

*ATTACHMENT TO RFP FOR
GENERAL ENGINEERING CONSULTANT SERVICES*

**FORM OF PROFESSIONAL
ENGINEERING SERVICES AGREEMENT**

THIS AGREEMENT, made and entered into as of this ____ day of ____, 2017, by and between the **Richmond Metropolitan Transportation Authority** (“**RMTA**” or the “**Authority**”), a political subdivision of the Commonwealth of Virginia, and _____, a _____ corporation (“**Engineer**”);

WITNESSETH

WHEREAS, RMTA owns and/or operates certain public facilities, including a tolled Expressway System, and desires certain professional engineering services in connection therewith;

WHEREAS, RMTA issued a Request for Proposal (“RFP”) dated May 4, 2017, for the provision of professional engineering services;

WHEREAS, Engineer submitted a proposal (the “Engineer’s Proposal”) in response to the RFP, and RMTA has selected the Engineer’s Proposal as the winning proposal;

NOW, THEREFORE, for good and valuable consideration and in consideration of the mutual undertakings of the parties to this agreement, RMTA and Engineer hereby agree to the following terms and conditions:

**ARTICLE I
SCOPE OF SERVICES**

1.1 Except as otherwise set forth in this Agreement, the scope of the duties and responsibilities of the parties shall be those set forth in the RFP (Exhibit A), and the Engineer’s Proposal (Exhibit B), or modified by amendment to this Agreement, each of which is or, from time to shall be, attached to and made a part of this Agreement by reference.

1.2 In any conflict between or among the terms of this Agreement, the RFP and the Engineer’s Proposal, the documents shall be controlling in the following order of precedent with the terms of a document taking precedent over the terms of any document listed below or following it: this Agreement (as it may be amended from time to time); the RFP (attached hereto as Exhibit A) and the Engineer’s Proposal (attached hereto as Exhibit B).

1.3 The compensation arrangements during the term of this Agreement shall be as set forth in Exhibit C.

1.4 Services under this Agreement will be done on an as directed/task order basis with reference to specific tasks pursuant to a work authorization issued by RMTA from time to time. Engineer shall then perform work under this Agreement as specified in the task order or work authorization, with compensation to be provided as set forth in Exhibit C, or as may be agreed to by RMTA and Engineer with respect to such task order or work authorization.

ARTICLE II COMMENCEMENT AND TERM

2.1 This Agreement shall become effective upon complete execution by the parties hereto.

2.2 The initial term of this Agreement shall expire on _____, 2018, subject to earlier termination as provided herein. This Agreement may be renewable up to [four (4)] additional [one (1)] year periods solely at RMTA's option, subject to applicable law. RMTA shall provide notice of option to renew not less than ninety (90) days prior to the end of the then-current term.

ARTICLE III PAYMENT

3.1 Engineer shall submit monthly statements for services rendered and reimbursable expenses incurred, based on the provisions in Exhibit C. Engineer's statements shall be in such detail as RMTA may reasonably require to show the identification of the personnel performing services, hours worked, and the detailed nature and extent of services performed. Payment of such itemized invoice shall be made within thirty (30) days after receipt and acceptance of an invoice by RMTA. RMTA shall notify Engineer of any disputed amount within thirty (30) days from date of the invoice, give reasons for the objection and promptly pay the undisputed amount. As to any progress billing, Engineer shall invoice for that portion of the services performed during the referenced period, with each invoice containing a progress report documenting the work completed for the applicable work period, including the financial status for each active task.

3.2 Engineer shall keep records pertaining to services performed and reimbursable expenses incurred on the basis of generally accepted accounting principles and in accordance with such reasonable requirements to facilitate audit as RMTA may provide. All records shall be available to RMTA or its authorized representative during normal business hours.

3.3 As to any particular task, project or portion thereof, RMTA and Engineer may agree on a specific cost for such task or project.

3.4 Notwithstanding anything to the contrary in this Agreement or in Exhibit C, should the work performed under this Agreement include products or services that are commercially priced by Engineer and unless otherwise agreed, such amounts shall be invoiced to RMTA at the catalog price(s) offered by Engineer. Engineer shall specifically designate such products, services or items and their respective price(s).

ARTICLE IV GENERAL TERMS AND CONDITIONS

4.1 Engineer agrees to perform the services under this Agreement as directed by RMTA in accordance with the terms of this Agreement and in accordance with applicable standards of professional care ordinarily possessed and exercised by a member of the same profession, currently practicing under similar circumstances. Engineer shall be responsible for the professional quality, technical accuracy, timely completion and coordination of all services it furnishes, as well as of any subconsultants, and by any principal, officer, employee and agents of it or any subconsultant.

4.2 Engineer accepts the relationship of trust and confidence established between it and RMTA by this Agreement, and Engineer covenants with RMTA to furnish its best skill and judgment in furthering the interests of RMTA. Engineer agrees to furnish at all times an adequate supply of personnel to perform the services in the best and most expeditious and economical manner consistent with the interests of RMTA, it being specifically understood that Engineer shall perform all services required to be performed hereunder in accordance with, as applicable, generally accepted engineering or architectural standards of care and practices for similar projects. Engineer shall, without additional compensation, promptly correct and revise any errors or deficiencies in any reports, design, drawings, specifications and other services, or in any portion of any services performed or service provided hereunder and for any portion of any work performed or service provided by any subconsultant.

4.3 Engineer shall not employ any subconsultant or subcontractor without RMTA's approval, in its sole discretion. Engineer shall bind each and every approved subconsultant to the terms stated herein and shall require the proper qualification of any such subconsultant. Engineer hereby affirms that it shall be responsible for the acts, errors and omissions of its subconsultants and shall fully indemnify, defend and save harmless RMTA, its agents and employees from any and all claims, judgments, losses, damages and expenses by third parties which may arise on account of the acts, errors or omissions of services rendered by Engineer's subconsultants. Engineer shall furnish a copy of this Agreement to any such subconsultant. No subconsultant shall have any rights as against RMTA.

4.4 All documents, records, reports, studies and analyses, including those prepared and stored on electronic medium, prepared pursuant to this Agreement, are the property of RMTA and shall be delivered to RMTA's custody upon completion of work or upon RMTA's request upon payment therefore (except as otherwise provided herein) and, in any event, no later than thirty (30) days after termination of this Agreement. Except as required for discharge of its duties to RMTA under this Agreement, no documents, records, reports, studies or analyses shall be released or disclosed by Engineer to any other person without the prior written approval of RMTA.

4.5 Engineer shall comply with the provisions of all Federal, state and local statutes, ordinances, and regulations of laws which may be applicable to the performance of this Agreement and obtain all necessary licenses and permits thereunder.

4.6 During the performance of this Agreement, Engineer for itself, assignees and successors in interest, affirms that it agrees to comply fully with Title VI and Title VII of the Civil Rights Act of 1964, as amended, and all other regulations promulgated thereunder. Further, Engineer agrees that it will not discriminate against any employee or applicant for employment because of race, religion, color, sex, disability or national origin except where religion, sex, disability or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of Engineer. Engineer agrees to post in a conspicuous place, available to employees and applicants for employment, notices setting forth provisions on this nondiscrimination clause and, in all solicitations or advertisements for employees placed by or on behalf of Engineer, will state that it is an equal opportunity employer. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation will be deemed sufficient for the purpose of meeting the foregoing requirements. Engineer will include the provisions of the foregoing paragraphs (i) and (ii) and this paragraph (iii) in every subcontract or purchase order of over \$10,000 so that the provisions will be binding upon each subcontractor or vendor.

4.7 Engineer agrees to (a) provide a drug-free workplace for its employees; (b) 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 Engineer's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (c) state in all solicitations or advertisements for employees placed by or on behalf of Engineer that Engineer maintains a drug-free workplace; and (d) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor. A "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 the Virginia Public Procurement Act, 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 this Agreement.

4.8 Engineer cannot use an indication of its services to the RMTA for commercial or advertising purposes, but may list this engagement in its corporate description for subsequent proposals being made to acquire additional business opportunities.

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

4.10 Engineer agrees that, if at any time during the course of its work hereunder there develops any situation that creates a conflict of interest or may create a conflict of interest between another entity (such as, but not limited to, the Virginia Department of Transportation) and RMTA

or might result in the disclosure of confidential or proprietary information of RMTA, Engineer will immediately bring such matter to RMTA's attention. While RMTA and Engineer will endeavor to resolve the conflict so as to allow Engineer to work on such matter, Engineer agrees that if such resolution cannot be attained, it will not apply or propose for such work, or withdraw or otherwise recuse itself at the request of RMTA from undertaking or performing further work on that particular matter.

4.11 Unless otherwise waived or provided by RMTA, Engineer shall furnish RMTA with a preliminary draft of any proposed correspondence to any federal, state or other regulatory agency for RMTA's review and approval at least seven (7) calendar days prior to mailing such correspondence.

ARTICLE V

OWNERSHIP AND USE OF DOCUMENTS

5.1 Final writings, reports, studies, analyses, maps and drawings prepared under this Agreement, including final reports, drawings and maps on media specified by RMTA, shall be the property of RMTA and shall be delivered to RMTA upon the earlier to occur of completion of the services or termination of this Agreement. RMTA may use such documents for the completion of or additions to the services performed hereunder, or for any other purpose provided that Engineer shall have no responsibility under this Agreement for any re-use of maps, drawings, or documents by RMTA for any purpose other than the services performed hereunder without verification or adaptation by Engineer.

5.2 Any re-use of drawings, specifications or documents by RMTA for any purpose other than as to any project or services performed hereunder without verification or adaptation by Engineer is at RMTA's sole risk. Should these documents be re-used by RMTA without verification by Engineer, Engineer's seal must be removed from the documents prior to use and the documents shall contain a notation that they are being used at RMTA's sole risk.

5.3 Any writings, reports, studies, analyses, maps and drawings, data, programs or other material first reduced to practice for the sole benefit of RMTA under this Agreement shall be deemed to be works for hire created by Engineer as a result of a special commission by RMTA, and owned outright by RMTA; but if they do not qualify as works for hire for any reason, Engineer to assign all of its right, title and interest in and to them to RMTA. Engineer hereby sells, assigns, transfers, conveys and delivers to RMTA, its successors and assigns, its entire right, title, and interest in, to and under all drawings, specifications, writings, reports, studies, analyses, maps, data, programs or other material, and other documents first reduced to practice for the sole benefit of RMTA hereunder, including all copyrightable elements thereof, which it warrants to not infringe on the copyrights or other rights of third parties, all of the foregoing to be held and enjoyed by RMTA for its own use and for the use of its successors, assigns, and other legal representatives, together with all claims for damages by reason of past, present, and future infringement of the rights assigned under this copyright assignment. Engineer agrees to execute and deliver to RMTA without additional charge such applications for copyright registration, assignments of copyright registrations, and other documents as RMTA deems are necessary or convenient to effectuate

copyright registration, the transfer of title contemplated by this copyright assignment, and to assist RMTA in prosecuting or defending any actions for copyright infringement to the extent resulting from the drawings, specifications, writings, reports, studies, analysis, maps, data, programs or other material and documents provided as deliverables to RMTA by Engineer under this Agreement.

Notwithstanding anything to the contrary contained herein, any tools, systems or information used by Engineer or its suppliers in the course of providing the services hereunder, including computer software (object code and source code), tools, systems, know-how, methodologies, equipment or processes and the intellectual property inherent therein and appurtenant thereto, including, without limitation, all copyrights, trademarks, patents, trade secrets, and any other proprietary rights inherent therein and appurtenant thereto shall remain the sole and exclusive property of Engineer or its suppliers unless conceived or first actually reduced to practice for the sole benefit of RMTA in the performance of services hereunder. To the extent necessary to use the project deliverables as intended, Engineer hereby grants RMTA a limited, non-exclusive, non-assignable license to use certain of Engineer's proprietary materials for such purpose. No other party shall use Engineer's proprietary materials, however, without the express, written consent of Engineer.

5.4 RMTA agrees that Engineer may use usual, typical and standard elements of the design in the design of other structures or facilities, provided that Engineer shall not use any design concepts which are specific or particular to the services, and which relate to layout, function or appearance on any other structure or facility. Engineer may retain its original notes, working documents, calculations and computations. RMTA shall be entitled to a copy of such materials on request without additional fees.

ARTICLE VI INSURANCE AND INDEMNIFICATION

6.1 Engineer shall carry commercial general liability coverage in amounts as set forth below throughout the term of this Agreement and shall furnish RMTA a certificate or certificates evidencing such insurance coverages in amounts acceptable to RMTA prior to commencing work on any project, all as set forth below.

6.2 Engineer shall acquire and maintain, at its sole expense, insurance coverage with forms of policies, insurers and limits no less than the following limits or such greater limits required by law:

- | | | |
|-----|-----------------------|---|
| (a) | Worker's Compensation | Statutory Limits |
| (b) | Employer's Liability | \$1,000,000 disease-policy limit
\$1,000,000 disease-each employee |

If there is an exposure of injury to Engineer's employees under the U.S. Longshoremen's and Harbor Worker's Compensation Act, the Jones Act or

under laws, regulations or statutes applicable to maritime employees, coverage shall be included for such injuries or claims.

- (c) Commercial General Liability Insurance. Engineer shall carry General Liability Insurance in the form of Commercial General Liability providing insurance for bodily injury liability and property damage liability for the limits of liability indicated below and including coverage for:
 - (i) Premises and Operations;
 - (ii) Products and Completed Operations;
 - (iii) Contractual Liability insuring, to the extent set forth in the policy provided to RMTA, the obligations assumed by the Engineer in this Agreement;
 - (iv) Broad Form Property Damage (including Completed Operations);
 - (v) Explosion, Collapse and Underground Hazards; and
 - (vi) Personal Injury Liability.

RMTA shall be named as additional insured under the Commercial General Liability policy. The combined single limits of liability under the Commercial General Liability Insurance to fulfill the requirements of this Subparagraph 6.1 shall be as follows:

\$2,000,000 per Occurrence Combined Single Limit for Bodily Injury, Property Damage, Personal and Advertising Injury, and Fire Legal Liability including Products/Completed Operations, and Professional Errors & Omissions Liability

\$4,000,000 General Aggregate Limit

- (d) Automobile Liability (Bodily Injury and Property Damage Liability) including coverage for all owned, hired and non-owned automobiles. The combined single limit of liability shall be \$1,000,000 for any one accident or loss. The required limits may be satisfied by a combination of a primary policy and an excess or umbrella policy.

The requirements contained herein as to types and limits, as well as RMTA's approval of insurance coverage to be maintained by Engineer are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by Engineer under this Agreement.

The foregoing insurance shall extend to damages because of bodily injury or property damage committed by the Engineer or alleged to have been committed by the Engineer, or its employees or its agents.

Engineer shall maintain all such insurance throughout the term of this Agreement and shall maintain the professional liability insurance throughout the term of this Agreement and for three (3) years following completion of the services hereunder. Engineer shall provide certificates of insurance coverage on an annual basis and demonstrate ability to obtain additional coverage as may be required for future services under this Agreement to RMTA to show current coverage upon execution of this Agreement by Engineer and at all times during which coverage is required by this Agreement. Upon request, Engineer shall advise RMTA of any claim against Engineer which may affect its errors and omissions coverage. The certificates of insurance required hereunder must provide clear evidence that Engineer's insurance policies contain the minimum limits of coverage and special provisions required by this Article. The insurance policies and certificates required herein shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until RMTA has been given no less than forty-five (45) days prior written notice. RMTA shall be named as an additional insured on all general liability policies using ISO Form Number CG 2010.

6.3 Engineer shall hold harmless, indemnify and defend RMTA, its officers, and employees from any and all liability, claims, judgments, losses, damages and expenses, including reasonable legal fees, costs of litigation and any judgment arising out of or alleged to arise from Engineer's negligent acts, errors or omissions, professional negligence or breach of this Agreement in the performance of this Agreement, but not including liability caused by the negligence of RMTA. These indemnification obligations shall apply to all liabilities, claims, judgments, losses, damages or expenses that are caused in whole or in part by Engineer's negligent acts, errors or omissions, professional negligence or breach, its subcontractors, anyone directly or indirectly employed by either or anyone for whose acts either may be liable, regardless of whether or not they are caused in part by a party indemnified hereunder. The indemnification obligation in this paragraph shall not be limited by a limitation on amount or type of damage, compensation or benefits payable by or for Engineer, Engineer's subcontractors, or anyone directly or indirectly employed by any of them under worker's or workmen's compensation acts, disability benefit acts or other employee benefit acts.

ARTICLE VII TERMINATION

- 7.1 This Agreement may be terminated under any or all of the following conditions:
- A. By mutual agreement and consent of RMTA and Engineer;
 - B. By either party at any time upon sixty (60) days' prior written notice; provided, however, that Engineer may not so terminate if it will result in a substantial inconvenience, burden, delay or hardship upon RMTA, as reasonably determined by RMTA, unless solely due to default by RMTA.

- C. Failure of Engineer to provide the services described in this Agreement within the times indicated will subject this Agreement to potential termination by RMTA on fourteen (14) days written notice. RMTA shall not be liable to Engineer for payment on any work that has not been completed and delivered to RMTA prior to termination of the Agreement.

After receipt of a notice of termination and except as otherwise directed by RMTA, Engineer shall:

- A. Stop all work under this Agreement on the date and to the extent specified in the notice of termination;
- B. Terminate and place no further orders or subcontracts for materials or services, except as may be necessary for completion of such portion of the work under this Agreement that has not been terminated.
- C. Assign to RMTA, in the manner and to the extent directed by RMTA, all of the right, title, and interest of Engineer under any Engineer orders or subcontracts as related to the performance of the work terminated. RMTA, at its discretion, may require Engineer to continue such subcontracts or orders until assumption of the same in writing by RMTA, or require Engineer to settle or pay any or all legitimate claims, arising out of termination of such orders and subcontracts.
- D. With RMTA's prior written authorization, terminate Engineer orders or subcontracts related to the performance of the work terminated. RMTA, in writing, may require Engineer to settle or pay all outstanding liabilities and/or claims arising from termination of Engineer orders related to the performance of the work terminated, the cost of which is reimbursable in whole or in part in accordance with the provisions of this Agreement.
- E. Complete performance of such part of the work as shall not have been terminated by the notice of termination.
- F. Take such action as may be necessary, or as RMTA may direct, for the protection and preservation of the property related to this Agreement which is in the possession of Engineer or any subcontractor or subconsultant or in which RMTA has or may acquire an interest.
- G. Deliver to RMTA all documents, reports, records, studies, work papers, and analyses of work compiled up to the date of termination pursuant to Section 4.4 hereof.

In the event of termination by RMTA due to failure of Engineer to perform satisfactorily, Engineer shall receive no additional compensation beyond that already due, and any work done shall become the property of RMTA. In the event of a termination of work under this Agreement, RMTA shall

review in a timely manner Engineer's termination invoice, and make such payment as is properly due. After receipt of a Notice of Termination for any reason other than Engineer's failure to perform, Engineer shall submit to RMTA its termination invoice in the form and with the certification prescribed by RMTA. Such termination invoice shall be submitted promptly, but in no event later than two (2) months from the effective date of termination. The termination invoice shall be restricted to payments due in accordance with this Agreement, plus extraordinary costs actually paid by Engineer as a direct result of such termination. However, Engineer shall undertake all reasonable and good faith efforts to mitigate such costs, for RMTA's benefit. RMTA shall review in a timely manner Engineer's termination invoice, and make such payment as is properly due.

Upon termination of this Agreement, RMTA is free to use any or all documents, records, reports, studies, analyses for which compensation has been paid as it desires without additional compensation to Engineer.

ARTICLE VIII GOVERNANCE

8.1 This Agreement 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 Circuit Court of the City of Richmond, Virginia. Engineer shall comply with all applicable federal, state and local laws and regulations, including rules and regulations of RMTA that have been disclosed to Engineer.

8.2 If any provision of this Agreement shall to any extent be held invalid or unenforceable, the remainder of the Agreement shall not be affected.

ARTICLE IX ASSIGNMENT

9.1 Engineer shall not assign, sublet or transfer this Agreement nor delegate its duties under this Agreement without the prior written consent of RMTA, which consent may be withheld in RMTA's sole discretion. This section shall be construed to include a substantial change in ownership or control of Engineer, including by way of illustration and without limitation, sale of all of the assets or sale of existing stock or securities and issuance of new stock or securities of Engineer or its parent corporation. Subject to the foregoing, this Agreement shall be binding on and inure to the benefit of RMTA and Engineer, their successors and assigns.

RMTA may not assign or transfer this Agreement without Engineer's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed; provided that RMTA may assign or transfer this Agreement to a governmental entity without any such prior written consent.

**ARTICLE X
TAXES**

10.1 RMTA shall not be liable for the payment of any taxes levied by the City, State or Federal Government against Engineer, and all such taxes shall be paid by Engineer; provided, however, should RMTA nevertheless pay any such taxes, Engineer shall reimburse RMTA therefore.

**ARTICLE XI
REPRESENTATIONS AND WARRANTIES**

11.1 RMTA represents and warrants that it is a political subdivision created under the laws of the Commonwealth of Virginia and that it has all necessary corporate power and authority to enter into and carry out its obligations under this Agreement. This Agreement has been duly authorized, executed and delivered by the RMTA, constitutes a valid and binding obligation of the RMTA, and is enforceable in accordance with its terms.

11.2 Engineer may reasonably rely upon the accuracy of data furnished by RMTA, or any other project participant, to Engineer for the service performed hereunder and upon which Engineer based such services. Engineer shall not be responsible for verifying or ensuring the accuracy of any information or content supplied by RMTA or any other project participant, nor ensuring that such information or content does not violate or infringe on any law or other third party rights, absent manifest error or appearance to the contrary.

11.3 Engineer represents and warrants that it is a corporation duly organized, validly existing and in good standing under the laws of the State of _____. Engineer has all necessary corporate power and authority to enter into and carry out its obligations under this Agreement. This Agreement has been duly authorized, executed, and delivered by Engineer, constitutes a valid and binding obligation of Engineer, and is enforceable in accordance with its terms.

11.4 Engineer represents and acknowledges to RMTA that it is knowledgeable of all laws, codes, rules and regulations applicable to the Project in the jurisdiction in which the Project is located, including, without limitation, all Federal laws, codes, rules and regulations including those related to highway engineering and by this representation agrees to comply with such laws, codes, rules and regulations.

11.5 Engineer represents that it is experienced and qualified to perform the services contemplated by this Agreement, and that it is properly licensed pursuant to applicable law to perform such services.

11.6 Engineer shall not employ any subconsultant without RMTA's approval. Engineer shall bind each and every approved subconsultant to the terms stated herein and shall ensure the proper licensing of such subconsultants. Engineer hereby affirms that it shall be responsible for the negligent acts, errors and omissions of its subconsultants and shall fully indemnify and save

harmless RMTA and its employees from any and all claims, judgments, losses, damages and expenses by third parties which may arise on account of negligent acts, errors and omissions rendered by Engineer's subconsultants in the performance of services under this Agreement.

11.7 Engineer shall be responsible for the professional quality, technical accuracy and the coordination of all designs, drawings, specifications, and other services furnished under this Agreement. Engineer shall, without additional compensation, promptly correct or revise any errors or deficiencies in its designs, drawings, specifications, and other services.

11.8 Engineer agrees to submit to RMTA on a reasonable frequency requested data regarding subcontractor/supplier activity with small businesses, minority-owned businesses, women-owned businesses, businesses owned by service disabled veterans and businesses located in the Richmond metropolitan area. Further, Engineer agrees to utilize the services of the "SWAM" subcontractors set forth in Engineer's Proposal and increase such utilization upon the RMTA's reasonable request.

11.9 Copies of all specifications, contract documents, and other written information shall be provided to RMTA on magnetic media specified and approved by RMTA. All bid plans and record drawings ("as built" plans) shall be provided in a CADD format and on magnetic media approved by RMTA. Engineer makes no warranty as to the compatibility of the data files beyond the release or version of the software as submitted, or with RMTA's hardware and/or software configurations except as specifically set forth in this Agreement. Because data stored on electronic media can deteriorate undetected or be modified without Engineer's knowledge, Engineer will not be responsible for maintaining copies of the submitted electronic files after acceptance by the RMTA and shall not be held liable for completeness or accuracy of the electronic data after the acceptance thereof. Only the submitted hard copy documents with the Engineer's seal on them will be considered the instrument of service hereunder. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.

11.10 Should it come to Engineer's attention that the estimated cost for any portion of any project or undertaking at any time during any phase of this Agreement exceed the amount available for the project construction, Engineer shall cease work immediately and so inform RMTA in writing. RMTA shall determine its options and Engineer shall not proceed further until written authorization is provided. Engineer's failure to notify RMTA shall release RMTA of any obligation to provide additional compensation for the work completed.

11.11 At RMTA's reasonable request or as necessary, Engineer shall establish or maintain a field office in the Richmond area. The field office shall be staffed and equipped to manage projects for which the Engineer is responsible and to provide timely responses to RMTA.

11.12 Because Engineer has no control over the cost of labor, materials, or equipment furnished by others, or over the resources provided by others to meet Project schedules, Engineer's opinion of probable costs and of a project or portion thereof shall be made on the basis of experience and qualifications as a practitioner of its profession. Engineer does not guarantee that proposals, bids, or actual project costs will not vary from Engineer's cost estimates or that actual schedules will not vary from Engineer's projected schedules.

11.13 Engineer shall not be responsible for (1) construction means, methods, techniques, sequences, procedures, or safety precautions and programs in connection with a project; (2) the failure of any contractor, subcontractor, vendor, or other project participant, not under contract to Engineer, to fulfill contractual responsibilities to RMTA or to comply with federal, state, or local laws, regulations, and codes; or (3) procuring permits, certificates, and licenses required for any construction unless such procurement responsibilities are specifically assigned to Engineer in any Attachments and the Scope of Services.

11.14 General Oversight and Inspection Disclaimer. Engineer shall visit the project sites as reasonably required to become generally familiar with the progress and quality of the work to determine, in general, if the work is proceeding in accordance with the design intent of the contract documents. On the basis of these on-site observations, Engineer shall endeavor to keep RMTA informed of portions of the work which Engineer discovers are not proceeding in accordance with the design intent of the contract documents, but Engineer's failure to discover defective or deficient work, data, materials or other services will not relieve the construction contractor of any responsibility it may have for the same under their agreement with RMTA.

11.15 Right to Rely. To the extent necessary to render the services, RMTA shall grant to or secure on behalf of Engineer a non-exclusive, worldwide, royalty-free license to edit, modify, adapt, translate, exhibit, publish, transmit, participate in the transfer of or, reproduce, create derivative works from, distribute, perform, display, and otherwise use RMTA's or other project participant's supplied content, materials or documents. Engineer shall not be responsible for verifying or ensuring the accuracy of any information or content supplied by RMTA or any other Project participant, not ensuring that such information or content does not violate or infringe any law or other third party rights.

11.16 Hazardous Waste. Engineer shall have no responsibility for the presence, removal or remediation of any hazardous waste in, on or under the work site except to the extent same is caused by Engineer or same is required under or part of any task order. In addition, Engineer shall have no duty to discover, detect or to report the presence of any hazardous materials at the work site except to the extent same is caused by Engineer or same is required under or part of any task order.

ARTICLE XII SCHEDULE FOR DELIVERY OF SERVICES

Engineer shall accomplish the services with due diligence and complete the work as follows:

12.1 Engineer shall immediately proceed on each portion of services hereunder after each Notice-to-Proceed from RMTA as required herein and shall complete its services in accordance with any designated project schedule for such services.

12.2 Construction progress shall be closely monitored by Engineer in an effort to keep the construction on schedule. Engineer shall notify RMTA in writing when any contractor's progress falls behind the respective project schedule.

12.3 Engineer shall complete the services in accordance with the respective project schedule. However, neither party shall hold the other responsible for damages or delay in performance caused by acts of God, strikes, lockouts, accidents, or other events beyond the control of the other or the other's employees and agents.

**ARTICLE XIII
NOTICES**

All notices hereunder shall be delivered in writing by hand delivery or certified mail return receipt requested to:

For RMTA: Richmond Metropolitan Transportation Authority
ATTN: Chief Executive Officer
919 E. Main Street, Suite 600
Richmond, Virginia 23219

For Engineer: _____

**ARTICLE XIV
ADDITIONAL PROVISIONS**

14.1 This Agreement constitutes the entire agreement between the parties and there are no agreements, understandings, warranties or representations between the parties except as provided for herein. This Agreement cannot be amended except in writing executed by the parties.

14.2 No waiver of any of the provisions of this Agreement shall be deemed to be nor constitute a waiver of any other provision, nor shall any waiver be binding unless evidenced by an instrument in writing executed by the party making the waiver.

IN WITNESS WHEREOF, the parties have executed this Agreement and made same effective as of the day and year first written above.

**RICHMOND METROPOLITAN
TRANSPORTATION AUTHORITY**

Date: _____

By: _____
Chief Executive Officer

Date: _____

By: _____

Its: _____

EXHIBIT C

COMPENSATION ARRANGEMENTS

In accordance with the Professional Engineering Agreement between the Richmond Metropolitan Transportation Authority (“RMTA”) and _____ (“Engineer”), the provisions below are the compensation arrangements referred to in Section 1.3 of such agreement:

The following principles will apply for in determining billing and payments provisions under such agreement.

[To Be Completed]