

SECTION 2

SPECIAL TERMS AND CONDITIONS

2.1 TERM OF CONTRACT

- A. The term of the Contract, exclusive of the Mobilization Period, shall be five (5) years, commencing July 1, 2010 and ending June 30, 2015, with the option to extend for two (2) additional periods of up to five (5) years each.
- B. The Mobilization Period shall be the date of the Notice to Proceed through June 30, 2010. VRE shall make all good faith efforts to issue the NTP for an effective date of January 1, 2010.
- C. The exercise of a Contract option will be at the sole discretion of VRE. The Contract will be extended by VRE under the terms and conditions of the original Contract, unless other wise agreed.

2.2 TYPE OF CONTRACT

This Contract is a fixed costs and actual costs, plus a general and administrative fee based Contract.

2.3 INCENTIVES

The following incentives may be earned:

- A. No train cancellations due to Contractor action or inaction during the month – \$5,000 payment.
- B. An incentive for on-time performance (OTP) will be based on each service line on a monthly basis as follows.



OTP Percentage Rate	Manassas Line	Fredericksburg Line
96.0% and higher	\$30,000	\$30,000
94.0% - 95.9%	\$25,000	\$25,000
92.0% - 93.9%	\$20,000	\$20,000
90.0% - 91.9%	\$15,000	\$15,000

- C. VRE’s Chief Executive Officer (CEO) reserves the right to develop spot incentive programs to motivate specific improvements.

2.4 PENALTIES

2.4.1 MAINTENANCE PENALTIES

The following penalties shall be assessed following a three (3) month grace period from the Commencement Date:

- A. HEP failure (longer than 15 minutes or 3 occurrences) during service day - \$1,000/locomotive/day.
- B. Door failure rendering railcar unavailable during service day - \$500/railcar/day.
- C. Prime mover failure (longer than 15 minutes or 3 occurrences) during service day - \$1,500/locomotive/day.
- D. Toilet inoperable (or entire consist without a toilet) - \$250/toilet/trip.

2.4.2 OTHER MAINTENANCE PENALTIES

- A. Operating a train set short of railcars as a result of mechanical failures - \$250/railcar/day.
- B. Flat spots on wheels caused by hand brakes left applied during movement - \$1,000/incident.
- C. Heavy cleaning overdue in excess of 15 calendar days - \$200/day/train set.
- D. HVAC system not operating - \$250/railcar/trip.
- E. Failure to comply with any of the requirements of the Maintenance Policies in VRE yards - \$500/incident.



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2.4.3 TRAIN OPERATIONS PENALTIES

- A. Blanked Jobs (due to vacancy, illness, vacation, training, etc.) - \$500/day/position.
- B. Failure to accommodate ADA Passenger - \$1,000 per occurrence.
- C. Failure to report delays - \$250 per incident.
- D. Failure to issue FRCs at the time of the delay - \$250 per incident.

2.4.4 OTHER PENALTIES

- A. Incomplete Mobilization - \$10,000 per day.
- B. Late Reports or Failure to Report - \$250/day for each day until report filed.
- C. Cancelled train due to mechanical failure - \$2,500 per train cancelled.
- D. In the event that the Contractor is found to be in violation of any FRA regulation which results in a fine being assessed by the FRA, the Contractor shall be responsible for correction of the violation as well as paying the assessed penalty at no additional change to VRE.
- E. Non-compliance with VRE standards, policies, or procedures if witnessed by a VRE employee – \$250 - \$1000/incident. Violations will be submitted to the VRE Chief Executive Officer for action. The Contractor will receive a copy of the complaint in writing.

2.5 SERVICE CHANGES

2.5.1 GENERAL AUTHORITY

- A. VRE may, at any time during the Term of this Contract, make any permanent changes to the Schedule of Services provided under this Contract and direct the Contractor to implement those changes. Changes could include those to timetables, schedules, service levels and/or the service territory. The changes and the cost impact thereof shall then be integrated into the Contract pursuant to **SECTION 66. CHANGES** of the General Terms and Conditions.
- B. VRE reserves the right, at any time, by written notice to the Contractor, to require the Contractor to stop any specific work or all work included in the Contract services. VRE may at any time transfer any or all Contract services work to a party other than the Contractor.



2.5.2 INITIATION OF CHANGE

VRE shall notify the Contractor of the change in writing and specify all details including a description of the change and an implementation date.

2.5.3 CONTRACTOR RESPONSE

- A. Within fifteen (15) days after receiving the notification of change, the Contractor shall provide VRE with:
1. A written statement as to the anticipated impact of the Service Change on the Contractor's ability to perform the Contract services, including any potential cost increase or decrease, any estimated increase or decrease in revenue, and any potential conflicts with the remaining Contract services; and
 2. An auditable, itemized proposed budget for such Service Change to perform the Service Change in the most cost effective manner possible.
- B. Any increase or reduction in compensation attributable to the Service Change shall be governed by VRE General Terms and Conditions.

2.6 SECTION 13(C) LABOR PROTECTION

2.6.1 CONTRACTOR'S RESPONSIBILITIES

The Contractor shall be financially and legally responsible for any claims or obligations that may arise under Section 13(c) of the Federal Transit Act (49 U.S.C. § 5333(b)) or under VRE's 13(c) protections arising out of the Contract services, and shall indemnify, defend, and hold VRE harmless for any such claims, obligations, costs, expenses, and attorney fees including but not limited to any claims, obligations, costs, expenses and attorney fees that may arise as a result of the termination or the expiration without renewal of the Contract.

2.6.2 SETTLEMENTS

The Contractor shall promptly share with VRE all information VRE deems necessary in connection with the administration of 13(c) claims arising out of the Contract, including, but not limited to, the resolution or defense of 13(c) claims or disputes, and the negotiation of agreements or settlements over issues that may arise in connection with or relate to the Contract Services. The Contractor shall also take all appropriate actions to avoid and minimize any 13(c) liability relating to the Contract services.



2.7 AVAILABILITY OF EMPLOYEE RECORDS

- A. Upon request of VRE, the Contractor shall grant VRE access to and copies of the payroll records of any employee of either the Contractor or any Subcontractors engaged in providing Contract Services. Such records shall include, but not be limited to drug and alcohol testing, efficiency testing, competency tests, qualifications, training, certification, fitness of duty observations, motor vehicle operator license records, background checks, and criminal records that directly relate to performance of Operating and Maintenance Services.
- B. The Contractor shall also provide any records requested by VRE including, but not limited to, employee turnover rates and history, job classifications, union agreements, and results of efficiency and banner tests.

2.8 CRIMINAL BACKGROUND CHECK

Criminal background checks shall be performed on all Contractor Personnel for the past five (5) years, the results of which shall be made available to VRE upon request. The Contractor shall not hire any person who has been convicted of a felony.

2.9 ENGLISH PROFICIENCY

The Contractor shall affirm that any employee of the Contractor or Subcontractor performing work on this Contract must be able to read, write, speak and understand the English language.

2.10 FORCE MAJEURE

2.10.1 GENERAL

- A. Each Party shall be excused from performance of any of its obligations to the other under this Contract, where such non-performance is caused by any event beyond the nonperforming Party's control. Such events shall include, without limitation, any order, rule, or regulation of any federal, state, or local government body, agency, or instrumentality (other than orders to the Contractor requiring the correction by the Contractor of its non-compliance with laws and regulations applicable to the performance of the Contract), natural disaster or civil disorder, provided, however, that the Party excused hereunder shall use all reasonable efforts to minimize its non-performance and to overcome, remedy, or remove such event causing non-performance in the shortest practical time.



- B. The Contractor shall use all reasonable efforts to undertake and complete the repair, restoration, or replacement of any property which is necessary for the provision of Contract Services in accordance with the Contract, and to resume its other obligations under the Contract as soon as reasonably possible.
- C. In the event either Party fails or refuses to use all reasonable efforts as aforesaid, the continuation of an event beyond the control of such Party shall not be deemed an excuse for non-performance hereunder.

2.10.2 LABOR DISPUTES

A strike, work stoppage or other labor dispute shall not constitute an event beyond the Contractor's control if the Contractor fails, as soon as reasonably possible, to seek an order of a court or administrative agency of competent jurisdiction to prevent the continuation of the same, or if the Contractor fails to continue to seek such order or pursue other means of ending such strike, work stoppage or labor dispute after the court or administrative agency initially denies Contractor's request for such order.

2.10.3 WEATHER CONDITIONS NOT FORCE MAJEURE EVENTS

Conditions caused by a storm or other weather condition shall not constitute an event beyond the Parties' control and shall not be the basis for excuse. The obligations of the Parties in the event of a storm or other weather conditions shall be in accordance with the provisions of the Contract services.

2.11 RAILROAD OPERATING RULES

- A. The Contractor shall, at all times, be fully knowledgeable of, and in compliance with all Norfolk Southern, CSXT and/or Amtrak Operating Rules, including modifications to these rules, which in any manner are applicable to the Contract and those engaged in the performance of, or employed in connection with, the Contract services.
- B. The Contractor shall indemnify, protect, defend and save harmless VRE and its officers, agents and employees from all fines or penalties which are threatened to be imposed or are imposed upon VRE or any such person by any public agency, authority or court having jurisdiction over the Parties hereto, when the imposition of same is attributable to the failure of Contractor to be fully knowledgeable of, and in compliance with the Norfolk Southern, CSXT or Amtrak Operating Rules including modifications made by VRE to these Operating Rules.



2.12 COORDINATION WITH OTHER RAIL CARRIERS

- A. Contractors shall comply and cooperate with all agreements made between VRE and other rail carriers on whose property VRE operates.
- B. The Contractor is responsible for ensuring train and engine crew compliance with annual rules classes and tests required by Norfolk Southern, CSX, and/or Amtrak. The Contractor shall ensure that all qualifications are kept current.

2.13 RIGHT TO SUBCONTRACT

- A. The Contractor may employ Subcontractors to perform services required under the Contract, except as otherwise stated. Prior written approval by VRE to use Subcontractors is required with the exception of:
 - 1. Subcontractors identified in Contractor's Proposal;
 - 2. Subcontracts in which the total amount payable in any twelve-month period is less than one percent (1%) of the total annual Contract cost.
- B. The Contractor shall remain solely responsible for any work under this Contract for which it employs Subcontractors. VRE shall have no obligation to any Subcontractors.
- C. All Subcontractors shall perform their work in accordance with the applicable terms and conditions of this Contract, including but not limited to compliance with all health, safety, Equal Employment Opportunity (EEO), and VRE insurance requirements. Subcontractor employees need to have background checks as discussed in **SECTION 2.8 CRIMINAL BACKGROUND CHECK**.
- D. In the event that the Contractor terminates a Subcontractor, VRE shall not be liable to the Contractor or to such Subcontractor for any damages, whether direct, consequential, incidental, liquidated or otherwise, resulting from the termination of such Subcontractor.
- E. Each subcontract between the Contractor and any Subcontractor shall include a waiver by the Subcontractor of any right to assert any claim against VRE on account of such termination, and shall include the same indemnification and hold harmless provisions for the benefit of VRE as required of the Contractor in **SECTION 39. INDEMNIFICATION** of the General Terms and Conditions.
- F. The Contractor shall not subcontract the role of Contract Manager.



2.14 ACCESS BY GOVERNMENT AGENCIES

- A. The Contractor shall grant access to VRE property to any duly authorized government authorities. The Contractor shall immediately notify VRE when any state or Federal inspector, law enforcement or emergency personnel enters VRE Property. In addition, the Contractor shall provide VRE with copies of all reports furnished to the Contractor by any regulatory agency, within twenty-four (24) hours of the Contractor's receipt of such reports.
- B. The Contractor shall submit triennially to a FTA audit as well as any audits conducted by VRE, federal, state or other regulatory agencies. The Contractor shall also implement recommended corrective actions as directed by VRE.

2.15 PICKETING OR OTHER DISRUPTIONS

2.15.1 BY CONTRACTOR EMPLOYEES OR AGENTS

- A. The Contractor shall use all reasonable, legal and practicable means to:
 - 1. Ensure that all collective bargaining agreements between the Contractor and representatives of its employees include provisions prohibiting strikes or other work stoppages;
 - 2. Enforce such provisions; and
 - 3. Obtain judicial or administrative relief in the event of any strike or work stoppage, whether or not in violation of the terms of any collective bargaining agreement.
- B. If employees of the Contractor picket or otherwise disrupt facilities of VRE in connection with a labor dispute between such employees and the Contractor, and if the Contractor, at the written request of VRE, is unable to terminate any picketing or disruption within six (6) hours of receiving such written request, the Contractor shall indemnify and reimburse VRE for legal and related expenses incurred by VRE in its efforts to terminate such picketing or disruption.

2.16 QUALITY ASSURANCE

- A. The Contractor shall be responsible for the professional quality, technical accuracy, completeness and coordination of the Contract services.
- B. Within thirty (30) days of the Notice to Proceed, the Contractor shall submit to VRE for approval a Quality Assurance Plan. The Quality Assurance Program shall include separate sections describing quality assurance guidelines and procedures for Operations and Mechanical Services, respectively. The Contractor shall review, revise and resubmit to VRE



the Quality Assurance Plan annually, by July 1st of each Contract Year for review and approval by VRE.

- C. The Quality Assurance Plan shall include processes, procedures and controls that assure that the Contract Services are performed accurately, efficiently and in compliance with all performance requirements and standards set forth in, or required by, the Contract.
- D. The Contractor shall incorporate the Quality Assurance Plan into its performance and shall constantly monitor the quality of work in all aspects of the Contract Services. VRE reserves the right to conduct an audit, and to require an independent audit, at the Contractor's cost and expense, as to the effectiveness of the Quality Assurance Plan.
- E. VRE shall have access to all records pertaining to Quality Assurance Plan activities, including but not limited to findings and corrective actions.

2.17 LITIGATION AND NOTIFICATION

The Contractor shall notify the VRE Contract Administrator if any of the following occur:

- A. The Contractor or any of the Subcontractors are served with notice, or otherwise advised, of violation of any law, regulation, permit or license arising out of the Contract;
- B. Proceedings are commenced which could lead to revocation of Contract related permits or licenses;
- C. Permits, licenses or other Government authorizations relating to this Contract are revoked;
- D. The Contractor or any of the Subcontractors become aware that their equipment or facilities or actions are not in compliance or may fail to comply in the future with applicable laws or regulations or Contract requirements.
- E. A claim is made against the Contractor or a Subcontractor arising out of the Contract services; or
- F. Litigation is commenced against the Contractor or a Subcontractor arising out of the Contract services.

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2.18 TERMINATION FOR DEFAULT

Notwithstanding the right to cure as described in **SECTION 14. TERMINATION FOR DEFAULT** in the General Terms and Conditions, any enroute failures of VRE trains caused by the Contractor's failure to meet the fueling schedule shall be a default and VRE shall have the right to immediately terminate this Contract with no opportunity to cure.

2.19 TASK ORDER PROCEDURES

- A. VRE will initiate work by requesting a task order proposal from one (1) or more contracted firms. Firms must provide a task order proposal in writing or indicate why they cannot produce a proposal within the time allowed.
- B. The firm shall assign a single point of contact responsible for ensuring the work is completed in close coordination with VRE.
- C. The Contractor shall perform work assigned under this Contract as further described in task orders that are issued. The work shall be in accordance with the terms and conditions of the task order or as specified elsewhere in the Contract. Upon execution of task orders, the Contractor shall provide the personnel, facilities, equipment, and other materials and services necessary to perform the work set forth in the task order.
- D. Task orders shall be subject to the terms and conditions of this Contract. In the event of conflict between a task order and this Contract, the Contract shall control.
- E. Task Orders shall be subject to appropriation and availability of funds as described in **SECTION 8. AVAILABILITY OF FUNDS** in the General Terms and Conditions. In no event, shall the Contractor be authorized to incur costs under an individual task order in excess of the total amount of funds obligated against that task order.
- F. Task orders may be negotiated. VRE reserves the right to negotiate changes to labor rates and overhead rates submitted as part of each cost proposal.
- G. Task orders may be issued from the effective date of this Contract through completion or termination of the Contract. Any task order issued during the effective period of this Contract and not completed within that time shall be completed by the Contractor within the time specified in the task order, if required by VRE to do so. The task order and the Contract shall govern the Contractor's and VRE's rights and obligations with respect to that task order to the same extent as if the task order were completed during the Contract's effective period.



- H. Task orders will be executed at the sole discretion of VRE in writing.
- I. There is no limit on the number of task orders that may be issued against this Contract. If and when needed, task orders will be within the maximum value of the Contract.
- J. The Contractor shall not exceed the estimated ceiling price for each individual task order unless authorized by an approved change order or task order supplement in advance.
- K. In the event that fewer direct labor hours or estimated total costs are used by the Contractor accomplishing the prescribed work under individual task orders than were obligated by the executed task orders, the Contractor shall invoice the actual costs pursuant to the requirements of **SECTION 3.2.3C CONTRACT SERVICES** of this RFP. Unused funds shall be restored to the unassigned funds for the Contract. The parties agree that any downward price/cost adjustment shall reflect actual work performed.
- L. VRE may request the Contractor to present an informal briefing and review of the work conducted under any task order.
- M. In the event that a task order is cancelled prior to completion of the work, the Contractor will be paid for approved costs up to the issuance of the cancellation.

2.20 MISCELLANEOUS

2.20.1 NO WAIVER

No failure on the part of either Party to exercise, and no delay in exercising, any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or remedy. A waiver of any right or remedy on any one occasion shall not constitute a bar to the exercise or waiver of any such right or remedy on any future occasion. The remedies of the Parties provided herein are cumulative and not exclusive of any remedies provided for by law.

2.20.2 SURVIVAL

All obligations that arise but which are not satisfied during the Term of the Contract, including the indemnification obligations of the Contractor, shall survive the satisfaction of the Contractor's obligation to perform the Contract services and the termination or expiration of the Contract.



2.20.3 NO THIRD PARTY BENEFICIARIES

Nothing in the Contract shall be deemed to create any right in any person not a Party hereto other than permitted successors and assigns of a Party hereto, and the Contract shall not be construed in any respect to be a contract in whole or in part for the benefit of a Third Party except as aforesaid.

2.20.4 PERFORMANCE DURING DISPUTES

During the pendency of any dispute between the Parties, the performance of the Parties' respective obligations under the Contract shall continue to be transacted.

2.20.5 CONTRACTOR FINANCIAL RECORDS

VRE reserves the right to request annual or quarterly financial statement information during the term of the Contract and to examine all financial records of the Contractor.

