

ATTACHMENT 2

VRE GENERAL PROVISIONS

Revised November 2, 2022

VRE GENERAL PROVISIONS

01. PRECEDENCE OF TERMS

- A. In the event of an inconsistency between the Request for Quotes, the Contract Terms and Conditions, other included documents, or the Federal Transit Administration (FTA) Master Agreement and state procurement law, the inconsistency shall be resolved by the following order of precedence:
1. Federal Transit Administration Master Agreement (30) (November 2, 2022) and FTA Circular 4220.IF, dated November 1, 2008, as amended;
 2. Virginia's Public Procurement Act, as amended;
 3. Request for Quotes;
 4. Special Provisions;
 5. General Provisions; and
 6. Contractor's Quote.
- B. Where the terms of these Contract Documents vary the most stringent shall apply.

02. VRE CONTRACT MANAGEMENT

- A. Contract Administrator: During the term of the Contract, matters relating to bonding, insurance, terms and conditions, and other contract administration matters shall be directed to the Contract Administrator. Changes to the Contract value, scope, or schedule will require consultation with the Contract Administrator.
- B. Contracting Officer: The Contracting Officer is the only individual who can legally commit or obligate VRE for the expenditure of federal/public funds. The technical administration of the Contract shall not be construed to authorize the revision of the terms and conditions of the Contract. Any such revision shall be authorized in writing only by the Contracting Officer. The Contracting Officer may designate personnel to act as their authorized representatives for one or more contract administration functions not involving a change in the scope, price, terms, or conditions of the Contract. Such designation will be in writing, set forth by a separate letter signed by the Contracting Officer, and will contain specific instructions as to the extent to which the representative may take action for the Contracting Officer. Such designation will not contain authority to sign contractual documents, nor will it authorize the designee to order contract changes, modify contract terms, or create any liability on the part of VRE.
- C. Project Manager: During the term of the Contract, the Contracting Officer may designate a Project Manager (PM) to represent VRE and assist in monitoring the work under the Contract. The PM is responsible for the overall project management and serves as the technical liaison to the Contractor. The PM is responsible for the day-to-day clarification and guidance of the Contractor's personnel as may be required under the Contract. Only the PM consulting with

the Contract Administrator and/or the Contracting Officer, as necessary is authorized to provide direction to the Contractor.

03. PROJECT ADMINISTRATION

The VRE Project Manager will be the point of contact for all aspects of the Contract. The VRE Project Manager will conduct ongoing reviews of the Contractor's progress in performing the work and will furnish comments in a timely manner. All communications to other agencies shall be through the VRE Project Manager, unless directed otherwise.

04. PRIME CONTRACTOR RESPONSIBILITIES

- A. The Contractor shall be responsible for completely supervising and directing the work under this Contract and all Subcontractor(s) that it may utilize, using adequate skill and attention. Subcontractor(s) who perform work under this Contract shall be responsible to the Prime Contractor.
- B. During the period of performance, the Contractor shall not substitute key personnel without the written approval of VRE. The Contractor shall provide VRE with information as to the circumstances necessitating the proposed change and other information as requested. Periodically, the VRE Project Manager may request an updated list of personnel.
- C. The Contractor agrees that it is fully responsible for the acts and omissions of its Subcontractor(s) and of persons employed by the Subcontractor as it is for the acts and omissions of its own employees.
- D. The VRE Project Manager shall coordinate the work on this Contract with VRE's ongoing operations and other activities performed by VRE or other contractors.

05. STANDARD OF CARE

VRE is entering into this Contract in reliance on the Contractor's experience and abilities with respect to performing the services hereunder. In performing the work, the Contractor shall ensure that it and its agents and employees exercise the degree of skill and care that is normally accepted by members of the same profession currently practicing under similar conditions in the same locality ("Customary Standard of Care"). The Contractor shall re-perform, without additional compensation, any services not meeting this Customary Standard of Care.

06. CONFORMITY WITH SCOPE OF WORK

All deviations from the Scope of Work shall be authorized in writing by VRE. No extra compensation for material or labor shall be allowed for work evidently necessary within the general intent of the Scope of Work.

07. PAYMENTS

- A. Payments shall be made monthly for the amount and value of the work and services performed by the Contractor under this Contract. Payment applications

shall be prepared by the Contractor and accompanied by all supporting data required by the VRE Project Manager.

B. **Terms**

1. The Contractor shall submit monthly invoices for work/goods ordered, delivered, and accepted by VRE by the 15th of each month. ***The invoice period shall be the calendar month.*** This payment schedule shall be maintained throughout the duration of the project, unless directed otherwise.
2. If no charges have been incurred for a particular month, no invoice is required. However, the VRE Project Manager shall be notified that no invoice will be submitted.
3. Any Contractor's payment terms requiring payment in less than thirty (30) days will be regarded as requiring payment thirty (30) days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than thirty (30) days.

C. **Billing Instructions**

1. Invoices shall be submitted electronically in one (1) continuous electronic copy in PDF to accountspayable@vre.org. The VRE Project Manager shall be copied on the email.
2. The VRE Project Manager shall be indicated on the invoice cover sheet.
3. At a minimum, invoices shall contain the information referenced in the RFQ.

08. PAYMENTS TO SUBCONTRACTOR

In the event that the Contractor utilizes a Subcontractor for any portion of the work under this Contract, the Contractor hereby agrees to:

- A. Provide payment of Subcontractors within seven (7) days of receipt of payment by VRE for work completed and approved expenses. The Contractor shall take one (1) of the two (2) following actions within seven (7) days after receipt of amounts paid to the Contractor by VRE for work performed by a Subcontractor under the Contract.
 1. Pay a Subcontractor for the proportionate share of the total payment received from VRE attributable to the work performed and completed by that Subcontractor under the Contract; or
 2. Notify VRE and any Subcontractors, in writing, of its intention to withhold all or a part of the Subcontractor's payment with the reason for nonpayment.
- B. The Contractor shall be obligated to pay interest to a Subcontractor on all monies owed by the Contractor that remain unpaid after seven (7) days following receipt by the Contractor of payment from VRE for work performed by a Subcontractor under the Contract, except for amounts withheld under subsection 1.b. of this

Section. Unless otherwise provided under the terms of this Contract, interest shall accrue at the rate of one percent (1%) per month. The date of mailing of any payment by U. S. Mail is deemed to be payment to the addressee. These provisions apply to each sub-tier contractor performing under the primary Contract.

- C. The Contractor's obligation to pay an interest charge to a Subcontractor pursuant to the provisions of this Section may not be construed as an obligation by VRE. A contract modification may not be made for the purpose of providing reimbursement for any such interest charge. A cost reimbursement claim may not include any amount for reimbursement for such interest charge.

09. TRAVEL EXPENSES

- A. VRE will not reimburse the Contractor for travel-related expenses for employees located within the greater Baltimore-Washington Metropolitan Area, as defined by the United States Office of Management and Budget.

- B. VRE will compensate the Contractor for Reimbursable Expenses, for employees located outside of this area, and only if they are pre-approved by VRE and in accordance with the Contract. **When authorized by the Project Manager**, expenses may include:

- 1. **Lodging/Meals/Incidental Expenses:**

- a. Each Contractor required to travel overnight in the performance of this Contract shall be reimbursed for lodging, meals and incidental expenses at the rates specified by the U.S. General Services Administration (GSA) (<http://www.gsa.gov> – search “Per Diem”) for the locations being visited.
- b. **Lodging:** VRE will reimburse for actual lodging costs at a reasonably priced commercial facility in the immediate area of where the work is performed, up to the GSA’s daily rates for the destination, current for the date of travel. Receipts for lodging must be itemized. Only room and tax charges will be reimbursed; no reimbursement will be made for additional expenses, including but not limited to, room service, laundry, telephone and in-room movies. If the Contractor or its employee shares a room with another person who is not connected with the performance of the work, including a spouse, VRE will reimburse for only the cost of a single room.
- c. **Meals:** The amount for meals and incidental expenses includes state sales tax (where applicable) and a 15% gratuity. On the day of departure, 75% of the applicable rate will apply. On the last day of travel, 75% of the applicable rate will apply.

- 2. **Air Travel:**

VRE shall reimburse for air travel at the coach rate. The Contractor is expected to obtain discount airfares to the extent possible. Travel shall be by the route that is most cost effective to VRE. Tickets must be purchased at least seven (7) calendar days in advance, unless otherwise approved by VRE. The

Contractor shall bear any additional costs incurred as a result of deviations from this route for personal reasons. Travel time shall not be compensated. Legible receipts are required.

3. **Local Transportation:**

Reservations must be made in advance whenever possible to take advantage of all available discounts.

a. **Taxi/limousine/bus** – Reasonable expenses reimbursable at **actual cost**. Receipts are required. Transportation expenses between places of lodging or business and places where meals are taken are not allowed unless suitable meals cannot be obtained at the site.

b. **Rental automobiles** – Reasonable expenses reimbursable at **actual cost**. Rental automobiles shall be used only when it will affect a savings or other advantage or when the use of other transportation is not feasible. Rental automobiles should be limited to sub-compact models when available. A legible copy of the rental agreement is required to support costs. Rental of other than a sub-compact is allowable when sub-compacts are not available. Any reimbursement will cover only those rental charges, insurance and/or fuel fees allocable to work on the Contract and will not cover the purchase of liability insurance and/or collision/comprehensive insurance. Legible receipts are required.

c. **Private automobile** - Use of private automobiles will be reimbursed at the current U.S. Internal Revenue Service (IRS) business mileage rate.

d. Tolls and parking charged for the use of ferries, roads, bridges, and tunnels while traveling to and from commercial carriers and parking charges at destination are reimbursable at **actual cost**. Legible receipts are required.

4. **Telephone:**

Actual cost of business telephone charges incurred by the Contractor while in travel status is reimbursable. Personal telephone charges are not allowable. Legible receipts are required.

5. **Other:**

a. Other actual expenses incurred in the performance of this Contract, exclusive of normal operating expenses, and as approved by VRE, shall be reimbursed. Receipts or invoices are required on each individual item under this category.

b. **Non-reimbursable costs** include expense for entertainment, first-class airfare, contributions, personal telephone and facsimile charges, dues and subscriptions, alcoholic beverages, expenses for transportation and lodging for personal pursuits, gifts, gratuities, and other charges expressly disallowed under the terms of this Contract.

6. **Exclusions:**

VRE will not reimburse or pay for expenses that are personal in nature. The following are some examples of expenses excluded from reimbursement:

- a. Alcoholic beverages
- b. Personal phone calls
- c. Entertainment (e.g. pay TV, movies, night clubs, health clubs, theaters, bowling)
- d. Personal expenses (e.g. laundry, valet, haircuts)
- e. Personal travel insurance (e.g. life, medical, or property insurance) for airfare or rental cars
- f. Fines for parking or traffic violations
- g. Auto repairs, maintenance, cleaning, inspection and insurance costs for personal vehicles

Reimbursable expenses must be included on each monthly invoice and require receipts and other documentation.

Time limit: VRE will not honor requests for travel reimbursement that are submitted more than sixty (60) calendar days after completion of travel.

10. **EXTRA CHARGES NOT ALLOWED**

Unless otherwise provided in the Contract, the Contract price shall be for the complete installation ready for VRE use, and shall include all applicable freight and installation charges; extra charges will not be allowed

11. **REGULATORY COMPLIANCE WITH LAWS AND PERMITS**

All work shall be performed in accordance with all applicable Federal, State and Local Laws, Rules and Regulations. In addition to the requirements described in the preceding Sections and the Scope of Work, any additional regulatory compliance required by the United States Department of Transportation shall be complied with during the term of the Contract.

12. **RELEASES, LICENSES, PERMITS AND AUTHORIZATIONS**

It is the Contractor's responsibility to obtain all releases, licenses, permits and other usage authorizations for all matters within its ordinary sphere of activity, including photographs, copyrighted materials, artwork or any other property or rights belonging to third parties obtained by the Contractor for use in performing services for VRE. The Contractor shall save the VRE harmless from all claims, demands, expenses (including reasonable attorney's fees), liabilities, suits, and proceedings (including any brought in or before any court, administrative body, arbitration panel or other tribunal) against or involving VRE on account of or arising out of such use. VRE shall obtain the same for any such items obtained by VRE which are used by the Contractor in performing services for VRE. The Contractor shall save VRE harmless from all claims, demands, expenses (including reasonable attorneys' fees), liabilities, suits, and proceeding (including any brought in or before any court, administrative body, arbitration panel or other tribunal) against or involving VRE on account of or arising out of any assertions,

claims, slogans, headlines or the like made by the Contractor for any VRE products, as well as for all claims, demands, expenses, liabilities, suits and proceedings arising out of the nature or use of VRE's products by the Contractor.

13. OWNERSHIP OF WORK PRODUCTS

- A. This Contract does not confer on the Contractor any ownership rights or rights to use or disclose VRE's data or inputs. VRE shall have unlimited rights, for the benefit of VRE, in all work products including, but not limited to, drawings, designs, specifications, notes and other work developed in the performance of this Contract. VRE shall have the right to use the work products on any other VRE work without additional cost to VRE.
- B. All work products, in any form, that result from this Contract are the property of VRE and must be provided or returned to VRE upon completion, termination, or cancellation of this Contract. The Contractor shall not use or allow others to use the work products for any purpose other than performance of this Contract without the written consent of VRE.
- C. The work products are confidential, and the Contractor may neither release the work products nor share their contents. The Contractor shall refer all inquiries regarding the status of any work product to the VRE Project Manager or to his or her designee. At VRE 's request, the Contractor shall deliver all work products, including hard copies of electronic files, to the VRE Project Manager.
- D. The Contractor must include the provisions of this Section as part of any contract or agreement related to this Contract into which it enters with Subcontractors or other third parties.
- E. If any invention, improvement, or discovery of the Contractor or any of its Subcontractors or lower-tier subcontractors is conceived or first actually reduced to practice in the course of or under the Contract, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, VRE and the Contractor agree to take actions necessary to provide immediate notice and a detailed report to the party at a higher tier until all applicable VRE funding partners are ultimately notified.
- F. The provisions of this Section will survive any termination or cancellation of this Contract.

14. CONFIDENTIAL INFORMATION

- A. The Contractor and its employees, agents and Subcontractors shall hold as confidential all VRE information obtained under this Purchase Order. Confidential information includes, but is not limited to, non-public personal information; social security numbers; addresses; dates of birth; other contact information or medical information about a person; secure network information, and information pertaining to products, operations, systems, customers, prospective customers, techniques, intentions, processes, plans and expertise.

- B. The Contractor must take reasonable measures to ensure that all of its employees, agents and Subcontractors are informed of and abide by this requirement.

15. DISSEMINATION OF CONTRACT INFORMATION

The Contractor shall not discuss, publish, permit to be published, or distribute for public consumption, and information, oral or written, or any material concerning this Contract, without the prior written consent of VRE.

16. CHANGES

- A. By written notice to the Contractor, VRE may from time to time make changes within the general scope of the Contract in the services to be provided by the Contractor, the method or place of delivery, or the place of performance. Changes may also be made by mutual agreement between the parties in writing. The Contractor shall promptly comply with the notice and shall perform all services in conformity to the notice.

- B. If any such changes cause an increase or decrease in the Contractor's cost of performance or the time required for performance, an equitable adjustment in the Contract price and/or the time allowed for performance of the Contract shall be negotiated and the Contract modified accordingly. Any claim by the Contractor for adjustment under this clause must be asserted by written notice to VRE within thirty (30) days from the date of receipt by the Contractor of the change notice. If the parties fail to agree to an adjustment, the question of an increase or decrease in the Contract price or time allowed for performance shall be resolved in accordance with the procedures for resolving disputes provided by the disputes clause of the Contract. Neither the existence of a claim, a dispute, submission of the dispute or the dispute resolution process, litigation or any portion of this provision or changes shall excuse the Contractor from promptly proceeding with performance of the Contract as changed by the notice.

17. DELAYS

- A. Upon written receipt of a request and justification for an extension from the Contractor, the VRE Contracting Officer may extend the time for performance of the Contract or delivery of work specified herein at the VRE Contracting Officer's sole discretion for good cause shown. Under no circumstances will VRE be responsible for consequential costs associated with delays.
- B. The Contractor shall use reasonable diligence to remove or overcome any such causes as expeditiously as possible.

18. SUBCONTRACTING

- A. The Contractor shall be responsible for completely supervising and directing the work under this Contract and all Subcontractors that it may utilize, using its best skill and attention. Subcontractors who perform work under this Contract shall be responsible to the Prime Contractor. The Contractor agrees that it is as fully responsible for the acts and omissions of its Subcontractors and of persons employed by each Subcontractor as it is for the acts and omissions of its own employees.

- B. VRE reserves the right to request from the Contractor during the solicitation process and any time during Contract performance, additional information about a Subcontractor proposed by the Contractor, that VRE deems necessary to evaluate the qualifications of the Subcontractor.
- C. The Contractor shall, however, remain fully liable and responsible for the work to be done by its Subcontractor(s) and their subcontractor(s) and shall assure compliance with all requirements of the Contract.
- D. The Contractor agrees to require its Subcontractors and sub-subcontractors to include adequate provisions to ensure compliance with applicable Federal requirements in each subcontract and sub-subcontract. Furthermore, the Contractor agrees to include appropriate clauses in each subcontract stating the Subcontractor's responsibilities under Federal law, regulation, and directive, including any necessary provisions requiring the Subcontractor to extend applicable requirements to its subcontractors to the lowest tier necessary.

19. INDEPENDENT CONTRACTOR

The Contractor is and shall be in all events, an independent contractor. Nothing herein shall be construed as constituting the Contractor as an agent, partner, employee, or legal representative of VRE for any purpose. Neither the Contractor nor its employees shall be entitled to or be eligible to participate in any benefits, privileges or plans given by or established for the benefit of VRE or its employees.

20. NOTIFICATION OF OWNERSHIP CHANGES

The Contractor shall notify VRE in writing when the Contractor becomes aware that a change in its ownership is certain to occur. The Contractor shall also include this provision in all subcontracts under this Contract, requiring each s Subcontractor to notify VRE in writing when the Subcontractor becomes aware that a change in its ownership is certain to occur.

21. AVAILABILITY OF FUNDS

It is understood and agreed that VRE shall be bound to the Contract only to the extent of the funds appropriated for the purpose of the Contract. If funds are reduced or eliminated by the Commonwealth of Virginia or any Federal, State or Local funding partners, the Contract can be terminated under the provisions of the Contract.

22. AUTHORIZED FUNDING

VRE shall not be obligated to pay the Contractor any amount in excess of the ceiling price reflected in the Contract, and the Contractor shall not be obligated to continue performance if to do so would exceed the price set forth in the Contract.

23. ASSIGNMENT OF CONTRACT

The Contract shall not be assignable, sublet or transferable by the Contractor, in whole or part, without the prior written consent of the VRE.

24. APPLICABLE LAW AND COURTS

Any Contract resulting from this solicitation shall be governed in all respects by the laws of the Commonwealth of Virginia and any litigation with respect thereto shall be brought in the federal and state courts of the Commonwealth. The successful Contractor shall comply with applicable Federal, State, and Local laws and regulations.

25. LITIGATION AND NOTIFICATION

The Contractor shall notify the VRE Purchasing Manager if any of the following occur:

1. The Contractor or any of the Subcontractors are served with a notice of violation of any law, regulation, permit or license which relates to this Contract.
2. Proceedings are commenced which could lead to revocation of related permits or licenses.
3. Permits, licenses or other Government authorizations relating to this Contract are revoked.
4. Litigation is commenced in which the Contractor is a named party, and which also involves as a named party, any Subcontractor of the Contractor who is otherwise a provider of indirect services or products under this Contract.
5. The Contractor or any of the Subcontractors become aware their equipment or facilities or actions are not in compliance or may fail to comply in the future with applicable laws or regulations.

26. CONTRACTUAL DISPUTES

- A. Disputes by the Contractor with respect to the Contract shall be decided in the first instance by the Contract Administrator or designee who shall reduce his/her decision to writing, and mail or otherwise furnish a copy thereof to the Contractor. This decision shall be final and binding unless within thirty (30) days from the date of such decision the Contractor institutes legal action in accordance with the Code of Virginia. Pending a final determination of a properly appealed decision of the Contract Administrator, the Contractor shall proceed diligently with the performance of the Contract, including the disputed portions, in accordance with that decision.
- B. The Contractor must notify VRE immediately when any current or prospective legal matter related to this Contract, including but not limited to, default, breach, major dispute or litigation, emerges that may affect the Federal Government. The Contractor must include this language in all subcontracts of \$25,000 or more.

27. TERMINATION FOR THE CONVENIENCE OF VRE

- A. The parties agree that VRE may terminate the Contract or any work or delivery required thereunder, from time-to-time either in whole or in part, without cause whenever the VRE Contracting Officer shall determine that such termination is in the best interest of VRE.
- B. Termination, in whole or in part, shall be affected by delivery of a Notice of Termination signed by the VRE Contracting Officer, mailed or delivered to the Contractor, and specifying the extent of termination and the effective date of termination. Upon receipt of such notice, the Contractor shall:
1. Cease any further deliveries or work due under the Contract on the date and to the extent which may be specified in the notice;
 2. Place no further orders with any Subcontractor except as may be necessary to perform that portion of the Contract not subject to the notice;
 3. Terminate all Subcontractors except those made with respect to Contract performance not subject to the notice;
 4. Settle all outstanding liabilities and claims which may arise out of such termination, with the ratification of VRE;
 5. Use its best effort to mitigate any damages which may be sustained by the Contractor as a consequence of termination under this Section;
 6. As directed by the VRE Contracting Officer, transfer title and deliver to VRE:
 - a. The fabricated or un-fabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated; and
 - b. The completed or partially completed plans, drawings, information, and other property that, if the Contract had been completed, would be required to be furnished to VRE.
 7. Complete performance of the work not terminated; and
 8. Take any action that may be necessary, or that the VRE Contracting Officer may direct, for the protection and preservation of the property related to the Contract that is in the possession of the Contractor and in which VRE or the Government has or may acquire an interest.
- C. After complying with the foregoing provisions, the Contractor shall submit a termination claim, no later than sixty (60) days after the effective date of its termination, unless an extension is granted by the VRE Contract Administrator. If the Contractor fails to submit the claim within the time allowed, the VRE Contracting Officer may determine, on the basis of information available, the

amount, if any, due to the Contractor because of the termination and shall pay the amount determined.

- D. If the termination is partial, the Contractor may file a claim with the VRE Contracting Officer or his/her designee for an equitable adjustment of the price(s) of the continued portion of the Contract. The VRE Contracting Officer shall make any equitable adjustment agreed upon. Any claim by the Contractor for an equitable adjustment under this Section shall be requested within thirty (30) days from the effective date of termination unless extended in writing by the VRE Contracting Officer.
- E. The VRE Contract Administrator, with the approval of the VRE Contracting Officer, shall pay reasonable costs of termination, including a reasonable amount for profit on services delivered or completed. In no event shall this amount be greater than the original Contract price, reduced by any payments made prior to the Notice of Termination, and further reduced by the price of the serviced not delivered, or those services not provided. The Contract shall be amended accordingly, and the Contractor shall be paid the agreed upon amount.
- F. In the event that the parties cannot agree on the whole amount to be paid to the Contractor by reason of termination under this Section, the VRE Contract Administrator shall pay to the Contractor the amounts determined as follows, without duplicating any amount which may have already been paid under Paragraph E. of this Section.
- G. With respect to all Contract performance prior to the effective date of Notice of Termination, the total of:
 - 1. Cost of the work performed;
 - 2. The cost of settling and paying any reasonable claims as provided in Paragraph B. above; and
 - 3. A sum as profit on Paragraph G. above determined by VRE to be fair and reasonable.
- H. The total sum to be paid shall not exceed the Contract price, as reduced by the amount of payments otherwise made, and as further reduced by the Contract price of services not terminated.
- I. In the event that the Contractor is not satisfied with any payments which the Contract Administrator shall determine to be due under this Section, the Contractor may appeal any claim to VRE in accordance with the Contractual Disputes provision of the Contract.
- J. Unless otherwise provided in the Contract or by statute, the Contractor shall maintain all records and documents relating to the terminated portion of the Contract for three (3) years after final settlement. This includes all books and

other evidence bearing on the Contractor's costs and expenses under the Contract. The Contractor shall make these records and documents available to the Government, at the Contractor's office, at all reasonable times, without any direct charge. If approved by the VRE Contracting Officer, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.

- K. When termination for the convenience of VRE is a provision of the Contract, the Contractor shall include similar provisions in any subcontract, and shall specifically include requirements that Subcontractors make all reasonable efforts to mitigate damages which may be suffered. Failure to include such provisions shall bar the Contractor from any recovery from VRE whatsoever of loss or damage sustained by a Subcontractor as a consequence of termination for convenience.

28. TERMINATION FOR DEFAULT

- A. Either party may terminate the Contract, without further obligation, for the default of the other party or its agents or employees with respect to any agreement or provision contained herein.
- B. If through any cause, the Contractor shall fail to fulfill in a timely and proper manner its obligations under the Contract, or if the Contractor shall violate any of the covenants, agreements or stipulations of the Contract, VRE shall thereupon have the right to terminate the Contract by giving written notice to the Contractor of such termination. The written notice shall specify the effective date of termination and shall be delivered to the Contractor prior to the effective date of termination.
- C. The Contractor shall have the right to cure its default, and thereby avoid termination, during the aforesaid notice period by remedying the circumstances which constitute the default or, where completion of such a remedy is not reasonably possible, then by taking all reasonable steps possible designed to remedy the default promptly.
- D. Successive defaults of the same nature, regardless of the Contractor's effort to cure, shall not prevent VRE from terminating the Contract.

29. INDEMNIFICATION

The Contractor shall not seek to hold liable VRE, or any of its officers, agents and employees for any claims, judgments, losses, and expenses of any nature whatsoever arising out of the Contract or arising out of the activities funded in whole or in part by the Contract. The Contractor shall defend, indemnify, save, and hold harmless VRE, and its officers, agents and employees against all claims and liability, including cost and expenses, arising out of, in whole or part, the acts or omissions of the Contractor or the acts or omissions of the Contractor's Subcontractors, agents or employees. The foregoing obligations shall survive termination of this Contract with respect to liabilities arising during its term. The Contractor agrees to maintain adequate insurance in an amount and form herein

specified and approved by VRE to protect VRE and its officers, agents, and employees from liability arising out of the Contract.

30. ANTITRUST

By entering into a Contract, the Contractor conveys, sells, assigns, and transfers to VRE all rights, title and interest in and to all causes of the action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or services purchased or acquired by VRE under said Contract.

31. SEVERABILITY

In the event that any provision shall be adjudged or decreed to be invalid, such ruling shall not invalidate the entire Contract but shall pertain only to the provision in question and the remaining provisions shall continue to be valid, binding and in full force and effect.

32. FAIR EMPLOYMENT CONTRACTING ACT

The Contractor, its agents, employees, assigns or successors, and any persons, firm, or agency of whatever nature with whom it may Contract or make a Contract, shall comply with the provisions of the Virginia Fair Employment Contract Act, Section 2.2-4200 et seq., VA Code Ann. the terms of which are incorporated herein by reference.

33. EMPLOYMENT OF PERSONNEL

The Contractor shall not employ any persons or persons in the employment of VRE for any work required by the terms of the Contract, without the prior written permission of VRE.

34. CONVICT LABOR

In connection with the performance of work under the Contract, the Contractor agrees not to employ any person undergoing sentence of imprisonment except as provided by Public Law 89-176, as amended.

35. COVENANT AGAINST CONTINGENT FEES

The Contractor warrants that it has not employed or retained any company or person, other than bona fide employees working solely for the Contractor, to solicit or secure the Contract, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the Contractor, any fee, VRE percentage, brokerage fee, or other considerations, contingent upon or resulting from the award of making of the Contract. For breach or violation of this warranty, VRE shall have the right to annul the Contract without liability, or, at its discretion, to deduct from the Contract price or consideration, or otherwise recover the full amount of such fee, VRE percentage, brokerage fee, gift, or contingent fee.

36. CONFLICT OF INTEREST

A. The Contractor and its officers and employees shall comply with the provisions of the Virginia Conflict of Interest Act (Section 2.2-3100 et. seq., of the Code of

Virginia), as amended, the State and Local Government Conflict of Interests Act, and Section 2.2-4300 et. seq. of the Code, the Virginia Public Procurement Act, the terms of which are incorporated herein by reference.

- B. VRE is intent on avoiding conflicts of interest associated with the award of the Contract. To these ends, prospective Contractors must identify existing and prospective contractual relations they have (or could have) with agencies which could present sources of conflict.
- C. VRE standards of conflict prohibit VRE employees, officers, board members, or agents from participating in the selection, award, or administration of a third-party contract or sub agreement supported by federal funds if a real or apparent conflict of interest would be involved. Such a conflict would arise when any of the following parties has a financial or other interest in the entity selected for award (a) an employee, officer, board member or agent (b) any member of his or her family (c) his or her partner or (d) an organization that employs or intends to employ any of the above.
- D. VRE standards of conflict also prohibit real or apparent organizational conflicts of interest. An organizational conflict of interest exists when the nature of the work to be performed under a third-party contract or sub agreement may, without some restriction on future activities, result in an unfair competitive advantage to the third-party Contractor or subrecipient or impair its objectivity in performing the Contract work.

37. ETHICS IN PUBLIC CONTRACTING

- A. This Contract incorporates by reference any State or Federal law related to ethics, conflicts of interest, or bribery, including, by way of illustration and not limitation, the State and Local Government Conflict of Interests Act (Code of Virginia § 2.2-3100 et seq.), the Virginia Governmental Frauds Act (Code of Virginia § 18.2-498.1 et seq.), and Articles 2 and 3 of Chapter 10 of Title 18.2 of the Code of Virginia, as amended (§ 18.2-438 et seq.).
- B. The Contractor certifies that its Quote is made without collusion or fraud and that it has not offered or received any kickbacks or inducements from any other Contractor, supplier, manufacturer or Subcontractor in connection with their Quote, and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.

38. ANTI-DISCRIMINATION

- A. By submitting a Quote, the prospective Contractor certifies to VRE that it will conform to the provisions of Title VI of the Federal Civil Rights Act of 1964, as amended; DOT regulations, “Nondiscrimination in Federally-Assisted Programs of the Department of Transportation” -- Effectuation of Title VI of the Civil Rights Act; the Virginia Fair Employment Act of 1975, as amended, where

applicable; the Virginia Values Act, as amended all requirements of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 20003, and 49 U.S.C. §4332 and any implementing requirements FTA may issue; the provisions of 49 U.S.C, § 5332, “Nondiscrimination in Federal Transit Programs,” which prohibits discrimination on the basis of race, color, creed, national origin, sex, or age, and prohibits discrimination in employment or business opportunity; and Section 2.2-4311 of the Virginia Public Procurement Act.

B. During the performance of the Contract, the Contractor agrees as follows:

1. The Contractor will not discriminate against any employee or applicant for employment because of race, color, creed, sex, disability, age, religion, or national origin. The Contractor agrees to take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, creed, sex, disability, age, religion, or national origin. Such action shall include, but not be limited to, the following: employment, upgrade, demotion or transfer, recruitment, or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause. The Contractor also agrees to comply with any implementing requirements FTA may issue.
2. The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, shall state that such Contractor is an equal opportunity employer.
3. Notices, advertisements, and solicitations placed in accordance with Federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this Section.
4. The Contractor will comply with all applicable requirements of Title IX of Education Amendments of 1972, as amended, 20 U.S.C. §§1681-1683, 1685-1688, with U.S. DOT regulations, “Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance,” 49 C.F.R. Part 25, and with any implementing directives that U.S. DOT or FTA may promulgate, which prohibit discrimination on the basis of sex.
5. The Contractor shall comply with applicable Federal guidance issued in compliance with Executive Order Number 13166, “Improving Access to Services for Persons with Limited English Proficiency,” August 11, 2000, 42 U.S.C. §2000d-1 note, and with the requirements and provisions of U.S. DOT Notice, “DOT Guidance to Recipients on Special Language Services to Limited English Proficient (LEP) Beneficiaries,” 66 Fed. Reg. 6733 et seq., January 22, 2001.

6. With respect to activities deemed by the U.S. Department of Labor (U.S. DOL) to qualify as "construction," the Contractor agrees to comply, and assures the compliance of each Subcontractor at any tier with all applicable EEO requirements of U.S. DOL regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000(e) note,) and any Federal statutes, executive orders, regulations, and Federal policies affecting construction undertaken as part of the Contract.
7. The Contractor agrees to comply with all applicable requirements of the Age Discrimination Act of 1975, as amended, 42 U.S.C. §§ 6101 et seq., and implementing regulations, which prohibit employment and other discrimination against individuals on the basis of age.
8. The Contractor agrees to comply with all applicable requirements of any other nondiscrimination statutes(s) that may apply.
9. The Contractor agrees to comply with the policies of Executive Order No. 12898, "Federal Actions to Address Environment Justice in Minority Populations and Low-Income Populations," 42.U.S.C. § 4321.
10. The Contractor agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary, to identify the affected parties.

39. ACCESS REQUIREMENTS FOR INDIVIDUALS WITH DISABILITIES

- A. The Contractor shall ensure that all Work performed under this Agreement is completed in accordance with the Contract Documents, including Work intended to meet the accessibility requirements of the Americans with Disabilities Act (ADA), and any other applicable regulations and standards.
- B. The Contractor must also comply with the provisions of the Virginians with Disabilities Act (§ 51.5-40 through § 51.5-46 of the Code of Virginia (1950), as amended), the terms of which are incorporated herein by reference.
- C. The Contractor is not required to ascertain whether the Contract Documents meet ADA design standards and guidelines, or other applicable regulations and standards. However, should the Contractor discover any non-conformity with such requirements, the Contractor shall immediately inform VRE to allow for corrective action.
- D. The Contractor shall defend and hold VRE harmless from any expense or liability arising from the Contractor's non-compliance in meeting its obligations herein. The Contractor shall be responsible for all costs related to delays, redesign, corrective work, and litigation relating to such non-compliance.

40. DRUG OR ALCOHOL ABUSE- CONFIDENTIALITY AND OTHER CIVIL RIGHTS PROTECTIONS

The Contractor agrees to comply with confidentiality and other civil rights protections of the Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. §§ 1174 et seq., with the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended, 42 U.S.C. §§ 4581 et seq., and with the Public Health Service Act of 1912, as amended, 42 U.S.C. §§ 290dd-3 and 290ee-3, and any subsequent amendments to these acts.

41. DRUG-FREE WORKPLACE

A. During the performance of the Contract, the Contractor agrees to (i) provide a drug-free workplace for the Contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each Subcontractor or vendor.

B. "Drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to a contractor in accordance with this chapter, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the Contract.

42. AUDIT

A. The Contractor hereby agrees to maintain all books, records, accounts, and reports required under the Contract for a period of not less than five (5) years after the date of termination or expiration of the Contract, except in the event of litigation or settlement of claims arising from the performance of the Contract, in which case the Contractor agrees to maintain same until VRE, the FTA Administrator, the Comptroller General, or any their duly authorized representatives, have disposed of all such litigation, appeals, claims, or exceptions related thereto. Reference 49 CFR 18.39(i)(11). The Contractor shall provide any documentation requested by VRE within fifteen (15) calendar days of such request.

B. VRE, its authorized agents, the Federal Government, and/or state auditors shall also have full access to and the right to examine any of said materials during said period. The Contractor shall conduct audits in accordance with U.S. General Accounting Office, Government Auditing Standards.

43. PUBLICATIONS

Articles, papers, bulletins, reports or other material reporting the results and findings of the work conducted under the Contract shall not be presented publicly

or published without the prior written approval of VRE, and all materials shall remain the sole property of VRE. Publications and reports officially released after the date of execution of the Contract describing the results of any investigation or study hereunder participated in by VRE shall give recognition to VRE in the text and title page to the nature of its cooperative character.

44. RIGHTS IN DATA

- A. Data and information submitted to VRE may be required to be made available for dissemination under the Freedom of Information Act, or other Federal, State and Local statute(s) in accordance with implementation instructions contained in 49 C.F.R. §19.36, revised March 2000, to the extent applicable, and any subsequent applicable Federal, State and Local requirements that may be promulgated.
- B. All "subject data" first produced in the performance of this Contract shall be the sole property of VRE. The Contractor agrees not to assert any rights at common law or equity and not to establish any claim to statutory copyright in such data. Except for its own internal use, the Contractor shall not publish or reproduce such data, in whole or in part, or in any manner or form, nor authorize others to do so without the prior written consent of VRE, until such time as the Federal Government or VRE may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to any Contract with an academic institution.

45. ROYALTIES

While VRE recognizes that certain materials or component parts may be produced under the terms of licensing or cross licensing agreements, it must be understood that the use of such materials and component parts requiring the application of recurring royalty charges, costs or payments is specifically prohibited. The Contractor agrees to and does hereby grant VRE a royalty-free license to all such data which they may cover by copyright and to all designs as to which they may assert any rights or establish any claim under the design patent or copyright laws.

46. PROTECTION OF SENSITIVE SECURITY INFORMATION

To the extent applicable, the Contractor shall comply with 49 C.F.R. Part 1520, "Protection of Sensitive Security Information," and with any implementing regulations, requirements, or guidelines that the Federal Government may issue.

47. EXAMINATION OF RECORDS

- A. The Contractor agrees as follows:
1. Reports. The Contractor agrees to provide to VRE those reports required by the U.S. DOT's grant management rules and any other reports the Federal Government may require.
 2. Records Retention. The Contractor agrees to provide VRE, the FTA Administrator, the Comptroller General of the United States or any authorized representatives access to any books, documents, paper and records of the Contractor which are directly pertinent to the Contract for the purpose of

making audits, examinations, excerpts and transcriptions even after the project has been closed-out. The Contractor also agrees, pursuant to 49 C.F.R. 633.17 to provide the FTA Administrator or their authorized representatives including any PMO contractor access to the Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309, or 5311. The Contractor agrees that it will maintain intact and readily accessible all data, books, accounts, documents, reports, records, contracts, and supporting materials relating to the Contract as the Federal Government and Commonwealth of Virginia may require during the course of the Contract and for five (5) years thereafter, except in the event of litigation of settlement of claims arising from the performance of the Contract, in which case the Contractor agrees to maintain the same until VRE, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives have disposed of all such litigation appeals claims or exceptions related thereto.

3. Access to Records. Upon request, the Contractor shall permit VRE, its authorized agents, state auditors, the Secretary of Transportation, and the Comptroller General of the United States, or their authorized representatives, to inspect all project work, materials, payrolls, and other data, and to audit the books, records, and accounts pertaining to the project.
 - a. The Contractor further agrees to include in all of its subcontracts hereunder a provision to the effect that the Subcontractor agrees that VRE, its authorized agents, state auditors, the Secretary of Transportation, and the Comptroller of the United States, or their authorized representatives, until the expiration of five (5) years after final payment under the subcontract, be permitted to inspect and audit all data and records of the Subcontractor relating to its performance under the subcontract.
 - b. The term "subcontract" as used in this clause excludes (1) purchase orders not exceeding \$100,000 and (2) subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public.
 - c. VRE shall continue to have for a period beyond five (5) years after Final payment under the Contract, the right to inspect and audit all data and records which relate to:
 1. Appeals under the "Disputes" clause of the Contract;
 2. Litigation of claims arising out of the performance of the Contract; or

3. Costs and expenses of the Contract as to which exception has been taken by VRE or the Commonwealth of Virginia or any of its duly authorized representatives.
- d. The extended right of inspection shall continue for such period beyond five (5) years after final payment under the Contract until such appeals, litigations, claims or exceptions have been disposed of, and for such period thereafter as required for review by the Virginia Department of Transportation (VDOT) and VRE.
- e. Notification of Federal Participation. In the announcement of any contract award for goods or services (including construction services) having an aggregate value of \$500,000 or more, the Contractor agrees to specify the amount of Federal assistance to be used in financing that acquisition of goods and services and to express the amount of that Federal assistance as a percentage of the total cost of that third-party contract.

48. TAXES

Sales of items purchased directly by VRE under the Contract shall be exempt from state sales and use tax and federal excise and transportation taxes to the extent permitted by law. State sales and use tax certificates of exemption, and VRE's federal excise tax exemption registration number will be furnished upon request. The foregoing shall not be construed to imply that the Contractor is exempt from all applicable taxes.

49. INSURANCE

Before beginning work under the Contract or any extension, the Contractor must provide to VRE a Certificate of Insurance indicating that the Contractor has in force, at a minimum, the coverage denoted by the insurance requirements included herein this solicitation. The Contractor must maintain this coverage until the completion of the Contract or as otherwise stated in the Contract Documents. All required insurance coverage must be acquired from insurers that are authorized to do business in the Commonwealth of Virginia, with a rating of "A-" or better and a financial size of "Class VII" or better in the latest edition of the A.M. Best Co. Guides.

50. PROTECTION OF EXISTING VEGETATION, STRUCTURES, EQUIPMENT, UTILITIES AND IMPROVEMENTS

- A. The Contractor shall preserve and protect all existing structures, equipment, and vegetation (such as trees, shrubs, and grass) on or adjacent to the work site, which are not to be removed and which do not unreasonably interfere with the work required under this Contract. The Contractor shall avoid damaging vegetation that will remain in place. If any limbs or branches of trees are broken during Contract performance, or by the careless operation of equipment, or by workmen, the Contractor shall trim those limbs or branches with a clean cut and paint the cut with a tree-pruning compound as directed by VRE or its authorized representative.

- B. The Contractor shall protect from damage all existing improvements and utilities to include, but not limited to, the following:
1. At or near the work site;
 2. Adjacent Host Railroad operating areas; and
 3. On the adjacent property of a third party, the locations of which are made known to or should be known by the Contractor.
- C. The Contractor shall repair any damage to those facilities, including those that are the property of a third party, resulting from failure to comply with the requirements of this Contract or failure to exercise reasonable care in performing the work. Repairs are to be performed as needed or on a 24-hour basis as may be required by VRE at no additional cost. If the Contractor fails or refuses to repair the damage promptly, the VRE Contracting Officer may have the necessary work performed and charge the cost to the Contractor.