 The documents and server folders to which Section 12.7.1(b) applies are as follows, all of which have been placed into escrow with the Pricing Documents:

(a) An identical copy of Contractor's folder that is located on its server at U:\Common\Work Packages (D-B)(Fixed Price Proposal); and

(b) An identical copy of Contractor's folder that is located on its server at InfoWorks 3.04.01\Docbases\dtf.

12.7.3 Contractor represents that during preparation of the Fixed Price Proposal and the Final Fixed Price Proposal, Contractor maintained subcontractor and procurement procedures under which Contractor's working files for each of the twenty-eight (28) Work Packages were to be retained on Contractor's server at U:\Common\Work Packages (D-B)(Fixed Price Proposal). The folder for each Work Package typically includes the following sub-folders: DB Proposals, Drawings, Evaluation, Letters and Bidders List, Pre-Quals, Quantities, RFQ Complete Package, Schedule, Scope and Specs.

12.7.4 Contractor represents that Contractor maintained document control procedures under which all official correspondence between Contractor and potential Subcontractors was to be retained on Contractor's server at InfoWorks 3.04.01\Docbases\dtp. The folder for each Work Package typically includes the following sub-folders: Bid Quotations, Bidders List, Correspondence, Pre-Qual Documents and Request for Proposal\Quote Packages.

12.7.5 Contractor represents that it has, as of May 1, 2007, copied the folders and sub-folders referenced in Sections 12.7.3 and 12.7.4 above and placed them in escrow. Contractor represents that it copied from its server these folders because such folders and sub-folders relate to the work covered by the Fixed Price Proposal and Final Fixed Price Proposal, provided, however, that to Contractor's knowledge, such folders and sub-folders do not include documents relating to work covered by the Allowance Items. Contractor represents that these copies are true and accurate copies of those folders and sub-folders as they actually exist on Contractor's server and that Contractor did not delete, alter, revise, or purge the folders, sub-folders or documents contained therein in any way before or during the copying process.

12.7.6 If Owner's Contracting Officer determines under Section 12.7.1 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 price of the Contract would not have been modified even if all required Pricing Documents used in establishing the Fixed Price Proposal and/or Final Fixed Price Proposal had been submitted.

(b) Owner or its Contracting Officer should have known that the Pricing Documents in issue failed to constitute all documents Contractor considered, generated, received or should have used in establishing the Fixed Price Proposal and/or Final Fixed Price Proposal, even though Contractor took no affirmative action to bring the absence of such documents to the attention of Owner's Contracting Officer.

(c) The Contract was based on an agreement about the total cost of the Contract and there was no agreement about the cost of each item procured under the Contract.

12.7.7 An offset in an amount determined appropriate by Owner or its Contracting Officer based upon the facts shall be allowed against the amount of a Contract Price reduction 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.

12.7.8 If any reduction in 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 failed to submit all required Pricing Documents used in establishing the Fixed Price Proposal or Final Fixed Price Proposal; provided, however, that the failure to submit any such Pricing Documents resulted in the overpayment.

12.7.9 The provisions of this Section 12.7 shall not be construed to expand or limit the audit rights and obligations established in Section 12.6 above.

ARTICLE 13.

PROJECT SCHEDULE AND ADJUSTMENTS TO SCHEDULED SUBSTANTIAL COMPLETION DATE

13.1 Project Schedules and Reporting Requirements.

13.1.1 Project Schedules.

(a) Contractor represents that: (i) the Original Initial Baseline Schedule (Appendix 5) is an accurate representation of Contractor's plan for the execution of the Work as of the Effective Date of the Original Contract; and (ii) the Initial Baseline Schedule (Appendix 10) 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 Initial Baseline Schedule to execute the Work in compliance with the Contract Documents until the approval of the Final Baseline Schedule. After the Effective Date, Contractor shall update the Initial Baseline Schedule in accordance with Section 01322 of Division 1.

(b) Contractor represents that the Final 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. Contractor shall update the Final Baseline Schedule in accordance with Section 01322 of Division 1.

(c) If Contractor's Final Baseline Schedule shows a projected Substantial Completion date more than thirty (30) days in advance of 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 Final Baseline Schedule. The specific intent of this Section 13.1.1(c) 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.

13.1.2 Joint Monthly Update Review Meetings.

(a) In addition to the requirements set forth in Section 01322 of Division 1, the parties shall, as part of the joint monthly update meetings, segregate Critical Path delays into two (2) categories: (i) those events which are concurrent delays to the Critical Path(s) ("Category 1 CPM Delays") and (ii) those events which are sole delays to the Critical Path(s) ("Category 2 CPM Delays"). Within the Category 1 CPM Delays and the Category 2 CPM Delays, the parties will then identify Excusable Delays and those delays that are not Excusable Delays. From the Excusable Delays, the parties will specifically identify Critical Path delays caused by Force Majeure Events to determine the amount of days to be included and calculated against the Force Majeure Reserve set forth in Section 13.4.3.

(b) Within ninety (90) days after an approval of a Monthly Updated Schedule, either party can request, at the Joint Monthly Update Review Meetings held pursuant to Section 01322 of Division 1, revision of any attribution of a delay based on newly discovered information. Owner will evaluate whether such new information justifies modification of the previously approved update and time assessment.

13.1.3 Recovery Schedules.

(a) The process for creating and implementing a Recovery Schedule is set forth in Section 01322 of Division 1.

(b) Any costs incurred by Contractor in overcoming delays to the Project, or in accelerating or resequencing the Work, shall be at Contractor's own expense, unless: (i) 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; (ii) a Recovery Schedule has been approved by Owner; and (iii) a Change Order has been issued for such costs.

13.2 Excusable Delays. The term "Excusable Delay" shall refer to: (a) events caused by acts, omissions, conditions, events, or circumstances that are beyond the reasonable control of Contractor; and (b) events for which the Contract provides that Contractor is entitled to claim a schedule adjustment by reference to Article 13, provided 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 law of Contractor or any Subcontractor. 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:

(a) 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 Equipment and Materials prices;

(b) weather conditions, except as set forth in Section 01322 of Division 1;

(c) 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 improper acts or omissions of Contractor or any Subcontractor;

(d) 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;

(e) delays of 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

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

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 comply with the joint updating process required in Section 13.1.2 and must demonstrate that: (i) notice was given to Owner's Contracting Officer in accordance with this Contract; (ii) the delay impacts the Critical Path(s) (as reflected on the most recent Monthly Updated Schedule), as confirmed in the process set forth in Section 13.1 reviewing the prior month's actual events; and (iii) 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 on the most current Monthly Updated Schedule. Each TIA shall include a Fragmentary Network, and for events that have yet to occur (such as proposed change orders), the Fragmentary Network shall demonstrate how Contractor proposes to incorporate such event into the most current Monthly Updated Schedule. The TIA shall demonstrate: (i) the time impact based on the date the event occurred, or, in the instance of a proposed change, the date such proposed change was given to Contractor; (ii) the status of the Work at such point in time; and (iii) the time computation of all affected activities. Upon execution of a Change Order extending the Scheduled Substantial Completion Date, the event shall be included in the next Monthly Updated Schedule. In the event the parties are unable to reach agreement to forward price the effect of the delay on the Project's Critical Path(s), Owner can either determine the effect of the delay in question through the process detailed in Section 13.1.2 or utilize a procedure using a preliminary time assessment for the delay in question, which will then be adjusted in the month by month update process when the actual duration of the delay is known.

13.3.3 Schedule Impact of Allowance Items. Section 14.1.6 describes the basis on which certain price and schedule allowances have been included in the Contract Price and the Initial Baseline Schedule and addresses the adjustment of the Contract Price to take account of the eventual subcontract price for each Allowance Item. This Section 13.3.3 addresses the adjustment of Project Schedules to account for the schedule duration for each Allowance Item as set forth in the executed Subcontract for that Allowance Item.

(1) If, at the time of award for an Allowance Item, the schedule duration for performance of any Allowance Item as set forth in the executed Subcontract for that Allowance Item is longer than the schedule allowance for such Allowance Item shown in the current Project Schedule (Initial Baseline Schedule, Final Baseline Schedule, or Revised Baseline Schedule) then, to the extent that such longer duration has an impact on the critical path for the Project as shown in the current Project Schedule which would delay the Scheduled Substantial Completion Date as shown on such schedule, then the Contractor shall be entitled to an adjustment of the Scheduled Substantial Completion Date by the duration of such delay, regardless of whether or to what extent: (i) there is actual critical path delay or any other operative cause of delay at the time the Subcontract is in fact executed; and/or (ii) the schedule duration as set forth in the executed Subcontract will in fact cause critical path delay in the circumstances then existing.

(2) In addition to adjustment of the Scheduled Substantial Completion Date as set forth in (1) above, Contractor shall be entitled to compensation for the additional costs resulting from such adjustment as if the adjustment had been made by Owner under Section 19.2.

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 the Original Contract, of any Hazardous Substance, which is otherwise addressed in Article 9;
- (c) Delays in the issuance of the Final Design Notice to Proceed and/or the Full Notice to Proceed, which are otherwise addressed in Article 3; and
- (d) 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: (i) have been, in accordance with the Contract requirements, properly noticed to Owner by Contractor; (ii) cause delays that are the sole delay to the Critical Path(s) (i.e., a Category 2 CPM Delay) and extend the Scheduled Substantial Completion Date; and (iii) 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 the preceding sentence.

13.4.3 Force Majeure Reserve. The Force Majeure Reserve shall be a total aggregate of forty-five (45) days, commencing on the effective date of Full Notice to Proceed. The Force Majeure Reserve reflects the Parties' intent that: (i) Contractor will bear the financial risk for delays by Force Majeure Events to the extent of the applicable Force Majeure Reserve; and (ii) 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 (i) and (ii). 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.

13.5 Remedy for Concurrent Delay. Contractor's sole remedy for Excusable Delays satisfying the requirements of Section 13.3.1 that are Category 1 CPM Delays shall be an adjustment to the Scheduled Substantial Completion Date in accordance with this Contract. Multiple delays to the Critical Path(s) caused by the same party shall not be considered concurrent delays.

13.6 Delays of Contractor Arising from Utility Relocations. Delays to the Utility Relocation shall be considered as Excusable Delays and, if Contractor claims that such Excusable Delay justifies an extension to the Scheduled Substantial Completion Date, Contractor shall proceed under Section 13.3.1.

13.7 Early Completion Incentive. Owner shall pay Contractor an early completion incentive per month for each month that Substantial Completion is achieved earlier than the Scheduled Substantial Completion Date, with the amount of such incentive at the rates of: (a) One Million Dollars (\$1,000,000) for the first month; (b) Two Million Dollars (\$2,000,000) for the second month; (c) Three Million Dollars (\$3,000,000) for the third month; (d) Two Million Dollars (\$2,000,000) for the fourth month; and (e) Two Million Dollars (\$2,000,000) for the fifth month. For the avoidance of doubt, the above incentive schedule is intended to be additive (e.g., if Contractor finishes three (3) months early, it will receive Six Million Dollars (\$6,000,000), which is the sum of (a), (b) and (c)). Notwithstanding anything to the contrary, the total amount of such incentive shall not exceed, and is limited to, Ten Million Dollars (\$10,000,000).

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 additional portions of the Work 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 Sections 14.1.3, 14.1.6 and 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 designs, Equipment and Materials, construction equipment and materials, labor, 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 (including all Work, Equipment and Materials, construction equipment and materials, labor and services provided by Subcontractors and all intellectual property rights necessary to perform the Work); (b) performance of each and every portion of the Work authorized hereunder; (c) payment of any 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; and (d) sales taxes for the Work (other than the Equipment and Materials).

14.1.3 Price Adjustments for Changes in Certain Equipment and Materials Prices. Adjustments will be made to the Contract Price for the pricing of certain Equipment and Materials that the Parties have determined to be subject to uncertain and substantial price volatility due to market conditions. The Equipment and Materials that will be subject to price adjustments and the formula for determining the amount of such price adjustments are set forth in Exhibit 14.1.3. Equipment and Materials that are not specifically identified in Exhibit 14.1.3 shall not be subject to any price adjustments due to market conditions, regardless of the severity of market conditions, and Contractor specifically acknowledges that it bears all pricing risk for such Equipment and Materials. Contractor agrees that the price adjustments in this Section 14.1.3 are intended to be made on a pass-through basis to Owner, and that neither it nor any Subcontractor will be entitled to any markup, including but not limited to overhead and fee, for the price adjustments made pursuant to this Section 14.1.3, other than applicable taxes.

14.1.4 Schedule of Values. Within sixty (60) days of the Effective Date, the parties shall agree upon a Schedule of Values, which schedule 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 Schedule of Values.

14.1.5 Maximum Payment Curve. Within ninety (90) days of the forecasted Full Notice to Proceed, the parties shall agree upon a 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.

14.1.6 Allowances and Allowance Items. The Contract Price includes allowances for the pricing of certain Subcontracts (“Allowance Items”) that the Parties have determined to be subject to uncertain future price variation due to the current level of design, schedule for implementation, and market conditions. The Initial Baseline Schedule includes allowances for the schedule durations for performance of the Allowance Items. The price and schedule allowance for each Allowance Item has been established by Owner. The price allowance includes certain other items calculated on the basis described in Exhibit 14.1.6(a) (each referred to as a “Contract Allowance Price”). Adjustments, as appropriate, will be made to the Contract Allowance Prices in accordance with this Section 14.1.6. Adjustments, as appropriate will be made to the Project Schedule for the Allowance Items in accordance with Section 13.3.3.

(a) The list of Allowance Items is set forth in Exhibit 14.1.6(a), attached hereto, along with the Contract Allowance Price for each Allowance Item.

(b) For each Allowance Item, Contractor shall: (i) solicit and evaluate written proposals received from potential subcontractors subsequent to the Effective Date of the Original Contract; and (ii) shall award and enter into Subcontracts, all in accordance with procurement procedures set forth in Exhibit 14.1.6(b). The scope descriptions for each Allowance Item are set forth in Exhibit 14.1(c).

(c) The schedule for the solicitation, evaluation and award of subcontracts for each Allowance Item shall be as set forth in the Initial Baseline Schedule.

(d) For each Allowance Item, once the Subcontract has been awarded to and executed by the successful bidder, if the Actual Price for an Allowance Item (defined as the successful bidder’s price plus other items calculated on the basis described in Exhibit 14.1.6(a)) is in excess of the Contract Allowance Price, then the Contract Price shall be increased accordingly. If the Actual Price for a specific Allowance Item is less than the Contract Allowance Price, then the Contract Price shall be reduced accordingly. If the aggregate amount of Actual Prices for Allowance Items exceeds [REDACTED]

[REDACTED] Contractor agrees that it shall not be entitled to any fee on the Actual Prices over such aggregate.

(e) If, for any Allowance Item, the Subcontract is not a full lump sum subcontract (e.g., the subcontract has base scope of work that will be priced on a quantity, unit price, or time-and-material basis, then the Actual Price shall be adjusted at the

completion of the Subcontract to reconcile the estimated quantities and/or time-and-materials with actual quantities and/or time-and-materials expended.

(f) Once a Subcontract for an Allowance Item is awarded and the Contract Price and Project Schedule have been adjusted pursuant to this Section 14.1.6 and Section 13.3.3, respectively, Contractor shall be responsible for the performance and risks of the Subcontractor for such Allowance Item in the same manner and to the same extent as any other Subcontractor under this Contract.

(g) By virtue of the principle stated in the preceding paragraph (f), the provisions of this Section 14.1.6 and Section 13.3.3 shall not apply to any re-bid or procurement due to default or termination of a Subcontractor initially procured and contracted for under this Section 14.1.6, provided, however, that if the work was initially awarded under a Subcontract which was not a full lump sum subcontract, then Paragraph (e) above shall nonetheless apply, modified such that the adjustment of the Contract Price is based on the amounts due to both the original and any subsequent Subcontractor(s), based upon actual installed quantities or time-and-materials expended.

14.2 Payments. Payment to Contractor of the Contract Price shall be made as follows:

14.2.1 Delivery of Draw Request and Certificate. On or about the twenty-fifth (25th) 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 Schedule of Values 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) 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; 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 ten (10) 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 suspend payment under Section 25.2, 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 thirty (30) 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 to withhold a reasonable portion of a payment, not to exceed ten percent (10%) of such payment, if Contractor does not 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 from the fixed-price amount portion of the Contract Price 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 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 sixty percent (60%) 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 ninety percent (90%) 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 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 Deductions, Exclusions, and Limitations on Payment.

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 14.6. 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, and five percent (5%) has been retained on this amount, Owner shall cease withholding Retainage from future payments owing to Contractor hereunder, provided that: (i) Retainage previously withheld will not be released/reduced on future payments; and (ii) 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 01322 of Division 1. Owner shall not withhold Retainage from payments allocable to insurance premiums and the premiums for the Performance and Payment Bond.

(b) No portion of the Retainage shall be released/reduced unless and until all of the following conditions have been met: (i) Liquidated Damages shall not then be payable to Owner; (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 has occurred; (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 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) Owner agrees to release/reduce a portion of the Retainage thirty (30) days after achievement of Substantial Completion and an additional portion thirty (30) days after achievement of Final Acceptance, subject to the following terms and conditions. The first release/reduction shall equal fifty percent (50%) of the then-remaining Retainage. The second release/reduction shall equal fifty percent (50%) of the then-remaining value of the Retainage. The amount to be released/reduced in each case shall be reduced by (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) the estimated cost of repairing any known nonconforming Work or otherwise remedying any known breach of contract by Contractor.

(e) On the date that final payment is due hereunder, Owner shall release to Contractor all remaining Retainage other than: (i) amounts applied to the payment of Liquidated Damages, (ii) amounts applied to the payment of losses, damages or expenses incurred by Owner for which Contractor is responsible, (iii) 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 (iv) one hundred fifty percent (150%) of the estimated cost of repairing any nonconforming Work or otherwise remedying any breach of contract by Contractor. Final payment of such Retainage not applied to the matters identified above shall be made upon Contractor's showing, to Owner's reasonable satisfaction, that all such matters have been resolved, including delivery to Owner of a certification representing that there are no outstanding Claims of Contractor or any Claims, Liens or stop notices of any Subcontractor, laborer, Utility Owner or other third party with respect to the Work.

(f) Contractor shall have the right to substitute a 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 approved by Owner in its sole discretion, (ii) be in the amount of one hundred percent (100%) of the required Retainage amount, and (iii) name Owner as payee.

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, or a notice of Claim is filed against the Performance and Payment Bond, 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 Mobilization Payment. In the event the Schedule of Values calls for a Mobilization Payment, the process for making payment of such amount, if different from the processes set forth in this Article 14, shall be agreed upon by the parties.

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 Completion Payment. Payment for Final Completion will be conditioned upon Contractor's compliance with those requirements of Section 17.5 below.

ARTICLE 15.
REPRESENTATIONS AND WARRANTIES

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

.1 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.

.2 Each person 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.

.3 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.

.4 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:

.1 Contractor is a duly organized and validly existing limited liability company created under the laws of the Commonwealth of Virginia, 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.

.2 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.

.3 Each person 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.

.4 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.

.5 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.

.6 There is no action, suit, proceeding, investigation or litigation pending and served on Bechtel Guarantor or Washington Guarantor which challenges Bechtel Guarantor's or Washington Guarantor's authority to execute, deliver or perform, or the validity or enforceability of, the Comprehensive Agreement Guarantees and the Parent Company Guarantees, or which challenges the authority of an officer of Bechtel Guarantor or Washington Guarantor to execute the Parent Company Guarantees; 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.

.7 Contractor is in material compliance with all Laws, Regulations and Ordinances applicable to Contractor or its activities in connection with this Contract.

.8 All cost, pricing and other information included in the Fixed Price Proposal, Final Fixed Price Proposal, Pricing Documents, and supplements and/or modifications thereto provided during negotiations, are current, accurate, and complete as of May 1, 2007, as certified by Contractor in the executed document, Contractor Certification of Pricing Summary and Pricing Documents, attached as Exhibit 15.2.8.

**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 Substantial Completion Date, unless due to acts of terrorism, and shall be responsible for maintenance of the Project during its construction until the Substantial Completion Date. On the Substantial Completion Date, Owner 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 Contractor for which it would otherwise be liable under the Contract.

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 its members or Subcontractors) owns or has prepared prior to the Effective Date of the Original Contract. Contractor Background Data used by Contractor in connection with the Contract shall remain the property of Contractor or its members or Subcontractors as applicable, but Contractor grants a non-exclusive, irrevocable, royalty-free license to Owner, WMATA, Fairfax 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, 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 LD Date.

17.2 Scheduled Substantial Completion Date.

17.2.1 Scheduled Substantial Completion Date. Contractor shall achieve Substantial Completion of the Work on or before July 31, 2013 (“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) working 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 hereof. Owner's execution of a Dynamic Testing Readiness Certificate 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 Dynamic Testing Readiness Certificate 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; and

(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 such 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).

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 hereof. Owner's execution of the Substantial Completion Certificate shall not relieve Contractor of any of its obligations under the Contract Documents.

17.5 Final Acceptance.

17.5.1 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.

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

- (a) Substantial Completion 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, Liens or stop notices 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, Liens and stop notices 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.

17.5.3 Final Acceptance Certificate. When the conditions set forth in Section 17.5.3 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.

17.5.4 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 hereof. Owner's execution of the Final Acceptance Certificate shall not relieve Contractor of any of its obligations under the Contract Documents.

17.6 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 Relevant Terms.

18.1.1 “Organizational conflict of interest” means that because of other activities or relationships with other persons, a person or business entity is unable or potentially unable to render impartial assistance or advice to Owner, or the person's or business entity's objectivity in performing the contract work is or might be otherwise impaired, or a person or business entity has an unfair competitive advantage.

18.1.2 “Equity owner” of Contractor excludes any person or entity who or which holds an equity interest in Contractor solely through stock held in a mutual fund or blind trust.

18.1.3 For purposes of this Article, “subcontractor” means and includes subcontractors, subconsultants and suppliers at any tier. In the context of Contractor, “subcontractor” includes those which Contractor knows, intends or reasonably anticipates will participate on behalf of Contractor in the performance of the Work, except where the cumulative amount of such subcontractor's, subconsultant's or supplier's compensation is reasonably anticipated to not exceed One Hundred Thousand Dollars (\$100,000). In the context of Owner, WMATA, VDOT or VDRPT, “subcontractor” includes those that have performed or will perform work on behalf of a contractor, consultant or supplier to Owner, WMATA, VDOT or VDRPT in the performance of the contractor's, consultant's or supplier's work for Owner, WMATA, VDOT or VDRPT with respect to the Project, except where the cumulative amount of such subcontractor's, subconsultant's or supplier's compensation was or is reasonably anticipated to not exceed Twenty-Five Thousand Dollars (\$25,000).

18.2 Prohibition on Conflict of Interest.

18.2.1 No person or business entity actively engaged and undertaking current work, as a contractor or consultant to Owner, WMATA, VDOT, or VDRPT concerning the Project, including any environmental consultant or project management consultant, or any subcontractor of any of the foregoing with respect to such engagement, may participate as an equity owner of, member of or subcontractor or consultant to Contractor.

18.2.2 No person or business entity engaged to assist Owner, WMATA, VDOT, or VDRPT with preparing the Contract Documents for the Project may participate as an equity owner of, member of or subcontractor or consultant to Contractor for the Project.

18.2.3 No person or business entity previously performing work on the Project on behalf of Owner, WMATA, VDOT, or VDRPT may participate as an equity owner of, member of or subcontractor or consultant to Contractor on the Project unless Owner is satisfied in its sole discretion that:

- (a) such work did not provide the person or business entity with access to or knowledge of confidential or inside information from Owner, WMATA, VDOT, or VDRPT that could provide a competitive advantage respecting the procurement; or

(b) the data and information provided to the person or business entity in the performance of its tasks is irrelevant to the procurement; or

(c) any person or business entity that served as a subcontractor for the environmental work for the Project did not act as the preparer of the draft or Final Environmental Impact Statement and served only as a participant in the environmental process.

18.2.4 No person or business entity engaged to assist Owner, WMATA, VDOT, or VDRPT with preparing or applying evaluation criteria for the Project or with preparing, negotiating or approving contracts for the Project may participate as an equity owner of, member of or subcontractor or consultant to Contractor on the Project.

18.2.5 No person or business entity engaged to assist Owner, WMATA, VDOT, or VDRPT with preparing, negotiating or approving contracts for the Project may have a financial interest in Contractor or be an equity owner of, member of or subcontractor to Contractor on the Project, other than a remote interest. A financial interest is remote only if:

(a) it is less than two percent (2%) of the legal or beneficial interest; or

(b) it is a legal or beneficial interest that is held by a former employee, is less than ten percent (10%) of the total legal or beneficial interest and is held exclusively in a qualified plan under § 401 of the Internal Revenue Code, and the employment relationship ended more than six (6) months before such assistance commences; or

(c) it is limited to joint venture or contracted work with Contractor or an equity owner of, member of or subcontractor to Contractor on discrete projects unrelated to Owner or the Project, and Owner is satisfied in its sole discretion that such situation is not an organizational conflict of interest; or

(d) Owner is otherwise satisfied in its sole discretion that it is sufficiently small or otherwise of such a nature that it is not and will not become an organizational conflict of interest.

18.2.6 No person engaged to assist Owner, WMATA, VDOT, or VDRPT with preparing, negotiating or approving contracts for the Project may have an immediate family member employed by any equity owner of Contractor or subcontractor or consultant to Contractor on the Project, unless Owner is otherwise satisfied in its sole discretion that the relationship is of such a nature that it is not and will not become an organizational conflict of interest. "Immediate family member" means grandparent, parent, sibling, spouse, child or grandchild, whether the family relationship exists by blood or adoption.

18.2.7 Owner shall provide the names of the contractors, consultants, suppliers and subconsultants that have provided services to Owner, WMATA, VDOT, or VDRPT in connection with the Project, and will request that WMATA, VDOT and VDRPT provide names of the contractors, consultants, suppliers and subconsultants that have provided services to Owner, WMATA, VDOT, and VDRPT in connection with the Project. Contractor may request

Owner to determine whether any such contractor, consultant, supplier, subconsultant or other entity is exempt from disqualification under Section 18.2.3.

18.2.8 Within seven (7) days of the earlier of any Limited Notice to Proceed, or the Final Design Notice to Proceed, each of the Key Personnel shall disclose in writing to Owner any financial interest, other than a remote interest as defined in Section 18.2.5, which he or she has in any commercial real estate parcel, improvement or leasehold interest that is subject to the locally preferred alternative acquisition list.

18.2.9 To avoid any appearance of impropriety, Contractor shall not negotiate the acquisition of Project Right-of-Way owned or otherwise controlled by West*Group Management LLC.

**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 have resulted 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 also to provide incentives to the parties to act expeditiously to resolve any problems 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 contractual breaches, fault, negligence, or wrongful conduct 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 address the direct, indirect impact 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.

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 may, at its discretion, schedule an initial meeting with Contractor to discuss and define the proposed change. Such initial consultation shall be at no additional cost to Owner.

(b) After the initial meeting set forth in Section 19.2.2(a), Owner's Contracting Officer may, at its discretion, issue a Notice of Proposed Change, identifying any limitations in the scope or price of Contractor's estimating efforts for the proposed change.

(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 an authorized officer of Contractor; (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 increase to be made to the Contract Price or extension of 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 increase to the Contract Price or extension of 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 (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 (b) or (c) above, the parties shall resolve such dispute in accordance with Article 28.

19.3 Contractor Claims and Procedures.

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 other relief due to any event or situation arising out of or related to the Work, Contractor shall, within fifteen (15) days after Contractor knows, or should have reasonably known, of such event or situation, deliver to Owner's Contracting Officer a written notice (an "RFC Notice") describing the general nature of the event or situation and the relief sought. If two or more federal holidays fall within this fifteen-day notice period, the parties shall reasonably extend this notice period.

19.3.2 Within thirty (30) days after submission of the RFC Notice, 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; and (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. If Contractor in good faith is unable to provide final cost and 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 ninety (90) days from the date of submitting its Request for Change Order. Failure to provide final cost and schedule information within such ninety (90) 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.

19.3.3 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 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 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 19.3.3:

(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 supporting 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.

19.3.4 Within a reasonable period of time (not to exceed thirty (30) 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.

19.3.5 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. 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 changes in the Work require the deletion or addition of items of Work of the same type as those for which unit prices have been established in the Contract Documents or subsequently agreed upon between the parties, Owner may elect to compensate Contractor for such changes in the Work on the basis of such unit prices. If the actual quantity of Work that is subject to unit prices should vary from the estimated quantity by twenty-five percent (25%), the parties shall negotiate new unit rates for such Work items based upon the analysis of actual production rates experienced for such units of Work.

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 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.

19.4.3 Time and Material.

(a) Should Owner determine that the scope and extent of the change in the Work cannot be readily determined or negotiated before the change in the Work is performed, Owner may elect to compensate Contractor on a time and material basis for such changes in the Work. Compensation due Contractor for such changes shall be priced in accordance with Section 19.4.4 below. Upon completion of the change order work, and prior to final payment for such change (exclusive of the payment for applicable Retainage), Owner shall have the right to audit such Contractor costs in accordance with the terms of this Contract.

(b) In the event Owner determines to compensate Contractor for changes in the Work on a time and materials basis, Contractor shall, at the end of each week, or at such other intervals as Owner may direct, furnish to Owner the following information:

(i) daily time slips for construction labor showing the name of each employee performing the change in the Work, the number of hours (with straight time and overtime hours identified separately) which he or she was employed thereon, the character of his or her duties, and the wages paid to the employee;

(ii) the rates and amounts of workers' compensation insurance premiums (if such insurance is not covered under the Contractor-Controlled Insurance Program ("CCIP") furnished by Contractor) 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 in performing the change in the Work, including the units installed on a daily basis;

(v) equipment and other apparatus owned or rented in performing the change in 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, and the equipment rates or the amount paid therefore; and

(vi) payments made to approved Subcontractors (with copies furnished to Owner of Subcontractor invoices and supporting documentation as required under items (i) through (v) of this Section 19.4.3(b)).

(c) Contractor shall summarize the labor, Equipment and Materials, construction equipment and other costs related to changes in the Work performed on a time and material basis. The failure of Contractor to furnish the supporting documentation required under 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.

(a) Labor.

(i) Actual wages shall be computed based upon base hourly rates by craft for all levels below, excluding the general foreman and excluding premium pay paid to all employees directly engaged in the Work.

.1 No supervision or project management time shall be included by Contractor as a direct labor cost to the Project. These costs are considered part of the field office overhead as set forth in Section 19.4.4(a)(v).

.2 To the extent Contractor is required to expend additional engineering time for the preparation and review of drawings or related engineering tasks associated with a change in the Work, Contractor shall be compensated for the actual salary costs associated with the number of hours spent on such tasks. However, time incurred by the engineering and project management staff assigned to the Project are considered as part of Contractor's field overhead operations and will not be included in any request for additional engineering time associated with a change. Time sheets will be maintained for the engineers to support the hours worked on the change order tasks. Contractor's overhead rates shall be applied to the engineering labor costs in accordance with Contractor's established corporate policies and accounting methodologies, as audited by Defense Contract Audit Agency ("DCAA") or an independent auditor complying with DCAA audit requirements, and as adjusted to exclude insurance elements that are covered by the CCIP 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 engineering labor. A profit markup will then be applied to the cumulative total of the labor and overhead costs, to be negotiated between the parties and not to exceed: (a) ten percent (10%) if the cumulative total is less than One Hundred Thousand Dollars (\$100,000); (b) seven percent (7%) if the cumulative total is between One Hundred Thousand Dollars (\$100,000) and Five Hundred Thousand Dollars (\$500,000); and (c) five percent (5%) if the cumulative total is greater than Five Hundred Thousand Dollars (\$500,000). No additional overhead markups shall be added to this amount.

(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 if not covered under the CCIP furnished by Contractor. 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 CCIP furnished by Contractor.

(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 CCIP.

(v) Field office overhead shall include: all supervision and administration above and including the general foreman level, such as superintendents, assistant superintendents, engineers (except as provided in Section 19.4.4(a)(i)(.2) above), purchasing agents, accountants, clerks, timekeepers, office managers, and all others on staff; office supplies; drinking water; temporary heat, light and power; field toilets; costs of services; small tools and/or equipment not incorporated in the Work or directly associated with the Work; telephone system and charges; facsimile machines and charges; telegrams; photographs; photocopying; postage; tool breakage, repairs, replacement, blades, bits and parts; and bonds. Field office overhead shall not exceed the following percentages, as applied to craft labor: (a) ten percent (10%) if the cumulative total is less than One Hundred Thousand Dollars (\$100,000); (b) seven percent (7%) if the cumulative total is between One Hundred Thousand Dollars \$100,000 and Five Hundred Thousand Dollars (\$500,000); and (c) seven percent (7%) if the cumulative total is greater than Five Hundred Thousand Dollars (\$500,000). No field office overhead mark-up shall be applied to the engineering labor costs referenced in Section 19.4.4(a)(i)(.2).

(vi) Mark-up for home office overhead and profit shall be negotiated between the parties and shall not exceed five percent (5%) of the total sum of the categories identified in Section 19.4.4(a)(i) through Section 19.4.4(a)(v) above, exclusive of Section 19.4.4(a)(i)(.2).

(b) **Material.**

(i) All Materials incorporated into the Work shall be at Contractor's net cost. All actually received quantity discounts and prompt payment discounts shall be reflected as credits for any Materials purchased. Expendable materials (e.g., small tools and welding supplies) previously purchased for the Work are not eligible for direct reimbursement, but are included as part of field overhead.

(ii) One-third (1/3rd) of the cost of reusable materials, such as concrete formwork lumber, shoring or temporary enclosures is allowed for each change, but not to exceed published rental rates for such reusable materials.

(iii) Actual freight and transportation costs of Materials or materials used shall be reimbursed.

(iv) Overhead and profit shall be ten percent (10%) of the total sum of the categories identified in Section 19.4.4(b)(i) through Section 19.4.4(b)(iii) above.

(c) **Equipment Rental.**

(i) Subject to Section 19.4.4(c)(ii) below, allowable costs for equipment leased specifically for changes in the Work shall be at Contractor's net invoiced cost.

(ii) Allowable costs for equipment in sound workable condition owned or controlled by Contractor or any Subcontractor shall be based on actual cost information for each piece of equipment or groups of similar serial and series of equipment for which Owner can determine ownership or operating costs from Contractor's accounting records. When either ownership or operating costs cannot be determined for any piece of such equipment or groups from Contractor's accounting records, costs for that element of the equipment costs shall be based upon the applicable provisions of the Construction Equipment and Operating Expense Schedule – Region II, published by the US Army Corps of Engineers (“Corps Equipment Schedule Rates”). Working conditions shall be considered to be average for determining equipment rates using the Corps Equipment Schedule Rates. For equipment not included in the Corps Equipment Schedule Rates, rates for comparable pieces of equipment may be used or a rate may be developed using the formula provided in the Corps Equipment Schedule Rates. For forward pricing of Change Orders, the Corps Equipment Schedule Rates in effect at the time of negotiations shall apply. For retroactive pricing of Change Orders, the Corps Equipment Schedule Rates in effect at the time the Work was performed shall apply. Rates for equipment rented from an Affiliate of Contractor or for leased equipment under a lease-purchase arrangement, shall be determined using the lower of the Corps Equipment Schedule Rates or those rates charged to Contractor by such Affiliate of Contractor. Contractor shall submit a listing of its proposed rates based on the Corps Equipment Schedule Rates. Contractor’s proposed rates shall be subject to periodic review, updating and re-negotiation when the Corps Equipment Schedule Rates are updated.

(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 are non-power operated and/or hand held tools weighing less than forty (40) pounds and shall not be reimbursable as equipment rental costs.

(v) Overhead and profit shall be negotiated between the parties and shall not exceed five percent (5%) of the total sum of the categories identified in Section 19.4.4(c)(i) through Section 19.4.4(c)(iii) above.

(d) **Subcontractor Cost.**

(i) Subcontractor cost shall be priced in the manner prescribed above for Contractor.

(ii) Contractor's overhead and profit on Subcontractor Work shall be negotiated between the parties and shall not exceed five percent (5%) of the net amount of Subcontractor's cost of the change. Such Subcontractor mark-up shall be limited to one-tier.

(e) **Miscellaneous.** The following expenses incurred for performing changes in the Work shall be reimbursable:

(i) Unless separately covered and paid for by Owner under the CCIP, the net increase in premiums for public liability and property damage insurance charged by insurance company(ies), which net increase is directly attributable to the change in the Work. No additional overhead or profit will be authorized, permitted or paid on additional insurance costs allowed under this Section 19.4.4(e)(i).

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

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

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 extension of the Scheduled Substantial Completion Date shall be subject to the requirements set forth in accordance Article 13 of this Contract.

19.5.2 Pricing of Delay Claims. Once the Final Baseline Schedule is approved, the parties agree to negotiate in good faith and attempt to reach agreement on daily rates that will apply for Contractor's time-related costs of compensable Excusable Delays. If such rates have not been agreed-upon, Contractor will be paid in accordance with Section 19.4 above.

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 increase in the

Contract Price and the costs of other operations. 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(s) 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 Claim regarding compensation for such Work as provided in Section 12.1. Owner and Contractor hereby agree that the requirements contained in Section 8.5(d)(ii) of the Comprehensive Agreement, regarding the placement of Change Order Pricing Documents into escrow, shall not be applicable.

19.6.1 Daily Work Reports and Data Collection.

(a) Contractor shall collect and preserve concurrent time and materials data and records in written form for: (a) all time and materials Work; and (b) all Work performed which Contractor believes constitutes extra work, pending issuance of a Change Order or resolution of any Claim in accordance with Article 28. At reasonable times as requested by Owner, Contractor shall provide Owner with a copy of each such item; provided, however, that the provision of such information shall not constitute a RFC Notice under Section 19.3.1.

(b) From the records and data described in Section 19.6.1(a), Contractor shall furnish Owner completed daily work reports for each day's Work to which Section 19.6.1(a) applies. The daily time and material Work reports shall be detailed as follows:

(i) Name, classification, date, daily hours, total hours, rate, and extension for each worker (including both construction and non-construction personnel) for whom direct reimbursement is requested.

(ii) Designation, dates, daily hours, total hours, rental rate, and extension for each unit of machinery and equipment.

(iii) Quantities of Equipment and Materials, prices, and extensions.

(iv) Transportation of Equipment and Materials.

(v) For construction labor, the cost of property damage, liability, and worker's compensation insurance premiums, unemployment insurance contributions, bonds, and social security tax.

Monthly and at any time upon request by Owner, the reports shall also state the total costs to date for the time and materials Work.

19.6.2 Invoices. Equipment and Materials charges shall be substantiated by valid copies of invoices from the applicable Subcontractor. Such invoices shall be submitted with the daily time and material Work reports, or if not available, they shall be submitted with subsequent daily time and material Work reports.

19.6.3 Execution of Reports. All time and materials reports shall be signed by the Authorized Contractor Representative.

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 the increase in the Contract Price or extension of 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 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 Subparagraphs (a) and (b), and, in respect of the relevant document which Contractor has not furnished, a reasonably prudent Person would have found such document significant in negotiating the adjustment to the Contract Price, then such adjustment to the Contract Price shall be reduced 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 19.3.2:

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

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

(iii) all documents Contractor received from any Person 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 its 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 19.3.3.

19.8.3 An offset in an amount determined appropriate by Owner or its 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 12.6 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 written notice to Contractor, 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 Contractor satisfies the requirements of Articles 13 and 19 herein. 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, including providing a safe, smooth, and unobstructed passageway through the construction area for use by the public during the period of such suspension.

**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 error or negligent or intentionally wrongful act 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, provided that Owner has made payment to Contractor in accordance with the terms of this Contract;

(d) any 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 above;

(e) any Hazardous Substances originally introduced to or brought onto any Project Right-of-Way or other Owner property by any Contractor-Related Party;

(f) exacerbation, due to the negligence, recklessness or willful misconduct of any Contractor-Related Party, of the release, spreading, migration or toxicity of Hazardous Substances at the Site which are known by any Contractor-Related Party to exist;

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

21.1.2 To the fullest extent permitted by law, Contractor's indemnities exclude the portion of liability on a Claim that is attributable: (i) to the negligent acts or omissions of an Owner Indemnitee; (ii) to a deficiency in an Owner design or construction standard which either: (A) is unknown to any Contractor-Related Party; or (B) although known to a Contractor-Related Party, is communicated in writing to Owner and not waived by Owner; or (iii) any injuries or loss arising from acts of terrorism. If the negligent acts or omissions of an Owner Indemnitee or such deficiency in an Owner design or construction standard has contributed to a loss (in whole or in part), 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 or entity other than an Owner Indemnitee or a Contractor-Related Party, except that a third party includes: (i) 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 (ii) 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 Substances. 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 Substances 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: (i) inform Contractor of such Claim; (ii) send to Contractor a copy of all written materials Owner has received asserting such Claim; and (iii) notify Contractor that either: (A) the defense of such Claim is being tendered to Contractor; or (B) 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 21.2.6 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: (i) 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; (ii) accepts the tender of defense but with a "reservation of rights" in whole or in part; or (iii) 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(i) 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 law.

21.2.5 Owner shall be entitled to select its own legal counsel and otherwise control the defense of such Claim if: (i) 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 (ii) Owner, at the time it gives notice of the Claim or at any time thereafter, reasonably determines that: (A) a conflict exists between it and Contractor which prevents or potentially prevents Contractor from presenting a full and effective defense; or (B) 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(ii) 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.

**ARTICLE 22.
INSURANCE AND BONDS**

22.1 CCIP Insurance Requirements. Contractor shall obtain a Contractor-Controlled Insurance Program ("CCIP") with project specific limits that shall include the insurance coverages set forth in this Section 22.1. Contractor shall continuously keep in force the CCIP from and after the Final Design Notice to Proceed until Contractor has achieved Substantial Completion. The CCIP will also apply during the performance of warranty Work (unless otherwise stated below); provided, however, that the Product/Completed Operations coverage under Section 22.1.2(c) shall continue to be in place for the time period set forth in Section 22.1.2(c). Contractor shall be responsible for payment of all premiums and all deductibles specified in this Section 22.1 unless otherwise expressly stated. Subcontractors shall provide a representation and warranty to Contractor that insurance costs for the coverages provided under the CCIP are excluded from their bids. For purposes of this Section 22.1, the term "On-Site Work" shall mean Work performed on the Site, Work performed on the property of Owner or WMATA adjacent to the Site, and Work incidental to the Site.

22.1.1 Workers' Compensation/Employer's Liability Insurance. The CCIP shall include Workers' Compensation/Employer's Liability Insurance for Contractor and all Subcontractors of all tiers for their On-Site services, which insurance shall include the following:

- (a) Workers' Compensation (Coverage A), with statutory limits, and in accordance with the laws of the state where the Work is performed;
- (b) Employer's Liability (Coverage B) with minimum limits of One Million Dollars (\$1,000,000) Bodily Injury by Accident, each Accident, One Million Dollars (\$1,000,000) Bodily Injury by Disease, each Employee;
- (c) Sixty (60) Day Cancellation Clause;
- (d) United States Longshoreman's Act and Harbor Workers Act and Jones' Act coverage, as may be appropriate for the Work.
- (e) Benefits stipulated by any labor contracts, as applicable; and
- (f) All States Endorsement.

22.1.2 Commercial General Liability Insurance. The CCIP shall include Commercial General Liability insurance covering Contractor and all Subcontractors of all tiers for their On-Site services, which insurance shall have the following limits:

\$2,000,000	Bodily injury/property damage each occurrence
\$4,000,000	Products/completed operations aggregate
\$4,000,000	General annual aggregate
\$2,000,000	Personal injury any one person or organization
\$100,000	Fire damage legal liability any one premises
\$50,000	Medical payments any one person

Coverage for the Commercial General Liability Insurance shall include, but not be limited to, the following:

- (a) contractual liability;
- (b) coverage of premises/operations;
- (c) product and completed operations for a period of ten (10) years after Substantial Completion;
- (d) bodily injury;
- (e) broad form property damage;
- (f) personal injury and advertising liability with the contractual liability exclusion deleted;
- (g) cross-liability or severability of interests;
- (h) independent contractors' liability;
- (i) Explosion, Collapse, Underground (X, C, U) coverage;
- (j) The liability insurance shall not exclude coverage of third party bodily injury and property damage claims arising out of Contractor's or its design professionals' errors and omissions;
- (k) there are to be no exclusions for blasting or cranes;
- (l) if a silica exclusion is required by the insurer, it shall not be broader than excluding coverage for lung disease caused by airborne silica or silica dust;
- (m) pollution exclusion limited exception to cover sudden and accidental pollution, as well as discharge, dispersal, seepage, migration, release or escape of pollutants;
- (n) annual aggregate liability policy for the construction term; and
- (o) coverage for full term of the warranty obligations under this Contract.

The Worker's Compensation, Employer's Liability and Commercial General Liability insurance will be placed with the Project insurer on the basis that there will be a Five Hundred Thousand Dollars (\$500,000) per occurrence deductible applicable to each of these coverages, subject to a maximum aggregate for all amounts paid within the deductible. It is intended that payment of

the per-loss deductible and maximum aggregate deductible amount will be the responsibility of the Contractor and will be funded in the cost of the CCIP.

22.1.3 Automobile Liability Insurance. For the benefit of Contractor and Owner, the CCIP shall include Automobile Liability insurance providing liability coverage for claims of bodily injury and property damage arising from the use of Contractor owned, non-owned and hired motor vehicles both on and off-site. Such policy shall provide coverage of One Million Dollars (\$1,000,000) combined single limit of liability for bodily injury and property damage. Coverage shall include pollution liability arising from overturn and collision.

22.1.4 Excess Liability Insurance. The CCIP shall include a policy of Excess Liability in excess of the underlying limits and terms set forth in Employer's Liability, CGL and Auto Liability policies as set forth in Sections 22.1.1, 22.1.2 and 22.1.3. Such policy or policies shall provide coverage of no less than:

- ██████████ combined single limit of liability for bodily injury, property damage and personal injury per occurrence;
- ██████████ general annual aggregate limit specifically and exclusively for the Project until Project Substantial Completion;
- ██████████ Project Aggregate for Completed Operations; and
- ██████████ Project Aggregate for Warranty Period

Such policy or policies shall also include the following terms and conditions:

- (a) Drop down feature;
- (b) Pay on behalf of wording;
- (c) Concurrency of effective dates with primary;
- (d) Punitive damages (where not prohibited by law); and
- (e) Follow form primary;

22.1.5 Builder's All Risk Insurance. The CCIP shall include a policy of Builder's All Risk insurance for physical loss, destruction or physical damage to the Work from the Full Notice to Proceed until Owner delivers to Contractor the Substantial Completion Certificate, duly executed by Owner, acknowledging that Contractor has achieved Substantial Completion. The Builder's All Risk policy will cover Contractor, as named insured, Owner, and all Subcontractors of all tiers performing On-Site Work and other eligible parties as additional named insureds as respect to their On-Site activities. The limit shall equal One Billion, Seven Hundred Sixty-Six Million, Five Hundred Forty-One Thousand, Four Hundred Seventy-Five Dollars (\$1,766,541,475). The Builder's All Risk policy will be automatically continuously in effect for the period set forth in the first sentence above and shall be written on a replacement cost basis with a limit of the total installed cost of the Project. The Builder's All Risk Policy shall include as a minimum the following coverages:

- (a) Earthquake, flood, transit, collapse;
- (b) All enabling works and preliminary works (including associated works and site mobilization and establishment);
- (c) Permanent and temporary works erected or in the course of erection;
- (d) All Equipment and Materials and other things for incorporation in the Work;
- (e) Property of every kind and description belonging to or in the care custody or control of the Insured or held by them in trust or on commission or for which they are responsible (excluding site accommodation and contents not forming part of the permanent works);
- (f) machinery, apparatus, equipment, temporary structures and supplies other than construction plant tools and equipment or employees tools and personal effects and contents not forming part of the permanent works;
- (g) Free issue items used in connection with the Project or intended for incorporation therein;
- (h) Professional Fees – Sub-Limit Five Million Dollars (\$5,000,000) any one occurrence;
- (i) Removal to Place of Safety;
- (j) Expediting Expenses – Sub-Limit twenty-five percent (25%) of loss – maximum Five Million Dollars (\$5,000,000) any one occurrence;
- (k) Additional Cost of Working – Sub-Limit Two Million Five Hundred Thousand Dollars (\$2,500,000) any one occurrence but with a fifty percent (50%) co-insurance clause;
- (l) Removal of debris – Sub-Limit twenty-five percent (25%) of the loss up to a maximum Limit Twenty-Five Million Dollars (\$25,000,000) any one occurrence;
- (m) Offsite Storage and Inland Transit – Sub-Limits Fifteen Million dollars (\$15,000,000);
- (n) Testing Commissioning and Start-up;
- (o) Marine Cargo 50/50 clause;

(p) LEG 2/96 cover for resulting damage from error in design, defect in material or faulty workmanship;

(q) Strikes, Riots and Civil Commotion (Excluding Terrorism);

(r) Waiver of subrogation against all insureds;

(s) Permission to occupy;

(t) The Builder's All Risk Policy shall include deductibles not greater than:

(1) Fire, Lightning, explosion, Flood, Wind Earthquake and Landslip Five Hundred Thousand Dollars (\$500,000);

(2) Tunneling One Million Dollars (\$1,000,000) each and every loss, or deductible as may be commercially available; and

(3) All other losses including during Operational Testing One Hundred Thousand Dollars (\$100,000) each and every loss;

22.1.6 All Risk Marine Cargo Insurance. The CCIP shall include an All Risk Marine Cargo insurance policy for physical injury to or physical loss or damage on a warehouse to warehouse basis covering ocean marine and air transit shipments for the Project (which may include barge shipments) to the full replacement value of the Equipment and Materials in shipment, with deductible not-to-exceed Twenty-Five Thousand Dollars (\$25,000) per loss.

22.1.7 Aircraft liability Insurance. The CCIP shall include aircraft liability coverage (including owned and non-owned) when aircraft are used in the performance of the work with the following limits:

Bodily injury: \$5,000,000 each occurrence; \$5,000,000 each person;
Property Damage: \$5,000,000 each occurrence

22.1.8 Watercraft Liability Insurance. The CCIP shall include watercraft liability coverage (including owned and non-owned) when watercraft are used in the performance of the work with the following limits:

Bodily injury: \$5,000,000 each occurrence; \$5,000,000 each person;
Property Damage: \$5,000,000 each occurrence

22.1.9 Railroad Protective Liability Insurance. The CCIP shall include a railroad protective liability policy when the work is on or within fifty (50) feet of a railroad or affects any railroad property, including but not limited to tracks, bridges, tunnels, and switches.

The limit of coverage shall be Five Million Dollars (\$5,000,000) for each occurrence and Ten Million Dollars (\$10,000,000) in the aggregate.

22.1.10 Contractor's Equipment. Contractor shall procure a Contractor's Equipment policy covering loss of or damage to equipment, tools or any other property of Contractor.

22.2 Other Insurance Requirements.

22.2.1 Liability Insurance for Off-Site Services. Contractor shall provide, on behalf of itself and shall require Subcontractors to provide for themselves, Commercial General Liability insurance for any Work not performed On-Site, with the Owner Indemnitees and Contractor named as additional insureds. The following limits shall apply:

\$2,000,000	bodily injury/property damage each occurrence
\$4,000,000	Products/completed operations aggregate
\$4,000,000	General aggregate
\$2,000,000	personal injury any one person or organization
\$ 100,000	fire damage legal liability any one premises
\$50,000	medical payments any one person

22.2.2 Worker's Compensation/Employer's Liability Insurance for Off-Site Work. Contractor and Subcontractors shall provide Worker's Compensation/Employer's Liability Insurance for any Work not performed On-Site, which insurance shall include:

- (a) Workers' Compensation (Coverage A), with statutory limits, and in accordance with the laws of the state where the Work is performed;
- (b) Employer's Liability (Coverage B) with minimum limits of One Million Dollars (\$1,000,000) Bodily Injury by Accident, each Accident, One Million Dollars (\$1,000,000) Bodily Injury by Disease, each Employee;
- (c) Sixty (60) Day Cancellation Clause; and
- (d) All States Endorsement.

22.2.3 Automobile Liability Insurance. Contractor shall cause each Subcontractor to carry insurance coverage for Claims of bodily injury and property damage arising from the use of owned, non-owned and hired motor vehicles, or those used on behalf of the Subcontractor, identified from time-to-time for use on the Project by or on behalf of the Subcontractor, with a limit not less than Two Million Dollars (\$2,000,000) combined single limit. This insurance may be provided through a combination of primary and excess insurance policies.

22.2.4 Supplemental General Liability Policy. A project-specific CGL policy shall be procured to cover third party bodily injury or property damage with a combined single limit of Twenty-Five Million Dollars (\$25,000,000) per occurrence and in the aggregate only in

the event of tie-in and turnover to Owner of any rail system prior to when Owner delivers to Contractor the Substantial Completion Certificate, duly executed by Owner, acknowledging that Contractor has achieved Substantial Completion.

22.3 Other Insurance Covenants.

22.3.1 General Covenants. Each insurance policy obtained by the Contractor shall:

(a) be in form and substance as is then standard in and reasonably acceptable to Owner for policies of like coverage;

(b) be issued by insurance carriers licensed to do business in the State and having a current policyholder's management and financial size category rating of not less than "AX" according to A.M. Best's Insurance Reports Key Rating Guide (except for policies underwritten by Lloyd's of London and approved foreign companies acceptable to the State and approved in writing by Owner), or of recognized financial responsibility and otherwise agreed by the parties and approved by Owner in writing;

(c) provide coverage on an "occurrence" basis and not a "claims made" basis;

(d) provide that no deductibles or self-insured retentions shall be applied against Owner, other than an aggregate deductible of no more than Two Million Dollars (\$2,000,000) for Builder's Risk deductibles per Section 22.1.5, after which any such amounts for deductibles for Builder's Risk shall be borne by Contractor;

(e) provide that the insurance policy cannot be canceled, suspended, lapsed or modified upon less than sixty (60) days prior to written notice by registered or certified mail to Owner;

(f) with respect to the insurance policies described in Sections 22.1.2, 22.1.3 and 22.1.4 (both primary and excess):

(A) provide that the coverage thereof is primary and non-contributory coverage with respect to all named or additional insureds; and

(B) designate the Owner and Owner Indemnitees as additional named insureds at policy inception as to any insured loss or liability arising out of or in any way related to the Project or Project Right-of-Way, provided that with respect to the insurance under Section 22.2.3, the additional named insured status shall not cover Owner owned or hired vehicles, unless such vehicles are used by Contractor or any Subcontractor.

22.3.2 Delivery of Binder. Within sixty (60) days after the Effective Date of the Original Contract, but prior to any Notice to Proceed, and thereafter not less than thirty (30) days prior to the expiration date of each insurance policy required hereunder, Contractor shall deliver

or cause to be delivered to Owner a binder or certificate of insurance from the broker, agent or carrier, in form reasonably satisfactory to Owner, stating the identity of all carriers, identity of named and additional insureds, type of coverage, description of all endorsements, policy limits, deductibles, subrogation waiver, other essential policy terms and a statement of non-cancellation consistent with Section 22.3.1(e). In addition, as soon as they become available, Contractor shall deliver or cause to be delivered to Owner: (i) a complete certified copy of each such insurance policy or modification, or renewal or replacement insurance policy and additional insured endorsements; and (ii) satisfactory evidence of payment of the premium therefor. If Owner does not receive the foregoing proof of coverage and payment within five (5) business days after delivering written request therefor, Owner may, in addition to any other available remedy, without obligation and without further inquiry as to whether such insurance is actually in force, obtain such an insurance policy; and Contractor shall reimburse Owner for the cost thereof upon demand.

22.3.3 Contractor's Failure to Comply. If on account of Contractor's failure to comply with the provisions of this Article 22, Owner is adjudged to be a co-insurer (through admission or stipulation by Contractor or court decision), then any loss or damage it shall sustain by reason thereof shall be borne by Contractor and Contractor shall immediately pay the same upon receipt of written demand therefor and evidence of such loss or damage.

22.3.4 Compliance with Requirements of Policies. Contractor and Owner shall observe and comply with the lawful requirements of all insurance policies. Contractor also shall perform and satisfy the commercially reasonable requirements of insurance companies writing such types of insurance policies so that at all times companies of good standing and meeting the requirements of Section 22.3.1(b) shall be willing to write or to continue such coverage.

22.3.5 No Representation as to Limits of Insurance. Owner makes no representation that the limits of liability specified for the insurance policies to be carried pursuant to this Article 22 are adequate to protect Contractor against its undertakings under this Contract or any other Project Agreement or preclude Owner from taking any actions as are available to it under this Contract or otherwise at law. Owner shall not be limited to the amount of the insurance premium not paid in the proof of any damages it may claim against Contractor or any other person arising out of or by reason of failure of Contractor to provide and keep in force the insurance policies required by this Article 22, but Owner shall instead be entitled to recover the full amount of damages available.

22.3.6 Duty to Cooperate. If the insurance carriers for any insurance policy described in this Article 22 deny coverage to Contractor or Owner with respect to any Contractor claims reported to such carriers, Contractor and Owner shall cooperate in good faith to establish whether and to what extent to contest, and how to fund the cost of contesting, the denial of coverage.

22.3.7 Liability for Deductibles. If the Contract Documents expressly assign responsibility to either Owner or Contractor to indemnify the other against or pay a claim that is subject to a deductible under any applicable insurance policy under this Article 22, then such indemnifying party shall be liable for the deductible, provided, however, that Owner shall pay

the first Two Million Dollars (\$2,000,000) in the aggregate of deductible amounts under the Builder's Risk Policy. If neither Owner nor Contractor is assigned such responsibility under this Contract and if this Contract does not otherwise expressly assign responsibility for a deductible, then Contractor shall be responsible for such deductible.

22.3.8 Waiver of Subrogation. The Owner and Contractor waive all rights against: (i) each other and the subcontractors, agents and employees of each other; and (ii) subcontractors, agents and employees, for damages caused by fire or other peril to the extent covered by property insurance obtained by Contractor pursuant to this Article 22 or by any other property insurance applicable to the Work. The insurance policies obtained by Contractor and Subcontractors under this Article 22 shall be endorsed to include a waiver of subrogation in favor of Owner Indemnitees.

22.4 Contractor-Provided Insurance After Substantial Completion and Prior to Final Acceptance. In the period after Substantial Completion and before Final Acceptance, Contractor will provide All Risk Property Insurance with a limit of Twenty-Five Million (\$25,000,000) per occurrence for the benefit of Owner and WMATA, provided, however, that the period for such insurance shall not exceed one (1) year.

22.5 Performance and Payment Bond.

22.5.1 Within fifteen (15) days of Full Notice to Proceed, Contractor shall deliver to Owner a combined Performance and Payment Bond in the amount of Two Hundred Seventy-Four Million Dollars (\$274,000,000). The Surety's obligations under the Payment Bond component will be maintained, and shall remain in full force and effect, until one (1) year after the Substantial Completion Date. The Surety's obligations under the Performance Bond component will be maintained, and shall remain in full force and effect, until three (3) years after the Substantial Completion Date, provided, however, that as of the date that is one (1) year after the Substantial Completion Date, the Surety's penal sum under the Performance Bond component shall be reduced to Fifty Million Dollars (\$50,000,000). The Performance and Payment Bond shall be in the form set forth in Exhibit 22.5.1.

22.5.2 The Performance and Payment Bond shall be executed by Contractor and a surety company ("Surety") authorized to do business in the Commonwealth of Virginia in accordance with the laws of the Commonwealth of Virginia and the rules and regulations of the Commonwealth of Virginia's State Corporation Commission. In order to be considered properly executed, the Performance and Payment Bond shall include authorized signatures and titles.

22.6 Parent Company Guarantees. Prior to the execution of this Contract, Contractor provided to Owner Parent Company Guarantees executed by [REDACTED] (the "Guarantors"), copies of which are attached hereto as Exhibit 22.6.

**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 rules and regulations 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. Owner has adopted a Disadvantaged Business Enterprises (“DBE”) program for the Project, which program includes the DBE requirements for this Contract as set forth in Exhibit 23.2 (DBE Subcontracting Plan). 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 them. Contractor (or one of its equity participants) must perform at least thirty-five percent (35%) of the Work and at least thirty-five percent (35%) of the Work must be subcontracted out. Owner’s approval is required before Contractor may select or substitute any Major Subcontractor.

**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 above.

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 20.2); 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 any Guarantor; 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 any Guarantor; 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) A DTP Default has occurred under the Comprehensive Agreement; or

(j) Contractor fails to make payment when due in accordance with its agreements with Subcontractors and applicable law; or

(k) 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

(l) Any Guarantor revokes or attempts to revoke its obligations under its guarantee or otherwise takes the position that such instrument is no longer in full force and effect; or

(m) 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(m) unless Owner gives its prior written consent; or

(n) Contractor fails to achieve Substantial Completion by the LD Date.

Except for a default under Item (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 (a) 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 (b) 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 and/or Guarantors to complete the Work;
- (b) to take 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, the Surety, or any Guarantor, 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 Sections 26.2 and 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 LD 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) attorney's fees and expenses incurred by Owner in enforcing its rights against Contractor, Surety or Guarantor(s).

Termination by Owner pursuant to this Article 25 shall not relieve Contractor, Surety or Guarantor from liability for Liquidated Damages. If this Contract is terminated pursuant to this Article 25, Contractor's liability to Owner shall be limited to the Liability Cap. 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, the Surety or any Guarantor, 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 Owner shall not have the right to terminate this Contract for default under Section 25.2.2 if its basis for termination is based in whole or in part on the Contractor Event of Default set forth in Section 25.1(n) until the expiration of the three hundred sixty-five (365) day period following the LD Date, and further agrees that its sole remedy for Contractor's failure to achieve Substantial Completion within such 365-day period shall be Contractor's payment of Liquidated Damages. The preceding sentence shall not prejudice any other rights or remedies that Owner may have due to any other Contractor Event of Default during this 365-day period. If Substantial Completion has not occurred within such 365-day period, Owner shall have the right to terminate this Contract under Section 25.2.2, and shall have the right to exercise whatever other rights and remedies it may have under the Contract.

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 delivery to Owner of a Notice of Default of such nonpayment, Contractor's remedies shall be as follows:

25.4.1 Suspension. Contractor is entitled to suspend the Work after delivery of a written notice to Owner. 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 herein. 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. Contractor is entitled to terminate this Contract for default if a suspension for nonpayment continues for more than one hundred eighty (180) consecutive days. The termination shall become effective if, after such 180-day period, Owner fails to cure the nonpayment within twenty (20) days of its receipt of a Notice of Intent to Terminate from Contractor. 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 LD 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 LD 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 LD 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 LD Date shall not preclude Owner from terminating the Contract, except as specifically provided in Section 25.3.1. 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 of the date of execution and delivery of the Contract.

26.1.1 Amount.

(a) Liquidated Damages for failure to meet the LD Date shall be payable as follows:

(i) If Substantial Completion has not occurred on or before the LD Date, but occurs on or before the day that is ninety-one (91) days after the LD 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.

(ii) If Substantial Completion has not occurred on or before the LD Date, but occurs on or after the day that is ninety-one (92) days after the Completion Date and on or before the day that is one hundred eighty-two (182) days after the LD Date, then Contractor shall pay to Owner the sum of: (a) Two Million Two Hundred Seventy-Five Thousand Dollars (\$2,275,000), which represents the amount of Liquidated Damages calculated pursuant to Section 26.1.1(i) above; and (b) Seventy-Five Thousand Dollars (\$75,000) per day for each day between the ninety-second (92nd) day after the LD Date and the day Substantial Completion is achieved.

(iii) If Substantial Completion has not occurred on or before the LD Date, but occurs on or after the day that is one hundred eighty-three (183) days after the LD Date, then Contractor shall pay to Owner the sum of: (a) Nine Million One Hundred Thousand Dollars (\$9,100,000), which represents the amount of Liquidated Damages calculated pursuant to Sections 26.1.1(i) and (ii) above; and (b) One Hundred Thousand Dollars (\$100,000) per day for each day

between the one hundred eighty-third (183rd) day after the LD Date and the day Substantial Completion is achieved.

(b) 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.

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 14.4. Failure of Owner to give written notice shall not constitute a waiver of the Liquidated Damages.

26.2 Limitations of Liability.

26.2.1 Limitation of Liability for Liquidated Damages. The parties agree that Contractor's total aggregate liability to Owner for the payment of Liquidated Damages under Section 26.1 above shall not exceed Sixty Million Dollars (\$60,000,000).

26.2.2 Liability Cap. In no event shall Contractor's total aggregate liability to Owner under the Contract Documents for any and all damages and losses from all causes, inclusive of those costs set forth in Section 25.2.4 in the event Owner terminates Contractor for default, exceed in the total aggregate Five Hundred Million Dollars (\$500,000,000) (which amount shall specifically include any Liquidated Damages paid) ("Liability Cap"). Owner hereby releases Contractor from all liability in excess of that amount, whether arising in contract, tort (including negligence) or other legal theory, provided, however, that Contractor's liability for the following shall not be limited or released in any way by the Liability Cap:

(a) 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;

(b) Contractor's liability for fraud, 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); and

(c) Contractor's liability for its indemnity obligations as set forth in Section 21.1.

26.2.3 Costs to Complete the Work. Notwithstanding the provisions in Section 26.2.2, the costs incurred by Contractor in completing the Work and achieving Substantial Completion shall not be construed as being part of or limited by the Liability Cap.

26.2.4 Liability Limitation Period. Notwithstanding anything to the contrary in this Contract, Contractor shall not be liable to Owner for any Claims: (1) that accrue more than five (5) years from the Substantial Completion Date; or (2) for which Contractor has not received written notice from Owner within five (5) years from the Substantial Completion Date, provided, however, that the preceding liability limitation shall not apply to:

(a) Contractor's liability for fraud, 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); or

(b) Contractor's liability for its indemnity obligations as set forth in Section 21.1, but only to the extent that Contractor could have been sued directly by, and would have been liable directly to, the third party in the underlying action.

The foregoing liability limitation shall not be construed to: (i) impact Owner's rights against Subcontractors for any extended warranty or latent defect periods that Contractor has obtained from Subcontractors pursuant to Section 11.3 above; or (ii) increase Contractor's liability for damages beyond those limitations set forth in Sections 26.2.2 or 26.3.

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 indirect, 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, 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; or

(e) 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.

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, provided, however, that the amount of Contractor's liability shall not exceed in the aggregate the limits set forth in Section 26.2.2.

26.4.2 The releases and limitations of liability 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 related or affiliated entities and its and their directors, officers, employees and agents.

**ARTICLE 27.
TERMINATION FOR CONVENIENCE**

27.1 Notice of Termination.

27.1.1 Owner may terminate this Contract prior to issuance of the Final Design Notice to Proceed or the Full Notice to Proceed in accordance with Article 2. In such event, Contractor's recovery shall be limited to the remedy set forth in Article 2.

27.1.2 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 Final Design Notice to Proceed or the Full 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;

(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: (a) possession and control of the Project; and (b) all right, title and interest of Contractor in and to: (i) the Work in process, completed Work, supplies and Equipment and Materials produced or acquired for the Work terminated; (ii) the construction documents 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 (iii) 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: (a) shall not take any such action with respect to any items for which title has previously transferred to Owner; (b) is not required to extend credit to any purchaser; and (c) 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 Design Documents, construction documents, and all other completed or partially completed drawings (including plans, elevations, sections, details and diagrams), specifications, records, samples, information and other property that would have been required to be furnished to 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. Such agreed amount or amounts payable for the terminated Work, exclusive of costs of demobilization costs, termination penalties and other shut-down costs, 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 and Payment 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. As part of the relationship of trust and confidence established between Contractor and Owner under this Contract, Owner and Contractor shall disclose and discuss any issues that may affect the cost or time of performance of the Work, whether or not such issues result in a Claim, at quarterly meetings between senior representatives of the parties.

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's Senior Representative and Owner's Senior Representative shall 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 law.

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.

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 Owner's Contracting Officer's final 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 hereof, 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 public agency or public entity, as permitted by law, 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:

Dulles Transit Partners, LLC
1595 Spring Hill Road
Suite 600
Vienna, Virginia 22182-2228
Attn:
[REDACTED]
Project Executive Director
Fax: (703)852-4905

With a copy to:

[REDACTED]

If to Owner:

Metropolitan Washington Airports
Authority
1 Aviation Circle
Arlington, VA 23218
Attn:
[REDACTED]
Contracting Officer
Fax: (703)417-8993

With a copy to:

[REDACTED]
Executive Vice President and
General Counsel
Metropolitan Washington Airports
Authority
1 Aviation Circle
Arlington, VA 23218
Fax: (703)417-3917

and:

[REDACTED]
Secretary to Board of Directors
Metropolitan Washington Airports
Authority
1 Aviation Circle
Arlington, VA 23218
Fax: (703)417-8967

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 Substantial Completion. 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 and Section 26.2.2 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. The parties hereto acknowledge and agree that this Contract and the other Contract Documents have been prepared jointly by the parties and has been the subject of arm's length and careful negotiation over a considerable period of time, that each party has been given the opportunity to independently review this Contract and the other Contract Documents with legal counsel, and that each party has the requisite experience and sophistication to understand, interpret and agree to the particular language of the provisions hereof. Accordingly, in the event of an ambiguity in or dispute regarding the interpretation of this Contract or any other Contract Documents, this Contract or any other Contract Documents shall not be interpreted or construed against the party preparing it, and instead other rules of interpretation and construction shall be utilized.

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 Obligations of Parties for Requirements Not Addressed in Contract. This Contract and the other Project Agreements attempt to set forth in full all requirements applicable under the PPTA as to the study, planning, design, acquisition, development, construction, operation, maintenance, repair, management and financing of the Project and attempt to define in full the rights and responsibilities of each party in connection therewith. To the extent requirements and rights and responsibilities have not been addressed in this Contract and the other Project Agreements, the parties agree to carry out their respective responsibilities in the spirit of cooperation contemplated by the PPTA, recognizing that they may not have defined in a sufficient detail or anticipated fully all activities necessary for the full implementation of the Project.

29.12 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.

29.13 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."

29.14 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.

29.15 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.

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

29.17 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.

29.18 Payments by Owner. The parties acknowledge that all amounts payable by Owner under this Contract and any other Contract Documents are subject to appropriations by

the Virginia General Assembly and subsequent allocations by the Commonwealth Transportation Board. Moreover, Owner is not obligated to provide funding for the Work until all conditions precedent as set forth in this Contract and any other Contract Documents have been satisfied or waived in writing.

29.19 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.

29.20 Value Engineering Change Proposals (“VECP”)

29.20.1 General. Contractor shall have the right to voluntarily develop, prepare, and submit in writing, Value Engineering Change Proposals (VECP) that modify the Contract requirements set forth in Appendices 1, 2 or 3 for the purpose of reducing the Contract Price. Contractor shall share with Owner in any savings realized from accepted VECPs in accordance with Section 29.20.3 below.

29.20.2 VECP Requirements.

(a) Contractor's VECP shall clearly demonstrate that modifying the Contract requirements would:

- (i) Result in a net reduction in the Contract Price;
- (ii) Not impair, in any manner, the essential functions or characteristics of the Project, including, but not limited to, service life, economy of operation, ease of maintenance, desired appearance, design and safety standards; and
- (iii) Not adversely impact the Project Schedule or the Scheduled Substantial Completion Date.

(b) At a minimum, Contractor shall submit the following information to Owner with each VECP:

- (i) A description of existing Contract requirements for performing both the Work and the VECP, with a discussion of the comparative advantages and disadvantages of each;
- (ii) An itemization of the Contract requirements that must be changed if the VECP is adopted;
- (iii) A detailed estimate of the cost of performing the Work under the then-existing Contract requirements and under the VECP;
- (iv) A statement of the date by which Owner must notify Contractor that a Change Order adopting the VECP will be issued. Said date shall be selected so as to preclude all adverse impacts to the Project Schedule

regardless of whether Work proceeds as specified in the then-existing Contract requirements or as specified in the VECP;

(v) A statement of the effect adoption of the VECP will have on the time for completion of the Contract;

(vi) The Contract items of work affected by the proposed changes, including any quantity variation attributable to them; and

(vii) A description and estimate of costs Owner may incur in implementing the VECP, such as redesign, evaluation, tests, and operating and support costs.

29.20.3 VECP Savings Sharing with Contractor.

(a) Owner may accept in whole, or in part, any VECP submitted by Contractor pursuant to this Section 29.20 by issuing a Change Order that will identify the VECP on which it is based. The Change Order will provide for an equitable adjustment in the Contract Price and will revise any other affected provisions of the Contract Documents.

(b) The equitable adjustment in the Contract Price shall be determined in accordance with the following:

(i) Estimated gross savings shall include Contractor's labor, Equipment and Materials, overhead, profit and bond.

(ii) Net savings shall be determined by deducting from the estimated gross savings: (1) Contractor's costs of preparing, submitting, developing and implementing the VECP (including any amount attributable to a Subcontractor); and (2) the estimated amount of increased costs to Owner resulting from the change, such as testing, redesign, implementation, inspection, related items, and Owner-furnished material.

(iii) Net savings shall be shared between Contractor and Owner on the basis of thirty percent (30%) for Contractor and seventy percent (70%) for Owner.

(iv) The Contract Price shall be reduced by Owner's share of the net savings.

(c) Owner shall be the sole judge of the acceptability of a Contractor submitted VECP and of the estimated net savings from the adoption of all or any part of such proposal. In determining the estimated net savings, Owner may disregard the Contract Schedule of Values and line item prices if, in Owner's judgment, such prices do not represent a fair measure of the value of the Work to be performed or deleted.

29.20.4 VECP Submission and Processing

(a) Contractor shall submit six (6) copies of the VECP along with all supporting information to Owner. Owner shall notify Contractor of the status of the VECP within twenty-one (21) calendar days after its receipt of the VECP. If additional time is required for evaluation, Owner shall notify Contractor within the twenty-one (21) day period and provide the reason for the delay and the expected date of the decision. Unless Owner's notification specifically states otherwise, Contractor shall continue to perform the Work in accordance with the requirements of the Contract.

(b) Failure of Owner to adopt the VECP by the date specified in the VECP, or the date subsequently specified in writing, shall be deemed rejection of the VECP.

(c) Owner shall not be liable for any delay in acting upon, or failing to act upon, a VECP.

(d) If the VECP is not accepted, Owner shall notify Contractor in writing, explaining the reasons for rejection. Contractor may withdraw any VECP, in whole or in part, at any time before it is accepted or rejected by Owner.

(e) Any VECP may be accepted, in whole or in part, by Owner issuing a Change Order citing this Section 29.20. Owner may accept the VECP, even though an agreement on price reduction has not been reached, by issuing Contractor a notice to proceed with the change.

(f) Owner shall have the sole and absolute discretion to accept or reject all or part of any VECP, and its decision shall be final, binding and not subject to review through the disputes process set forth in Article 28 or in any other manner.

(g) Contractor shall continue to perform the work in accordance with the requirements of the Contract until a notice to proceed is issued or a Change Order is issued by Owner incorporating the VECP into the Contract. If a VECP has not been approved by the date upon which Contractor's VECP submission specifies that a decision should be made, or such other date as Contractor may subsequently have requested in writing, such VECP shall be deemed rejected.

29.20.5 Contractual Obligations

(a) The submission of a VECP by Contractor to Owner shall not in itself affect the rights or obligations of either party under this Contract.

(b) Owner acceptance of a VECP and performance of the cost-reduction work shall not extend the time of completion of the Contract unless specifically provided for in the Change Order.

29.20.6 Preliminary VECPs

(a) Contractor may submit a Preliminary value engineering change proposal (Preliminary VECP) to Owner to determine whether an idea is considered feasible and to assist Contractor in determining whether a formal VECP should be developed and submitted. A Preliminary VECP should be brief, one or two pages if possible, but comprehensive. At a minimum, it should:

- (i) Describe the technical concept being contemplated;
- (ii) Describe other, non-technical factors critical to analysis of the potential VECP such as schedule impacts, aesthetic considerations, operational or maintenance impacts, etc.;
- (iii) Provide an order-of-magnitude estimate of the net cost savings which might be realized from the potential VECP; and
- (iv) State approximate costs for development of the formal VECP.

(b) Submittal of a Preliminary VECP does not establish ownership of a value engineering idea and does not establish a right to share in any resultant savings. Ownership of a value engineering idea is not established until a fully documented formal VECP is submitted. Owner will review the Preliminary VECP within ten (10) business days and indicate if the ideas presented therein have potential, could be modified to have potential, or have little or no chance of being accepted.

(c) Indication by Owner that a Preliminary VECP has potential does not guarantee that the subsequent formal VECP will be accepted. Owner shall be the sole judge of the acceptability of a formal VECP and reserves the right to reject a VECP for any reason, including technical, non-technical, financial or contractual reasons.

29.21 Contribution to Capital Reserve Account. Owner has notified Contractor that, as a condition of considering and approving the FFGA, the FTA has required Owner and/or its funding partners identify funding sources for a \$200 million Capital Reserve Account (“CAPRA”), with the CAPRA being created to ensure that sufficient funds will be available to cover risks on the Project in the event that Project cost exceeds allocated and unallocated contingency levels. In consideration for the benefits that it will receive under this Contract, Contractor agrees that it will participate in the process of funding the CAPRA, in the following amounts and in the following manner:

29.21.1 Amounts to be Contributed. Contractor’s financial contribution to the CAPRA shall be as follows:

- (a) Upon issuance of the Full Notice to Proceed, Contractor shall be entitled to receive from Owner, under the Comprehensive Agreement, a total of Twenty-Six Million Six Hundred Thousand Dollars (\$26,600,000). Contractor shall contribute

Fifteen Million Dollars (\$15,000,000) of this amount to the CAPRA. Such amount shall be deemed as contributed as of the date of Full Notice to Proceed.

(b) Contractor shall contribute one hundred percent (100%) of its portion of the VECP net savings under Section 20.29.3(b)(iii), to a maximum amount of Five Million Dollars (\$5,000,000). Such amounts shall be deemed as contributed as of the date that the VECP is incorporated into a Change Order.

(c) Contractor shall contribute fifty percent (50%) of any fee earned on additive Change Orders issued after the Effective Date, to a maximum amount of Five Million Dollars (\$5,000,000). Such amount shall be deemed as contributed as of the date that Contractor is entitled to be paid for the Change Order, with the understanding that once such amount is credited to the CAPRA, there shall be no reduction of this amount to account for deductive Change Orders.

(d) Contractor shall contribute the interest earned on deposits into the CAPRA Escrow Account described in Section 29.21.2 below.

29.21.2 Creation of an Escrow Account. Owner shall place all monies contributed by Contractor into an interest-bearing escrow account, which account shall not be commingled with funds from other sources ("CAPRA Escrow Account"). The parties shall establish the CAPRA Escrow Account and the terms and conditions of an Escrow Agreement no later than thirty (30) days in advance of the anticipated date for Full Notice to Proceed.

29.21.3 Relation of the CAPRA Escrow Account to the CAPRA. As of the Effective Date, the specific terms and conditions associated with the CAPRA have neither been negotiated with nor agreed upon between Owner and FTA. Although Owner intends to request that FTA recognize that the monies placed into the CAPRA Escrow Account serve as a component of its \$200 million CAPRA obligation, the parties acknowledge that there is no certainty that FTA will agree upon this. If FTA does not agree upon this, Owner shall nonetheless maintain the contribution from Contractor in the CAPRA Escrow Account. Contractor shall have no right to participate in the negotiation of the terms associated with the CAPRA, including but not limited to conditions upon which draws will be made against the CAPRA or how the CAPRA will be closed out or reduced. Contractor further acknowledges the possibility that FTA will require a third party to participate in, or fully control, the administration of the CAPRA.

29.21.4 Draws upon the CAPRA Escrow Account. Owner will draw against the CAPRA Escrow Account on a *pari passu* basis with draws against any other sources of funds that form the \$200 million CAPRA. For purposes of calculating the draw against the CAPRA Escrow Account, the total amount in the CAPRA Escrow Account shall be deemed a portion of the \$200 million CAPRA, regardless of whether FTA recognizes the CAPRA Escrow Account as a portion of the CAPRA. By way of example, if the total amount in the CAPRA Escrow Account at the time of a \$100 million draw against the CAPRA is \$20 million, then Owner shall be entitled to fund the \$100 million draw with \$11,111,111 from the CAPRA Escrow Account (which represents the ratio that \$20 million bears to \$180 million), and the balance with its other

funding sources that comprise the CAPRA. For the avoidance of doubt, draws against the CAPRA Escrow Account may be made for reasons that have nothing to do with Contractor's performance, or for reasons that are outside the control of Contractor. Contractor expressly waives any rights it may have to assert that a draw against the CAPRA Escrow Account is improper, except insofar the right it has to argue that a draw was not made on a *pari passu* basis.

29.21.5 Return of Unused Monies from the CAPRA Escrow Account. If any funds remain in the CAPRA Escrow Account at the time the CAPRA is closed in accordance with its terms, Contractor shall be entitled to receive such funds.

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 Margaret E. McKeon
for James E. Bennett
Date: 8/15/08

"Contractor"

DULLES TRANSIT PARTNERS, LLC

By George B. Morschaem
Its Authorized Representative
Date: 8/15/08