



## *Florida Department of Transportation*

RICK SCOTT  
GOVERNOR

719 S. Woodland Blvd.  
DeLand, FL 32720

ANANTH PRASAD, P.E.  
SECRETARY

September 25, 2013

Mr. Greg Hackbarth, President  
Herzog Technologies, Inc.  
8216 Northeast Parkway, Suite 100  
North Richland Hills, TX 76182

RE: SIGNAL MAINTENANCE OF WAY CONTRACT  
Financial ID#: 412994-8-82-05  
Procurement No.: RFP-DOT-12-13-5005-MOW  
Contract Number: BDX 26

Dear Mr. Hackbarth:

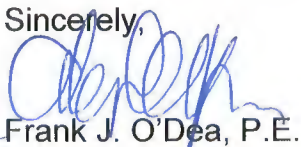
You have been forwarded under separate cover the subject contract document (copy attached). This is your Notice to Proceed to perform the described work and to incur authorized charges under this contract.

You are advised that Jonathan Duazo is the Project Manager for this contract. Invoices and any questions concerning management or administration of the contract should be directed to his attention at the following address:

Jonathan Duazo, SunRail Public Transportation Manager  
District Five Headquarters, MS# 506  
719 South Woodland Boulevard  
DeLand, Florida 32720-6834  
Phone: 386-956-7990  
Email: [jonathan.duazo@dot.state.fl.us](mailto:jonathan.duazo@dot.state.fl.us)

We look forward to a productive and mutually beneficial working relationship with you and your company.

Sincerely,

*FJO*   
Frank J. O'Dea, P.E.

Director of Transportation Development

FJO/tkh  
Attachments

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
**STANDARD WRITTEN AGREEMENT**

Page 1 of 9  
375-040-19  
PROCUREMENT  
OGC – 06/11

Agreement No.: BDX 26  
Financial Project I.D.: 412994-8-82-05  
F.E.I.D. No.: F27 4409948 001  
Appropriation Bill Number(s) for 1<sup>st</sup> year of contract,  
pursuant to s.216.313, F.S.: \_\_\_\_\_  
(required for contracts in excess of \$5 million)  
Procurement No.: RFP-DOT-12-13-5005-MOW  
D.M.S. Catalog Class No.: 955-240, 955-920

BY THIS AGREEMENT, made and entered into this 25<sup>th</sup> day of September, 2013, by and between the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION, hereinafter called "Department" and Herzog Technologies, Inc. of 8216 Northeast Parkway, Suite 100, North Richland Hills, TX 76182 duly authorized to conduct business in the State of Florida, hereinafter called "Vendor", hereby agree as follows:

1. SERVICES AND PERFORMANCE

- A. In connection with Central Florida Rail Corridor (CFRC) Signal Maintenance of Way Services the Department does hereby retain the Vendor to furnish certain services, information, and items as described in Exhibits "A" Scope of Services and Exhibit "D" Signal Maintenance of Way Requirements attached hereto and made a part hereof.
- B. Before making any additions or deletions to the work described in this Agreement, and before undertaking any changes or revisions to such work, the parties shall negotiate any necessary cost changes and shall enter into an Amendment covering such work and compensation. Reference herein to this Agreement shall include any amendment(s).
- C. All tracings, plans, specifications, maps, computer files, and reports prepared or obtained under this Agreement, as well as all data collected, together with summaries and charts derived therefrom, shall be the exclusive property of the Department without restriction or limitation on their use and shall be made available, upon request, to the Department at any time during the performance of such services and/or upon completion or termination of this Agreement. Upon delivery to the Department of said document(s), the Department shall become the custodian thereof in accordance with Chapter 119, Florida Statutes. The Vendor shall not copyright any material and products or patent any invention developed under this Agreement. The Department shall have the right to visit the site for inspection of the work and the products of the Vendor at any time.
- D. All final plans, documents, reports, studies, and other data prepared by the Vendor shall bear the professional's seal/signature, in accordance with the applicable Florida Statute, Administrative Rules promulgated by the Department of Business and Professional Regulation, and guidelines published by the Department, in effect at the time of execution of this Agreement. In the event that changes in the statutes or rules create a conflict with the requirements of published guidelines, requirements of the statutes and rules shall take precedence.
- E. The Vendor agrees to provide project schedule progress reports in a format acceptable to the Department and at intervals established by the Department. The Department shall be entitled at all times to be advised, at its request, as to the status of work being done by the Vendor and of the details thereof. Coordination shall be maintained by the Vendor with representatives of the Department, or of other agencies interested in the project on behalf of the Department. Either party to the Agreement may request and be granted a conference.
- F. All services shall be performed by the Vendor to the satisfaction of the Director who shall decide all questions, difficulties, and disputes of any nature whatsoever that may arise under or by reason of this Agreement, the prosecution and fulfillment of the services hereunder and the character, quality, amount of value thereof; and the decision upon all claims, questions, and disputes shall be final and binding upon the parties hereto. Adjustments of compensation and contract time because of any major changes in the work that may become necessary or desirable as the work progresses shall be subject to mutual agreement of the parties, and amendment(s) shall be entered into by the parties in accordance herewith.

Reference herein to the Director shall mean the District Five Secretary.

## 2. TERM

- A. Initial Term. This Agreement shall begin on date of execution and shall remain in full force and effect through the FDOT funding period. Subsequent to the execution of this Agreement by both parties, the services to be rendered by the Vendor shall commence and be completed in accordance with the option selected below. (Select box and indicate date(s) as appropriate)

☐ Services shall commence \_\_\_\_\_ and shall be completed by \_\_\_\_\_ or date of termination, whichever occurs first.

☐ Services shall commence upon written notice from the Department's Contract Manager and shall be completed by \_\_\_\_\_ or date of termination, whichever occurs first.

☒ Other: See Exhibit "A" Scope of Services

- B. RENEWALS (Select appropriate box):

☒ This Agreement may not be renewed.

☐ This Agreement may be renewed for a period that may not exceed three (3) years or the term of the original agreement, whichever period is longer. Renewals shall be contingent upon satisfactory performance evaluations by the Department and subject to the availability of funds. Any renewal or extension shall be in writing and shall be subject to the same terms and conditions set forth in this Agreement.

- C. EXTENSIONS. In the event that circumstances arise which make performance by the Vendor impracticable or impossible within the time allowed or which prevent a new contract from being executed, the Department, in its discretion, may grant an extension of this Agreement. Extension of this Agreement shall be in writing for a period not to exceed six (6) months and shall be subject to the same terms and conditions set forth in this Agreement; provided the Department may, in its discretion, grant a proportional increase in the total dollar amount based on the method and rate established herein. There shall be only one extension of this Agreement unless the failure to meet the criteria set forth in this Agreement for completion of this Agreement is due to events beyond the control of the Vendor.

It shall be the responsibility of the Vendor to ensure at all times that sufficient time remains in the Project Schedule within which to complete services on the project. In the event there have been delays which would affect the project completion date, the Vendor shall submit a written request to the Department which identifies the reason(s) for the delay and the amount of time related to each reason. The Department shall review the request and make a determination as to granting all or part of the requested extension.

## 3. COMPENSATION AND PAYMENT

- A. Payment shall be made only after receipt and approval of goods and services unless advance payments are authorized by the Chief Financial Officer of the State of Florida under section 215.422(14), Florida Statutes.
- B. If this Agreement involves units of deliverables, then such units must be received and accepted in writing by the Contract Manager prior to payments.
- C. Bills for fees or other compensation for services or expenses shall be submitted in detail sufficient for a proper preaudit and postaudit thereof.
- D. The bills for any travel expenses, when authorized by terms of this Agreement and by the Department's Project Manager, shall be submitted in accordance with Section 112.061, Florida Statute and Chapter 3 - Travel, Department's Disbursement Operations Manual, 350-030-400.
- E. Vendors providing goods and services to the Department should be aware of the following time frames. Upon receipt, the Department has five (5) working days to inspect and approve the goods and services, unless otherwise specified herein. The Department has twenty (20) days to deliver a request for payment (voucher) to the Department of Financial Services. The twenty (20) days are measured from the latter of the date the invoice is received or the goods or services are received, inspected and approved.



- F. If a payment is not available within forty (40) days, a separate interest penalty as established pursuant to Section 215.422, Florida Statutes, shall be due and payable, in addition to the invoice amount, to the Vendor. Interest penalties of less than one (1) dollar shall not be enforced unless the Vendor requests payment. Invoices which have to be returned to a Vendor because of Vendor preparation errors shall result in a delay in the payment. The invoice payment requirements do not start until a properly completed invoice is provided to the Department.
- G. The State of Florida, through the Department of Management Services, has instituted MyFloridaMarketPlace, a statewide eProcurement system. Pursuant to Section 287.057(22), Florida Statutes, all payments shall be assessed a transaction fee of one percent (1%), which the Vendor shall pay to the State. For payments within the State accounting system (FLAIR or its successor), the transaction fee shall, when possible, be automatically deducted from payments to the Vendor. If automatic deduction is not possible, the Vendor shall pay the transaction fee pursuant to Rule 60A-1.031(2), Florida Administrative Code. By submission of these reports and corresponding payments, Vendor certifies their correctness. All such reports and payments shall be subject to audit by the State or its designee. The Vendor shall receive a credit for any transaction fee paid by the Vendor for the purchase of any item(s) if such item(s) are returned to the Vendor through no fault, act, or omission of the Vendor. Notwithstanding the foregoing, a transaction fee is non-refundable when an item is rejected or returned, or declined, due to the Vendor's failure to perform or comply with specifications or requirements of the Agreement. Failure to comply with these requirements shall constitute grounds for declaring the Vendor in default and recovering reprocurement costs from the Vendor in addition to all outstanding fees. VENDORS DELINQUENT IN PAYING TRANSACTION FEES MAY BE EXCLUDED FROM CONDUCTING FUTURE BUSINESS WITH THE STATE.
- H. A vendor ombudsman has been established within the Department of Financial Services. The duties of this individual include acting as an advocate for vendors who may be experiencing problems in obtaining timely payment(s) from a state agency. The Vendor Ombudsman may be contacted at (850) 413-5516.
- I. Records of costs incurred under terms of this Agreement shall be maintained and made available upon request to the Department at all times during the period of this Agreement and for three years after final payment for the work pursuant to this Agreement is made. Copies of these documents and records shall be furnished to the Department upon request. Records of costs incurred shall include the Vendor's general accounting records and the project records, together with supporting documents and records of the Vendor and all subvendors performing work on the project, and all other records of the Vendor and subvendors considered necessary by the Department for a proper audit of project costs.
- J. The Department, during any fiscal year, shall not expend money, incur any liability, or enter into any contract which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any contract, verbal or written, made in violation of this subsection is null and void, and no money may be paid on such contract. The Department shall require a statement from the comptroller of the Department that funds are available prior to entering into any such contract or other binding commitment of funds. Nothing herein contained shall prevent the making of contracts for periods exceeding one (1) year, but any contract so made shall be executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years. Accordingly, the Department's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature.

#### 4. INDEMNITY AND PAYMENT FOR CLAIMS

- A. **INDEMNITY:** To the extent permitted by Florida Law, the Vendor shall indemnify and hold harmless the Department, its officers and employees from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the Vendor and persons employed or utilized by the Vendor in the performance of this Agreement.

It is specifically agreed between the parties executing this Agreement that it is not intended by any of the provisions of any part of the Agreement to create in the public or any member thereof, a third party beneficiary hereunder, or to authorize anyone not a party to this Agreement to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this Agreement.

**PAYMENT FOR CLAIMS:** The Vendor guarantees the payment of all just claims for materials, supplies, tools, or labor and other just claims against the Vendor or any subvendor, in connection with the Agreement. The Department's final acceptance and payment does not release the Vendor's bond until all such claims are paid or released.

## B. LIABILITY INSURANCE AND WORKER'S COMPENSATION

**(1) FELA and Workers' Compensation Insurance:** Vendor shall provide coverage under the Federal Employers' Liability Act (FELA) in the greater of the amount required by federal law or a limit of not less than \$1,000,000 for all damages arising out of bodily injuries to, or death of, one person and, subject to that limit for each person, a total limit of \$5,000,000 for all damages arising out of bodily injuries to, or death of, two or more persons in any one occurrence.

To the extent that FELA does not apply, Vendor shall provide Workers' Compensation Insurance in accordance with the laws of the State of Florida and in amounts sufficient to secure the benefits of the Florida Workers' Compensation Law for all employees. If subcontracting any of the work, ensure that the employees of the subcontractors are covered by similar insurance. Ensure that any equipment rental agreements that include operators who are employees of independent Contractors, sole proprietorships or partners are covered by similar insurance. The Department will accept equivalent approved protection in lieu of insurance.

**(2) Contractors' Public Liability and Property Damages Liability Insurance:** Vendor shall furnish evidence to the Department that, with respect to the operations performed, regular Contractors' Public Liability Insurance providing for a limit of not less than \$1,000,000 for all damages arising out of bodily injuries to, or death of, one person and, subject to that limit for each person, a total limit of \$5,000,000 for all damages arising out of bodily injuries to, or death of, two or more persons in any one occurrence; and regular Contractors' Property Damage Liability Insurance providing for a limit of not less than \$50,000 for all damages arising out of injury to, or destruction of, property in any one occurrence and, subject to that limit per occurrence, a total (or aggregate) limit of \$100,000 for all damages arising out of injury to, or destruction of, property during the policy period is carried.

Vendor shall cause the Department, and National Railroad Passenger Corporation (a/k/a "Amtrak"), and Florida Central Railroad Company, Inc., and Central Florida Commuter Rail Commission, and Volusia County, and Seminole County, and Orange County, and Osceola County, and City of Orlando, to be each an additional insured party on the Contractor's Public Liability and Property Damages Liability policies that insure the Contractor for the described work that it performs under the Contract.

**(3) Contractors' Protective Public Liability and Property Damage Liability Insurance:** Vendor shall furnish evidence to the Department that, with respect to the operations performed by subcontractors, regular Contractors' Protective Public Liability Insurance providing for a limit of not less than \$1,000,000 for all damages arising out of bodily injuries to, or death of, one person and, subject to that limit for each person, a total limit of \$5,000,000 for all damages arising out of bodily injuries to, or death of, two or more persons in any one occurrence; and regular Contractors' Protective Property Damage Liability Insurance providing for a limit of not less than \$50,000 for all damages arising out of injury to, or destruction of, property in any one occurrence and, subject to that limit per occurrence, a total (or aggregate) limit of \$100,000 for all damages arising out of injury to, or destruction of, property during the policy period is carried.

Vendor shall cause the Department, and National Railroad Passenger Corporation (a/k/a "Amtrak"), and Florida Central Railroad Company, Inc., and Central Florida Commuter Rail Commission, and Volusia County, and Seminole County, and Orange County, and Osceola County, and City of Orlando, to be each an additional insured party on the Contractor's Protective Public Liability and Property Damage Liability Insurance policies that insure the Contractor for the described work that it performs under the Contract.

### **(4) Insurance Required for Construction at Railroads:**

**(A) General:** In addition to any other forms of insurance or bonds required under the terms of the Contract, when the Contract includes the construction of a railroad grade crossing, overpass, or underpass structure, or a railroad crossing signal installation, or any other work or operations by the Contractor within the limits of the railroad right-of-way, including any encroachments thereon from work or operations in the vicinity of the railroad right-of-way, Vendor shall provide insurance of the types set forth below and in amounts not less than specified herein.

**(B) Railroads' Protective Public Liability and Property Damage Liability Insurance:** Vendor shall furnish the Department with an original insurance policy that, with respect to the operations performed, will provide, in behalf of the railroad company regular liability insurance providing coverage for bodily injury, death, and property damage limited to a combined single limit of \$2,000,000 per occurrence with an aggregate limit of \$6,000,000 for the term of the policy.

CSX Transportation, Inc. and the Department are to be each a Named Insured on the policy. National Railroad Passenger Corporation (a/k/a "Amtrak"), and Florida Central Railroad Company, Inc., and Central Florida Commuter Rail Commission, and Volusia County, and Seminole County, and Orange County, and Osceola County, and City of Orlando are to be each an additional insured on the policy.

**(5) Insurance for Protection of Utility Owners:** When the work under the Contract involves work on or in the vicinity of utility-owned property or facilities, Vendor shall furnish the Department with evidence that, with respect to the operations performed, General Comprehensive Liability Insurance or its equivalent providing for a limit of not less than \$1,000,000 for bodily injury or death to person(s) per occurrence and \$300,000 property damage each occurrence is carried.

The Department and Utility Company are to be Additional Named Insureds, and the policy will be primary to any coverage maintained by the Department or Company. National Railroad Passenger Corporation (a/k/a "Amtrak"), and Florida Central Railroad Company, Inc., and Central Florida Commuter Rail Commission, and Volusia County, and Seminole County, and Orange County, and Osceola County, and City of Orlando, are each to be additional insured on the policy. Vendor shall not make any material change or cancellation to the policy without providing the Department with ten days prior written notice.

**(6) Insurance by Others:** Vendor shall require every subcontractor or other third party who may have a contract with Vendor and who may require access on or to State Property or the Corridor or the Sun Rail Corridor or the FCEN Corridor to obtain and maintain for the duration of such access an insurance policy or policies with coverage that satisfies the conditions stated in this section 4. B. paragraphs (1), (2), (3), (4), and (5), and including causing each of the Named Insureds and the additional insureds stated in those paragraphs to be Named Insureds and additional insureds on such subcontractor or third party policy or policies.

For purposes of this section 4.B. paragraph (6) the following apply: "State Property" has the meaning stated in the "TRANSITION AGREEMENT Between State of Florida Department of Transportation and CSX Transportation, Inc.," Appendix A, at page A-4; and "Corridor" has the meaning stated in the "INTERLOCAL OPERATING AGREEMENT FOR OPERATION OF THE CENTRAL FLORIDA COMMUTER RAIL SYSTEM By and Between FLORIDA DEPARTMENT OF TRANSPORTATION AND CENTRAL FLORIDA COMMUTER RAIL COMMISSION," Appendix A, at page A-3; and Sun Rail "Corridor" has the meaning stated in the "AGREEMENT BETWEEN NATIONAL RAILROAD PASSENGER CORPORATION AND THE FLORIDA DEPARTMENT OF TRANSPORTATION," Definitions, at page 6; and "FCEN Corridor" has the meaning stated in the "OPERATING AGREEMENT Between State of Florida Department of Transportation, an agency of the State of Florida, and Florida Central Railroad Company, Inc., a Florida Corporation," Definitions, at page 6. Those agreement definitions mentioned above, and as heretofore amended, are incorporated by reference and may be accessed at [www.sunrail.com](http://www.sunrail.com). At that website click on "Updates & Documents," and then click on "Contract Documents" except regarding the Interlocal Operating Agreement click on "Local Agreements."

**(7) Submission and Approval of Policies; Termination:** Certificates of insurance (and other evidence of insurance requested by the Department) for each required policy shall be provided by Vendor at the time of Contract execution.

Vendor shall provide all insurance policies in such form and with insurers that are acceptable to the Department. Keep such insurance in force, in the full amount specified herein, until this contract is ended.

C. **PERFORMANCE AND PAYMENT BOND.**

☐ No Bond required.

☒ Within ten (10) calendar days of Notice to Proceed for maintenance mobilization services (MMS) and at all times during the term hereof, including extensions, the Vendor will supply to the Department and keep in force a Performance and Payment bond in the annual amount of the maintenance services portion of the contract provided by a surety authorized to do business in the State of Florida, payable to the Department and conditioned for the prompt, faithful, and efficient performance of this Agreement according to the terms and conditions hereof and within the time periods specified herein, and for the prompt payment of all persons furnishing labor, materials, equipment and supplies therefore. On or before ninety (90) days prior to the expiration of any Performance and Payment bond the Vendor shall provide the Department written proof from the Surety that an acceptable Performance and Payment bond will be issued prior to the expiration of the current bond.

D. **CERTIFICATION.** With respect to any insurance policy required pursuant to this Agreement, all such policies shall be issued by companies licensed to do business in the State of Florida. The Vendor shall provide to the Department certificates showing the required coverage to be in effect and showing the Department to be an additional certificate holder. Such policies shall provide for cancellation notice to the Department as required by law.

5. **COMPLIANCE WITH LAWS**

A. The Vendor shall allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received by the Vendor in conjunction with this Agreement. Failure by the Vendor to grant such public access shall be grounds for immediate unilateral cancellation of this Agreement by the Department.

B. The Vendor agrees that it shall make no statements, press releases or publicity releases concerning this Agreement or its subject matter or otherwise disclose or permit to be disclosed any of the data or other information obtained or furnished in compliance with this Agreement, or any particulars thereof, during the period of the Agreement, without first notifying the Department's Contract Manager and securing prior written



consent. The Vendor also agrees that it shall not publish, copyright, or patent any of the data developed under this Agreement, it being understood that such data or information is works made for hire and the property of the Department.

- C. The Vendor shall comply with all federal, state and local laws and ordinances applicable to the work or payment for work thereof, and will not discriminate on the grounds of race, color, religion, sex, national origin, age, or disability in the performance of work under this Agreement.
- D. If the Vendor is licensed by the Department of Business and Professional Regulation to perform the services herein contracted, then section 337.162, Florida Statutes, applies as follows:
  - (1) If the Department has knowledge or reason to believe that any person has violated the provisions of state professional licensing laws or rules, it shall submit a complaint regarding the violations to the Department of Business and Professional Regulation. The complaint shall be confidential.
  - (2) Any person who is employed by the Department and who is licensed by the Department of Business and Professional Regulation and who, through the course of the person's employment, has knowledge to believe that any person has violated the provisions of state professional licensing laws or rules shall submit a complaint regarding the violations to the Department of Business and Professional Regulation. Failure to submit a complaint about the violations may be grounds for disciplinary action pursuant to chapter 455, Florida Statutes, and the state licensing law applicable to that licensee. The complaint shall be confidential.
  - (3) Any complaints submitted to the Department of Business and Professional Regulation are confidential and exempt from Section 119.07(1), Florida Statutes, pursuant to chapter 455, Florida Statutes, and applicable state law.
- E. The Vendor covenants and agrees that it and its employees and agents shall be bound by the standards of conduct provided in applicable law and applicable rules of the Board of Business and Professional Regulation as they relate to work performed under this Agreement. The Vendor further covenants and agrees that when a former state employee is employed by the Vendor, the Vendor shall require that strict adherence by the former state employee to Sections 112.313 and 112.3185, Florida Statutes, is a condition of employment for said former state employee. These statutes will by reference be made a part of this Agreement as though set forth in full. The Vendor agrees to incorporate the provisions of this paragraph in any subcontract into which it might enter with reference to the work performed pursuant to this Agreement.
- F. A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity, may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids, proposals, or replies on leases of real property to a public entity, may not be awarded or perform work as a vendor, supplier, subvendor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, for CATEGORY TWO for a period of thirty-six (36) months following the date of being placed on the convicted vendor list.
- G. An entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity, may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids, proposals, or replies on leases of real property to a public entity, may not be awarded or perform work as a vendor, supplier, subvendor, or consultant under a contract with a public entity, and may not transact business with any public entity.
- H. The Department shall consider the employment by any vendor of unauthorized aliens a violation of Section 274A(e) of the Immigration and Nationality Act. If the vendor knowingly employs unauthorized aliens, such violation shall be cause for unilateral cancellation of this agreement.
- I. Pursuant to Section 216.347, Florida Statutes, the vendor may not expend any State funds for the purpose of lobbying the Legislature, the judicial branch, or a state agency.

## 6. TERMINATION AND DEFAULT

- A. This Agreement may be canceled by the Department in whole or in part at any time the interest of the Department requires such termination. The Department further reserves the right to terminate or cancel this

Agreement in the event an assignment be made for the benefit of creditors.

- B. If the Department determines that the performance of the Vendor is not satisfactory, the Department shall have the option of (a) immediately terminating the Agreement, or (b) notifying the Vendor of the deficiency with a requirement that the deficiency be corrected within a specified time, otherwise the Agreement will be terminated at the end of such time, or (c) take whatever action is deemed appropriate by the Department.
- C. If the Department requires termination of the Agreement for reasons other than unsatisfactory performance of the Vendor, the Department shall notify the Vendor of such termination, with instructions as to the effective date of termination or specify the stage of work at which the Agreement is to be terminated.
- D. If the Agreement is terminated before performance is completed, the Vendor shall be paid only for that work satisfactorily performed for which costs can be substantiated. Such payment, however, may not exceed an amount which is the same percentage of the agreement price as the amount of work satisfactorily completed is a percentage of the total work called for by this Agreement. All work in progress shall become the property of the Department and shall be turned over promptly by the Vendor.
- E. If the Agreement is for goods or services of \$1 million or more and was entered into or renewed on or after July 1, 2011 and the Department determines that the Vendor submitted a false certification under Section 287.135(5), Florida Statutes, or if the Vendor has been placed on the Scrutinized Companies with Activities in the Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, the Department shall have the option of (a) terminating the Agreement after it has given the Vendor notice and an opportunity to demonstrate the agency's determination of false certification was in error pursuant to Section 287.135(5)(a), Florida Statutes, or (b) maintaining the Agreement if the conditions of Section 287.135(4), Florida Statutes, are met.
- F. If the Vendor fails to comply with the Vendor's obligations under this contract, the Vendor shall be liable to the Department for all damages associated with the Vendor's breach of contract. Damages shall include, but not necessarily be limited to, all costs, all attorney's fees, all penalties assessed against the Department, as well as all incidental and consequential damages.

## 7. ASSIGNMENT AND SUBCONTRACTS

- A. The Vendor shall maintain an adequate and competent staff so as to enable the Vendor to timely perform under this Agreement and may associate with it such subvendors, for the purpose of its services hereunder, without additional cost to the Department, other than those costs within the limits and terms of this Agreement. The Vendor is fully responsible for satisfactory completion of all subcontracted work. The Vendor, however, shall not sublet, assign or transfer any work under this Agreement to other than subvendors specified in the proposal, bid and/or Agreement without the written consent of the Department.

- B. Select the appropriate box:

☒ [X] The following provisions are not applicable to this Agreement.

☐ [ ] The following provision is hereby incorporated in and made a part of this Agreement:

It is expressly understood and agreed that any articles that are the subject of, or required to carry out this Agreement shall be purchased from a nonprofit agency for the blind or for the severely handicapped that is qualified pursuant to Chapter 413, Florida Statutes, in the same manner and under the same procedures set forth in Section 413.036(1) and (2), Florida Statutes; and for purposes of this Agreement the person, firm, or other business entity (Vendor) carrying out the provisions of this Agreement shall be deemed to be substituted for the state agency (Department) insofar as dealings with such qualified nonprofit agency are concerned.

☐ [ ] The following provision is hereby incorporated in and made a part of this Agreement:

It is expressly understood and agreed that any articles which are the subject of, or required to carry out this Agreement shall be purchased from the corporation identified under Chapter 946, Florida Statutes, in the same manner and under the procedures set forth in section 946.515(2) and (4), Florida Statutes; and for purposes of this Agreement, the person, firm, or other business entity (Vendor) carrying out the provisions of this Agreement shall be deemed to be substituted for this agency (Department) insofar as dealings with such corporation are concerned.



The "corporation identified" is Prison Rehabilitative Industries and Diversified Enterprises, Inc. (PRIDE). Available pricing, products, and delivery schedules may be obtained by contacting:

PRIDE Enterprises  
12425 - 28<sup>th</sup> Street, North  
St. Petersburg, Florida 33716-1826  
Telephone: (800) 643-8459

- [ ] This Agreement involves the expenditure of federal funds and Section 946.515, Florida Statutes, as noted above, does not apply. However, Appendix I is applicable to all parties and is hereof made a part of this Agreement.

## 8. MISCELLANEOUS

- A. The Vendor and its employees, agents, representatives, or subvendors are not employees of the Department and are not entitled to the benefits of State of Florida employees. Except to the extent expressly authorized herein, Vendor and its employees, agents, representatives, or subvendors are not agents of the Department or the State for any purpose or authority such as to bind or represent the interests thereof, and shall not represent that it is an agent or that it is acting on the behalf of the Department or the State. The Department shall not be bound by any unauthorized acts or conduct of the Vendor or its employees, agents, representatives, or subvendors. Vendor agrees to include this provision in all its subcontracts under this Agreement.
- B. All words used herein in the singular form shall extend to and include the plural. All words used in the plural form shall extend to and include the singular. All words used in any gender shall extend to and include all genders.
- C. This Agreement embodies the whole agreement of the parties. There are no promises, terms, conditions, or obligations other than those contained herein, and this Agreement shall supersede all previous communications, representations, or agreements, either verbal or written, between the parties hereto. The State of Florida terms and conditions, whether general or specific, shall take precedence over and supersede any inconsistent or conflicting provision in any attached terms and conditions of the Vendor.
- D. It is understood and agreed by the parties hereto that if any part, term or provision of this Agreement is by the courts held to be illegal or in conflict with any law of the State of Florida, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term or provision held to be invalid.
- E. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.
- F. In any legal action related to this Agreement, instituted by either party, the Vendor hereby waives any and all privileges and rights it may have under Chapter 47 and section 337.19, Florida Statutes, relating to venue, as it now exists or may hereafter be amended, and any and all such privileges and rights it may have under any other statute, rule, or case law, including, but not limited to those grounded on convenience. Any such legal action may be brought in the appropriate Court in the county chosen by the Department and in the event that any such legal action is filed by Vendor, the Vendor hereby consents to the transfer of venue to the county chosen by the Department upon the Department filing a motion requesting the same.
- G. If this Agreement involves the purchase or maintenance of information technology as defined in Section 282.0041, Florida Statutes, the selected provisions of the attached Appendix II are made a part of this Agreement.
- H. Vendor/Vendor:
  - 1. shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the Vendor/Vendor during the term of the contract;
  - and
  - 2. shall expressly require any subvendors performing work or providing services pursuant to the state contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subvendor during the contract term.

I. Time is of the essence as to each and every obligation under this Agreement.

J. The following attachments are incorporated and made a part of this agreement:

Exhibit "A", Scope of Services; Exhibit "B", Method of Compensation; Exhibit "C", Price Proposal, Exhibit "D" Signal Maintenance of Way Requirements, Exhibit "E", IOS Signal Route and Aspect Chart Sheets, Exhibit "F", Field Inspection Findings for Signals, Exhibit "G", Signal Equipment Photograph Log, Exhibit "H"-1 and "H"-2, Signal and Track Charts, Exhibit "I", Required Federal Transit Administration Contract Provisions

K. Other Provisions: In case of conflict the contract documents shall have the following order of precedence.

Exhibit "I", Required Federal Transit Administration Contract Provisions  
Exhibit "A" Scope of Services  
Exhibit "D" Signal Maintenance of Way Requirements  
Exhibit "B" Method of Compensation  
Standard Written Agreement

IN WITNESS WHEREOF, the parties have executed this Agreement by their duly authorized officers on the day, month and year set forth above.

Herzog Technologies, Inc.  
Name of Vendor

STATE OF FLORIDA  
DEPARTMENT OF TRANSPORTATION

By: [Signature]  
Authorized Signature

By: [Signature]  
Authorized Signature

Greg Hackbarth  
(Print/Type)

for Noranne B. Downs, P.E.  
(Print/Type)

Title: President

Title: District Five Secretary

FOR DEPARTMENT USE ONLY

APPROVED:  
[Signature]  
Procurement Office  
SB

LEGAL REVIEW:  
[Signature]

# **Exhibit A - Scope of Services**

## **STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION**

RFP Number: RFP-DOT-12-13-5005-MOW

Title: Central Florida Rail Corridor (CFRC) Signal Maintenance of Way Services

### **I. Introduction**

The Department is initiating its implementation of its Central Florida Commuter Rail Transit system (a.k.a. SunRail) which involves the design, construction and initial start-up of a 32-mile commuter rail system that extends from Fort Florida Road in Volusia County, Florida to Sand Lake Road in Orange County, Florida and also assumption of the dispatch and maintenance of the entire 62-mile Central Florida Rail Corridor (CFRC) that extends from DeLand, Florida to Poinciana, Florida. The Department is in the process of acquiring the infrastructure, including right-of-way, from CSXT. Upon transfer of title, the Department will be responsible for the ongoing operations and maintenance of the existing rail corridor as well as the construction of system improvements to accommodate commuter rail service. These improvements include the construction of 18.3 miles of new double track, maintaining two miles of single track (in two segments) and maintaining 11 miles of existing double track; design and installation of a complete signal (train control) and communication system, development of a Vehicle Storage and Maintenance Facility, development of 12 stations, modifications of up to 96 highway grade crossings, and construction of three (3) new pedestrian crossings.

The Department will be responsible for the maintenance of the rail corridor infrastructure and dispatching for operation of the existing freight and passenger rail traffic through the initial start-up of commuter service and continuing into the first seven years of revenue service (The FDOT Funding period). The dispatch operations for the construction period will be performed, under a separate contract, by CSXT. The maintenance of the track will be performed by the Design/Build/Maintain Firm selected for the Civil, Systems, Track and Signal Work Design/Build/Maintain Contract. Flagging operations during the construction period will be performed by the Design/Build/Maintain Firm.

The services to be performed under this Signal Maintenance of Way Services contract involve the maintenance of the existing signal systems (both wayside and grade crossing systems) for the 62-mile corridor described above to be designated as the Central Florida Rail Corridor (CFRC) after acquisition of the rail corridor from CSXT. The Signal Maintenance of Way Services will be initiated during the construction phases of the Design/Build/Maintain contract and continue through the completion of Phase 1 construction into the operations of the commuter rail SunRail system and planned Phase 2 construction. The Signal Maintenance of Way Services shall include maintenance of the existing system and maintenance of new signal systems as they are cutover during the construction activities. Services under this agreement shall begin on the date shown in the written Notice to Proceed for Maintenance Mobilization Services (MMS) from the Department and continue for seven (7) years from the date shown in the written Notice to Proceed date for Maintenance Services (MS).

### **II. Personnel Qualifications**

All employees of the Signal Maintenance Firm engaged in the inspection, testing and maintenance of Service Property, except for Manager(s), Supervisor(s) and Administrative Support, shall be covered employees under the Railroad Retirement Tax Act (26 USC 3231(a)). Vendor shall submit Signal Maintenance Experience for each employee Vendor expects to employ for these services. Employees of Vendor identified in A. and B. below shall at all times meet the following minimum requirements:



## **A. Signal Maintenance Manager**

An Electrical Engineering degree plus ten (10) years of engineering experience in Railroad Signal Systems Maintenance (four (4) years of which are in major commuter rail systems), or for non-degreed personnel fifteen (15) years of responsible Railroad Signal Maintenance, Railroad Signal Construction or Signal Engineering experience (four (4) years of which are on a Class I railroad or a passenger rail system).

Requires the ability to communicate effectively in English (verbally and in writing); direct highly complex and specialized maintenance, administration and inspection program; plan and organize the work of subordinate and staff members; develop and/or review policies, methods, practices, and procedures; and review programs for conformance with Department standards. Participate in safety audits with other project safety professionals. Coordinate with Design/Build/Maintain Firm Maintenance of Way Manager and FDOT Chief Operating Officer and its staff on safety, security, and maintenance activities. Also must have the following:

### Qualifications:

Previous experience is required in the following:

- Design, construction, testing, installation, and maintenance of Centralized Traffic Control Systems (CTC/TCS), Highway-Rail Grade Crossing Warning Systems, ATCS Communications Systems, CTC Dispatch Systems.
- Applicable Federal laws and regulations pertaining to railroad signal systems and highway-rail grade crossing warning systems.
- Review and verification of CTC signal systems, highway-rail grade crossing and communications systems design and engineering.
- Performing independent on-site inspections during preventative maintenance, regulatory and operational testing of all wayside signal, train control, communications, and highway-rail crossing warning systems to ensure that they are properly installed, maintained, tested, and operated.

### Certifications:

- Qualified or able to obtain qualification on RWP Rules as defined by the Federal Railroad Administration – applicable parts of 49 CFR Part 214.

## **B. Signal Systems Maintainer**

An Electrical Engineering degree plus four (4) years of engineering experience in Railroad Signal Systems Maintenance (two (2) years of which are on a Class I or passenger rail system), or for non-degreed personnel eight (8) years of responsible Railroad Signal Construction (two (2) years of which are in a major commuter rail project).

Qualifications include the ability to communicate effectively in English (verbally and in writing); receive specific tasks and instructions and perform preventative maintenance, testing, troubleshooting and repair, verification and inspection of signal systems including communications, wayside signal, highway–rail grade crossing systems for conformance with applicable regulations and standards. Also must have the following:

### Qualifications:

Previous experience is required in the following:

- Maintenance, testing, and installation of Centralized Traffic Control Systems (CTC/TCS), Highway-Rail Grade Crossing Warning Systems, and Communications Systems.

- Applicable Federal laws and regulations pertaining to railroad signal systems and highway-rail grade crossing warning systems.
- Performing independent on-site preventative maintenance, regulatory testing and verification and troubleshooting of all wayside signal, train control, communications and highway-rail crossing warning systems to ensure that they are properly installed, tested, operated, and maintained.
- Performing maintenance of operation and operational testing during track construction and maintenance to ensure the wayside signal and highway rail grade crossings function during and after construction or maintenance work has been performed on the track.

Certifications:

- Qualified or able to obtain qualification on RWP Rules as defined by the Federal Railroad Administration – applicable parts of 49 CFR Part 214.

Vendor shall only use employees for whom Vendor submitted Signal Maintenance Experience forms as part of Vendor's bid documents for this procurement unless the Department provides written consent to use other employees. As part of providing that consent, the Department may require Vendor to submit new Signal Maintenance Experience forms for the new proposed employees.

### **III. Services**

The services to be provided under this Agreement are in two distinct parts, Maintenance Mobilization Services and Maintenance Services. The Signal Maintenance Firm shall not start Maintenance Mobilization Services or Maintenance Services activities within the railroad right-of-way prior to the Department's issuance of a Notice to Proceed as to such activities. Separate Notices to Proceed shall be issued for each of these parts. Additional Notices to Proceed may be issued subsequently for each part if additional services beyond that authorized by the Scope of Services are needed.

It is currently anticipated that the Notice to Proceed for Maintenance Mobilization Services will be issued within one month of contract execution and a Notice to Proceed for Maintenance Services will be issued approximately three (3) months after the Maintenance Mobilization Services are initiated. Services will commence on the date shown in the Notice to Proceed for Maintenance Mobilization Services, the Department will pay for Maintenance Mobilization Services until the commencement date on the Notice to Proceed for Maintenance Services or the contract is terminated whichever comes first. Signal Maintenance Firm will be afforded a minimum of three (3) months for Maintenance Mobilization Services. If mobilization extends beyond three (3) months, the monthly maintenance mobilization services fee shall be subject to negotiation. The Signal Maintenance Firm shall have no right whatsoever to any monetary compensation or damages of any nature or kind for delay in the Department's issuance of a Notice to Proceed for Maintenance Services. The detailed requirements for the service to be performed by Vendor are contained in the document entitled "Signal Maintenance of Way Requirements which is attached hereto and by this reference made a part hereof. Vendor shall comply with all requirements of the Signal Maintenance of Way Requirements that either expressly or impliedly apply to the Maintenance Mobilization or Maintenance Services which are a part of this Agreement. The Vendor shall be responsible for the maintenance of the existing signal infrastructure and for new signal infrastructure as it is cut in by Other Contractors.

The following documents contain additional requirements applicable to the performance of Vendor under this Agreement and are attached hereto and by this reference made a part hereof:

Exhibit E, IOS Route and Aspect Charts Sheets 1 through 16  
Exhibit F, Field Inspection Findings for Signals, 96 pages

#### **IV. STANDARD CONTRACT TERMS AND CONDITIONS**

The following form PUR 1000 is a standard contract terms form that the Department includes in all procurements, except that paragraphs 4, 5, 11, 19, 20, 25, 26, 27, 29, 31, 35, 40, 41, 43, and 45 do not apply to this Request for Proposal. Deletion of these paragraphs shall not be deemed to be deletion of content contained elsewhere and the substance of these excepted paragraphs may be addressed in other locations in the procurement documents. That substance located elsewhere continues to apply regardless of this exception paragraph.

**State of Florida  
PUR 1000  
General Contract Conditions  
Central Florida Rail Corridor (CFRC), Signal Maintenance of Way Services**

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**1. Definitions.** The definitions contained in s. 60A-1.001, F.A.C. shall apply to this agreement. The following additional terms are also defined:

(a) "Contract" means the legally enforceable agreement that results from a successful solicitation. The parties to the Contract will be the Customer and Contractor.

(b) "Customer" means the State agency or other entity identified in a contract as the party to receive commodities or contractual services pursuant to a contract or that orders commodities or contractual services via purchase order or other contractual instrument from the Contractor under the Contract. The "Customer" may also be the "Buyer" as defined in the PUR 1001 if it meets the definition of both terms.

(c) "Product" means any deliverable under the Contract, which may include commodities, services, technology or software.

(d) "Purchase order" means the form or format a Customer uses to make a purchase under the Contract (e.g., a formal written purchase order, electronic purchase order, procurement card, contract or other authorized means).

**2. Purchase Orders.** In contracts where commodities or services are ordered by the Customer via purchase order, Contractor shall not deliver or furnish products until a Customer transmits a purchase order. All purchase orders shall bear the Contract or solicitation number, shall be placed by the Customer directly with the Contractor, and shall be deemed to incorporate by reference the Contract and solicitation terms and conditions. Any discrepancy between the Contract terms and the terms stated on the Contractor's order form, confirmation, or acknowledgement shall be resolved in favor of terms most favorable to the Customer. A purchase order for services within the ambit of section 287.058(1) of the Florida Statutes shall be deemed to incorporate by reference the requirements of subparagraphs (a) through (f) thereof. Customers shall designate a contract manager and a contract administrator as required by subsections 287.057(14) and (15) of the Florida Statutes.

**3. Product Version.** Purchase orders shall be deemed to reference a manufacturer's most recently release model or version of the product at the time of the order, unless the Customer specifically requests in writing an earlier model or version and the contractor is willing to provide such model or version.

~~**4. Price Changes Applicable only to Term Contracts.** If this is a term contract for commodities or services, the following provisions apply.~~

~~(a) Quantity Discounts. Contractors are urged to offer additional discounts for one time delivery of large single orders. Customers should seek to negotiate additional price concessions on quantity purchases of any products offered under the Contract. State Customers shall document their files accordingly.~~

~~(b) Best Pricing Offer. During the Contract term, if the Customer becomes aware of better pricing offered by the Contractor for substantially the same or a smaller quantity of a product outside the Contract, but upon the same or similar terms of the Contract, then at the discretion of the Customer the price under the Contract shall be immediately reduced to the lower price.~~

~~(c) **Sales Promotions.** In addition to decreasing prices for the balance of the Contract term due to a change in market conditions, a Contractor may conduct sales promotions involving price reductions for a specified lesser period. A Contractor shall submit to the Contract Specialist documentation identifying the proposed (1) starting and ending dates of the promotion, (2) products involved, and (3) promotional prices compared to then-authorized prices. Promotional prices shall be available to all Customers. Upon approval, the Contractor shall provide conspicuous notice of the promotion.~~

~~(d) **Trade-In.** Customers may trade-in equipment when making purchases from the Contract. A trade-in shall be negotiated between the Customer and the Contractor. Customers are obligated to actively seek current fair market value when trading equipment, and to keep accurate records of the process. For State agencies, it may be necessary to provide documentation to the Department of Financial Services and to the agency property custodian pursuant to Chapter 273, F.S.~~

~~(e) **Equitable Adjustment.** The Customer may, in its sole discretion, make an equitable adjustment in the Contract terms or pricing if pricing or availability of supply is affected by extreme and unforeseen volatility in the marketplace, that is, by circumstances that satisfy all the following criteria: (1) the volatility is due to causes wholly beyond the Contractor's control, (2) the volatility affects the marketplace or industry, not just the particular Contract source of supply, (3) the effect on pricing or availability of supply is substantial, and (4) the volatility so affects the Contractor that continued performance of the Contract would result in a substantial loss.~~

**5. Additional Quantities.** ~~For a period not exceeding ninety (90) days from the date of solicitation award, the Customer reserves the right to acquire additional quantities up to the amount shown on the solicitation but not to exceed the threshold for Category Two at the prices submitted in the response to the solicitation.~~

**6. Packaging.** Tangible product shall be securely and properly packed for shipment, storage, and stocking in appropriate, clearly labeled, shipping containers and according to accepted commercial practice, without extra charge for packing materials, cases, or other types of containers. All containers and packaging shall become and remain Customer's property.

**7. Inspection at Contractor's Site.** The Customer reserves the right to inspect, at any reasonable time with prior notice, the equipment or product or plant or other facilities of a Contractor to assess conformity with Contract requirements and to determine whether they are adequate and suitable for proper and effective Contract performance.

**8. Safety Standards.** All manufactured items and fabricated assemblies subject to operation under pressure, operation by connection to an electric source, or operation involving connection to a manufactured, natural, or LP gas source shall be constructed and approved in a manner acceptable to the appropriate State inspector. Acceptability customarily requires, at a minimum, identification marking of the appropriate safety standard organization, where such approvals of listings have been established for the type of device offered and furnished, for example: the American Society of Mechanical Engineers for pressure vessels; the Underwriters Laboratories and/or National Electrical Manufacturers' Association for electrically operated assemblies; and the American Gas Association for gas-operated assemblies. In addition, all items furnished shall meet all applicable requirements of the Occupational Safety and Health Act and state and federal requirements relating to clean air and water pollution.

**9. Americans with Disabilities Act.** Contractors should identify any products that may be used or adapted for use by visually, hearing, or other physically impaired individuals.

**10. Literature.** Upon request, the Contractor shall furnish literature reasonably related to the product offered, for example, user manuals, price schedules, catalogs, descriptive brochures,

etc.

**11. ~~Transportation and Delivery.~~** ~~Prices shall include all charges for packing, handling, freight, distribution, and inside delivery. Transportation of goods shall be FOB Destination to any point within thirty (30) days after the Customer places an Order. A Contractor, within five (5) days after receiving a purchase order, shall notify the Customer of any potential delivery delays. Evidence of inability or intentional delays shall be cause for Contract cancellation and Contractor suspension.~~

**12. Installation.** Where installation is required, Contractor shall be responsible for placing and installing the product in the required locations at no additional charge, unless otherwise designated on the Contract or purchase order. Contractor's authorized product and price list shall clearly and separately identify any additional installation charges. All materials used in the installation shall be of good quality and shall be free of defects that would diminish the appearance of the product or render it structurally or operationally unsound. Installation includes the furnishing of any equipment, rigging, and materials required to install or replace the product in the proper location. Contractor shall protect the site from damage and shall repair damages or injury caused during installation by Contractor or its employees or agents. If any alteration, dismantling, excavation, etc., is required to achieve installation, the Contractor shall promptly restore the structure or site to its original condition. Contractor shall perform installation work so as to cause the least inconvenience and interference with Customers and with proper consideration of others on site. Upon completion of the installation, the location and surrounding area of work shall be left clean and in a neat and unobstructed condition, with everything in satisfactory repair and order.

**13. Risk of Loss.** Matters of inspection and acceptance are addressed in s. 215.422, F.S. Until acceptance, risk of loss or damage shall remain with the Contractor. The Contractor shall be responsible for filing, processing, and collecting all damage claims. To assist the Contractor with damage claims, the Customer shall: record any evidence of visible damage on all copies of the delivering carrier's Bill of Lading; report damages to the carrier and the Contractor; and provide the Contractor with a copy of the carrier's Bill of Lading and damage inspection report. When a Customer rejects a product, Contractor shall remove it from the premises within ten days after notification or rejection. Upon rejection notification, the risk of loss of rejected or non-conforming product shall remain with the Contractor. Rejected product not removed by the Contractor within ten days shall be deemed abandoned by the Contractor, and the Customer shall have the right to dispose of it as its own property. Contractor shall reimburse the Customer for costs and expenses incurred in storing or effecting removal or disposition of rejected product.

**14. Transaction Fee.** The State of Florida has instituted MyFloridaMarketPlace, a statewide eProcurement System ("System"). Pursuant to section 287.057 (22), Florida Statutes, all payments shall be assessed a Transaction Fee of one percent (1.0%), which the Contractor shall pay to the State, unless exempt pursuant to 60A-1.032, F.A.C.

For payments within the State accounting system (FLAIR or its successor), the Transaction Fee shall, when possible, be automatically deducted from payments to the Contractor. If automatic deduction is not possible, the Contractor shall pay the Transaction Fee pursuant to Rule 60A-1.031(2), F.A.C. By submission of these reports and corresponding payments, Contractor certifies their correctness. All such reports and payments shall be subject to audit by the State or its designee.

Contractor shall receive a credit for any Transaction Fee paid by the Contractor for the purchase of any item(s) if such item(s) are returned to the Contractor through no fault, act, or omission of the Contractor. Notwithstanding the foregoing, a Transaction Fee is non-refundable when an item is rejected or returned, or declined, due to the Contractor's failure to perform or comply with specifications or requirements of the agreement.

Failure to comply with these requirements shall constitute grounds for declaring the Contractor



in default and recovering procurement costs from the Contractor in addition to all outstanding fees. **CONTRACTORS DELINQUENT IN PAYING TRANSACTION FEES MAY BE SUBJECT TO BEING REMOVED FROM THE DEPARTMENT OF MANAGEMENT SERVICES' VENDOR LIST AS PROVIDED IN RULE 60A-1.006, F.A.C.**

**15. Invoicing and Payment.** Invoices shall contain the Contract number, purchase order number if applicable, and the appropriate vendor identification number. The State may require any other information from the Contractor that the State deems necessary to verify any purchase order placed under the Contract.

At the State's option, Contractors may be required to invoice electronically pursuant to guidelines of the Department of Management Services. Current guidelines require that Contractor supply electronic invoices in lieu of paper-based invoices for those transactions processed through the system. Electronic invoices shall be submitted to the Customer through the Ariba Supplier Network (ASN) in one of the following mechanisms – EDI 810, cXML, or web-based invoice entry within the ASN.

Payment shall be made in accordance with sections 215.422 and 287.0585 of the Florida Statutes, which govern time limits for payment of invoices. Invoices that must be returned to a Contractor due to preparation errors will result in a delay in payment. The Customer is responsible for all payments under the Contract. A Customer's failure to pay, or delay in payment, shall not constitute a breach of the Contract and shall not relieve the Contractor of its obligations to the Department or to other Customers. A vendor ombudsman has been established within the Department of Financial Services. The duties of this individual include acting as an advocate for vendors who may be experiencing problems in obtaining timely payment(s) from a state agency. The Vendor Ombudsman may be contacted at (850) 413-5516 or by calling the Division of Consumer Services at 1-877-693-5236.

**16. Taxes.** The State does not pay Federal excise or sales taxes on direct purchases of tangible personal property. The State will not pay for any personal property taxes levied on the Contractor or for any taxes levied on employees' wages. Any exceptions to this paragraph shall be explicitly noted by the Customer in the special contract conditions section of the solicitation or in the Contract or purchase order.

**17. Governmental Restrictions.** If the Contractor believes that any governmental restrictions have been imposed that require alteration of the material, quality, workmanship or performance of the products offered under the Contract, the Contractor shall immediately notify the Customer in writing, indicating the specific restriction. The Customer reserves the right and the complete discretion to accept any such alteration or to cancel the Contract at no further expense to the Customer.

**18. Lobbying and Integrity.** Customers shall ensure compliance with Section 11.062, FS and Section 216.347, FS. The Contractor shall not, in connection with this or any other agreement with the State, directly or indirectly (1) offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for any State officer or employee's decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty, or (2) offer, give, or agree to give to anyone any gratuity for the benefit of, or at the direction or request of, any State officer or employee. For purposes of clause (2), "gratuity" means any payment of more than nominal monetary value in the form of cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind. Upon request of the Customer's Inspector General, or other authorized State official, the Contractor shall provide any type of information the Inspector General deems relevant to the Contractor's integrity or responsibility. Such information may include, but shall not be limited to, the Contractor's business or financial records, documents, or files of any type or form that refer to or relate to the Contract. The Contractor shall retain such records for the longer of (1) three years after the expiration of the Contract or (2) the period required by the General Records Schedules maintained by the Florida Department of State (available at:

<http://dliis.dos.state.fl.us/barm/genschedules/gensched.htm>). The Contractor agrees to reimburse the State for the reasonable costs of investigation incurred by the Inspector General or other authorized State official for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the State which results in the suspension or debarment of the Contractor. Such costs shall include, but shall not be limited to: salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees. The Contractor shall not be responsible for any costs of investigations that do not result in the Contractor's suspension or debarment.

**19. Indemnification.** ~~The Contractor shall be fully liable for the actions of its agents, employees, partners, or subcontractors and shall fully indemnify, defend, and hold harmless the State and Customers, and their officers, agents, and employees, from suits, actions, damages, and costs of every name and description, including attorneys' fees, arising from or relating to personal injury and damage to real or personal tangible property alleged to be caused in whole or in part by Contractor, its agents, employees, partners, or subcontractors, provided, however, that the Contractor shall not indemnify for that portion of any loss or damages proximately caused by the negligent act or omission of the State or a Customer.~~

~~Further, the Contractor shall fully indemnify, defend, and hold harmless the State and Customers from any suits, actions, damages, and costs of every name and description, including attorneys' fees, arising from or relating to violation or infringement of a trademark, copyright, patent, trade secret or intellectual property right, provided, however, that the foregoing obligation shall not apply to a Customer's misuse or modification of Contractor's products or a Customer's operation or use of Contractor's products in a manner not contemplated by the Contract or the purchase order. If any product is the subject of an infringement suit, or in the Contractor's opinion is likely to become the subject of such a suit, the Contractor may at its sole expense procure for the Customer the right to continue using the product or to modify it to become non-infringing. If the Contractor is not reasonably able to modify or otherwise secure the Customer the right to continue using the product, the Contractor shall remove the product and refund the Customer the amounts paid in excess of a reasonable rental for past use. The customer shall not be liable for any royalties.~~

~~The Contractor's obligations under the preceding two paragraphs with respect to any legal action are contingent upon the State or Customer giving the Contractor (1) written notice of any action or threatened action, (2) the opportunity to take over and settle or defend any such action at Contractor's sole expense, and (3) assistance in defending the action at Contractor's sole expense. The Contractor shall not be liable for any cost, expense, or compromise incurred or made by the State or Customer in any legal action without the Contractor's prior written consent, which shall not be unreasonably withheld.~~

**20. Limitation of Liability.** For all claims against the Contractor under any contract or purchase order, and regardless of the basis on which the claim is made, the Contractor's liability under a contract or purchase order for direct damages shall be limited to the greater of \$100,000, the dollar amount of the contract or purchase order, or two times the charges rendered by the Contractor under the purchase order. This limitation shall not apply to claims arising under the Indemnity paragraph contain in this agreement.

~~Unless otherwise specifically enumerated in the Contract or in the purchase order, no party shall be liable to another for special, indirect, punitive, or consequential damages, including lost data or records (unless the contract or purchase order requires the Contractor to back-up data or records), even if the party has been advised that such damages are possible. No party shall be liable for lost profits, lost revenue, or lost institutional operating savings. The State and Customer may, in addition to other remedies available to them at law or equity and upon notice to the Contractor, retain such monies from amounts due Contractor as may be necessary to satisfy any claim for damages, penalties, costs and the like asserted by or against them. The State may set off any liability or other obligation of the Contractor or its affiliates to the State~~

~~against any payments due the Contractor under any contract with the State.~~

**21. Suspension of Work.** The Customer may in its sole discretion suspend any or all activities under the Contract or purchase order, at any time, when in the best interests of the State to do so. The Customer shall provide the Contractor written notice outlining the particulars of suspension. Examples of the reason for suspension include, but are not limited to, budgetary constraints, declaration of emergency, or other such circumstances. After receiving a suspension notice, the Contractor shall comply with the notice and shall not accept any purchase orders. Within ninety days, or any longer period agreed to by the Contractor, the Customer shall either (1) issue a notice authorizing resumption of work, at which time activity shall resume, or (2) terminate the Contract or purchase order. Suspension of work shall not entitle the Contractor to any additional compensation.

**22. Termination for Convenience.** The Customer, by written notice to the Contractor, may terminate the Contract in whole or in part when the Customer determines in its sole discretion that it is in the State's interest to do so. The Contractor shall not furnish any product after it receives the notice of termination, except as necessary to complete the continued portion of the Contract, if any. The Contractor shall not be entitled to recover any cancellation charges or lost profits.

**23. Termination for Cause.** The Customer may terminate the Contract if the Contractor fails to (1) deliver the product within the time specified in the Contract or any extension, (2) maintain adequate progress, thus endangering performance of the Contract, (3) honor any term of the Contract, or (4) abide by any statutory, regulatory, or licensing requirement. Rule 60A-1.006(3), F.A.C., governs the procedure and consequences of default. The Contractor shall continue work on any work not terminated. Except for defaults of subcontractors at any tier, the Contractor shall not be liable for any excess costs if the failure to perform the Contract arises from events completely beyond the control, and without the fault or negligence, of the Contractor. If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is completely beyond the control of both the Contractor and the subcontractor, and without the fault or negligence of either, the Contractor shall not be liable for any excess costs for failure to perform, unless the subcontracted products were obtainable from other sources in sufficient time for the Contractor to meet the required delivery schedule. If, after termination, it is determined that the Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Customer. The rights and remedies of the Customer in this clause are in addition to any other rights and remedies provided by law or under the Contract.

**24. Force Majeure, Notice of Delay, and No Damages for Delay.** The Contractor shall not be responsible for delay resulting from its failure to perform if neither the fault nor the negligence of the Contractor or its employees or agents contributed to the delay and the delay is due directly to acts of God, wars, acts of public enemies, strikes, fires, floods, or other similar cause wholly beyond the Contractor's control, or for any of the foregoing that affect subcontractors or suppliers if no alternate source of supply is available to the Contractor. In case of any delay the Contractor believes is excusable, the Contractor shall notify the Customer in writing of the delay or potential delay and describe the cause of the delay either (1) within ten (10) days after the cause that creates or will create the delay first arose, if the Contractor could reasonably foresee that a delay could occur as a result, or (2) if delay is not reasonably foreseeable, within five (5) days after the date the Contractor first had reason to believe that a delay could result. **THE FOREGOING SHALL CONSTITUTE THE CONTRACTOR'S SOLE REMEDY OR EXCUSE WITH RESPECT TO DELAY.** Providing notice in strict accordance with this paragraph is a condition precedent to such remedy. No claim for damages, other than for an extension of time, shall be asserted against the Customer. The Contractor shall not be entitled to an increase in the Contract price or payment of any kind from the Customer for direct, indirect, consequential, impact or other costs, expenses or damages, including but not limited to costs of acceleration or

inefficiency, arising because of delay, disruption, interference, or hindrance from any cause whatsoever. If performance is suspended or delayed, in whole or in part, due to any of the causes described in this paragraph, after the causes have ceased to exist the Contractor shall perform at no increased cost, unless the Customer determines, in its sole discretion, that the delay will significantly impair the value of the Contract to the State or to Customers, in which case the Customer may (1) accept allocated performance or deliveries from the Contractor, provided that the Contractor grants preferential treatment to Customers with respect to products subjected to allocation, or (2) purchase from other sources (without recourse to and by the Contractor for the related costs and expenses) to replace all or part of the products that are the subject of the delay, which purchases may be deducted from the Contract quantity, or (3) terminate the Contract in whole or in part.

**25. Changes.** ~~The Customer may unilaterally require, by written order, changes altering, adding to, or deducting from the Contract specifications, provided that such changes are within the general scope of the Contract. The Customer may make an equitable adjustment in the Contract price or delivery date if the change affects the cost or time of performance. Such equitable adjustments require the written consent of the Contractor, which shall not be unreasonably withheld. If unusual quantity requirements arise, the Customer may solicit separate bids to satisfy them.~~

**26. Renewal.** ~~Upon mutual agreement, the Customer and the Contractor may renew the Contract, in whole or in part, for a period that may not exceed 3 years or the term of the contract, whichever period is longer. Any renewal shall specify the renewal price, as set forth in the solicitation response. The renewal must be in writing and signed by both parties, and is contingent upon satisfactory performance evaluations and subject to availability of funds.~~

**27. Purchase Order Duration.** ~~Purchase orders issued pursuant to a state term or agency contract must be received by the Contractor no later than close of business on the last day of the contract's term to be considered timely. The Contractor is obliged to fill those orders in accordance with the contract's terms and conditions. Purchase orders received by the contractor after close of business on the last day of the state term or agency contract's term shall be considered void.~~

~~Purchase orders for a one-time delivery of commodities or performance of contractual services shall be valid through the performance by the Contractor, and all terms and conditions of the state term or agency contract shall apply to the single delivery/performance, and shall survive the termination of the Contract.~~

~~Contractors are required to accept purchase orders specifying delivery schedules exceeding the contracted schedule even when such extended delivery will occur after expiration of the state term or agency contract. For example, if a state term contract calls for delivery 30 days after receipt of order (ARO), and an order specifies delivery will occur both in excess of 30 days ARO and after expiration of the state term contract, the Contractor will accept the order. However, if the Contractor expressly and in writing notifies the ordering office within ten (10) calendar days of receipt of the purchase order that Contractor will not accept the extended delivery terms beyond the expiration of the state term contract, then the purchase order will either be amended in writing by the ordering entity within ten (10) calendar days of receipt of the contractor's notice to reflect the state term contract delivery schedule, or it shall be considered withdrawn.~~

~~The duration of purchase orders for recurring deliveries of commodities or performance of services shall not exceed the expiration of the state term or agency contract by more than twelve months. However, if an extended pricing plan offered in the state term or agency contract is selected by the ordering entity, the contract terms on pricing plans and renewals shall govern the maximum duration of purchase orders reflecting such pricing plans and renewals.~~

~~Timely purchase orders shall be valid through their specified term and performance by the Contractor, and all terms and conditions of the state term or agency contract shall apply to the recurring delivery/performance as provided herein, and shall survive the termination of the Contract.~~

~~Ordering offices shall not renew a purchase order issued pursuant to a state term or agency contract if the underlying contract expires prior to the effective date of the renewal.~~

**28. Advertising.** Subject to Chapter 119, Florida Statutes, the Contractor shall not publicly disseminate any information concerning the Contract without prior written approval from the Customer, including, but not limited to mentioning the Contract in a press release or other promotional material, identifying the Customer or the State as a reference, or otherwise linking the Contractor's name and either a description of the Contract or the name of the State or the Customer in any material published, either in print or electronically, to any entity that is not a party to Contract, except potential or actual authorized distributors, dealers, resellers, or service representative.

**29. Assignment.** ~~The Contractor shall not sell, assign or transfer any of its rights, duties or obligations under the Contract, or under any purchase order issued pursuant to the Contract, without the prior written consent of the Customer. In the event of any assignment, the Contractor remains secondarily liable for performance of the contract, unless the Customer expressly waives such secondary liability. The Customer may assign the Contract with prior written notice to Contractor of its intent to do so.~~

**30. Antitrust Assignment.** The Contractor and the State of Florida recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the State of Florida. Therefore, the contractor hereby assigns to the State of Florida any and all claims for such overcharges as to goods, materials or services purchased in connection with the Contract.

**31. Dispute Resolution.** ~~Any dispute concerning performance of the Contract shall be decided by the Customer's designated contract manager, who shall reduce the decision to writing and serve a copy on the Contractor. The decision shall be final and conclusive unless within twenty one (21) days from the date of receipt, the Contractor files with the Customer a petition for administrative hearing. The Customer's decision on the petition shall be final, subject to the Contractor's right to review pursuant to Chapter 120 of the Florida Statutes. Exhaustion of administrative remedies is an absolute condition precedent to the Contractor's ability to pursue any other form of dispute resolution; provided, however, that the parties may employ the alternative dispute resolution procedures outlined in Chapter 120.~~

~~Without limiting the foregoing, the exclusive venue of any legal or equitable action that arises out of or relates to the Contract shall be the appropriate state court in Leon County, Florida; in any such action, Florida law shall apply and the parties waive any right to jury trial.~~

**32. Employees, Subcontractors, and Agents.** All Contractor employees, subcontractors, or agents performing work under the Contract shall be properly trained technicians who meet or exceed any specified training qualifications. Upon request, Contractor shall furnish a copy of technical certification or other proof of qualification. All employees, subcontractors, or agents performing work under the Contract must comply with all security and administrative requirements of the Customer and shall comply with all controlling laws and regulations relevant to the services they are providing under the Contract. The State may conduct, and the Contractor shall cooperate in, a security background check or otherwise assess any employee, subcontractor, or agent furnished by the Contractor. The State may refuse access to, or require replacement of, any personnel for cause, including, but not limited to, technical or training qualifications, quality of work, change in security status, or non-compliance with a Customer's security or other requirements. Such approval shall not relieve the Contractor of its obligation to



perform all work in compliance with the Contract. The State may reject and bar from any facility for cause any of the Contractor's employees, subcontractors, or agents.

**33. Security and Confidentiality.** The Contractor shall comply fully with all security procedures of the United States, State of Florida and Customer in performance of the Contract. The Contractor shall not divulge to third parties any confidential information obtained by the Contractor or its agents, distributors, resellers, subcontractors, officers or employees in the course of performing Contract work, including, but not limited to, security procedures, business operations information, or commercial proprietary information in the possession of the State or Customer. The Contractor shall not be required to keep confidential information or material that is publicly available through no fault of the Contractor, material that the Contractor developed independently without relying on the State's or Customer's confidential information, or material that is otherwise obtainable under State law as a public record. To insure confidentiality, the Contractor shall take appropriate steps as to its personnel, agents, and subcontractors. The warranties of this paragraph shall survive the Contract.

**34. Contractor, Employees, Subcontractors, and Other Agents.** The Customer and the State shall take all actions necessary to ensure that Contractor's employees, subcontractors and other agents are not employees of the State of Florida. Such actions include, but are not limited to, ensuring that Contractor's employees, subcontractors, and other agents receive benefits and necessary insurance (health, workers' compensations, and unemployment) from an employer other than the State of Florida.

~~**35. Insurance Requirements.** During the Contract term, the Contractor at its sole expense shall provide commercial insurance of such a type and with such terms and limits as may be reasonably associated with the Contract. Providing and maintaining adequate insurance coverage is a material obligation of the Contractor. Upon request, the Contractor shall provide certificate of insurance. The limits of coverage under each policy maintained by the Contractor shall not be interpreted as limiting the Contractor's liability and obligations under the Contract. All insurance policies shall be through insurers authorized or eligible to write policies in Florida.~~

**36. Warranty of Authority.** Each person signing the Contract warrants that he or she is duly authorized to do so and to bind the respective party to the Contract.

**37. Warranty of Ability to Perform.** The Contractor warrants that, to the best of its knowledge, there is no pending or threatened action, proceeding, or investigation, or any other legal or financial condition, that would in any way prohibit, restrain, or diminish the Contractor's ability to satisfy its Contract obligations. The Contractor warrants that neither it nor any affiliate is currently on the convicted vendor list maintained pursuant to section 287.133 of the Florida Statutes, or on any similar list maintained by any other state or the federal government. The Contractor shall immediately notify the Customer in writing if its ability to perform is compromised in any manner during the term of the Contract.

**38. Notices.** All notices required under the Contract shall be delivered by certified mail, return receipt requested, by reputable air courier service, or by personal delivery to the agency designee identified in the original solicitation, or as otherwise identified by the Customer. Notices to the Contractor shall be delivered to the person who signs the Contract. Either designated recipient may notify the other, in writing, if someone else is designated to receive notice.

**39. Leases and Installment Purchases.** Prior approval of the Chief Financial Officer (as defined in Section 17.001, F.S.) is required for State agencies to enter into or to extend any lease or installment-purchase agreement in excess of the Category Two amount established by section 287.017 of the Florida Statutes.

**40. Prison Rehabilitative Industries and Diversified Enterprises, Inc. (PRIDE).** Section 946.515(2), F.S. requires the following statement to be included in the solicitation: "It is expressly understood and agreed that any articles which are the subject of, or required to carry out, the Contract shall be purchased from the corporation identified under Chapter 946 of the Florida Statutes (PRIDE) in the same manner and under the same procedures set forth in section 946.515(2) and (4) of the Florida Statutes; and for purposes of the Contract the person, firm, or other business entity carrying out the provisions of the Contract shall be deemed to be substituted for the agency insofar as dealings with such corporation are concerned." Additional information about PRIDE and the products it offers is available at <http://www.pridefl.com>.

**41. Products Available from the Blind or Other Handicapped.** Section 413.036(3), F.S. requires the following statement to be included in the solicitation: "It is expressly understood and agreed that any articles that are the subject of, or required to carry out, this contract shall be purchased from a nonprofit agency for the Blind or for the Severely Handicapped that is qualified pursuant to Chapter 413, Florida Statutes, in the same manner and under the same procedures set forth in section 413.036(1) and (2), Florida Statutes; and for purposes of this contract the person, firm, or other business entity carrying out the provisions of this contract shall be deemed to be substituted for the State agency insofar as dealings with such qualified nonprofit agency are concerned." Additional information about the designated nonprofit agency and the products it offers is available at <http://www.respectofflorida.org>.

**42. Modification of Terms.** The Contract contains all the terms and conditions agreed upon by the parties, which terms and conditions shall govern all transactions between the Customer and the Contractor. The Contract may only be modified or amended upon mutual written agreement of the Customer and the Contractor. No oral agreements or representations shall be valid or binding upon the Customer or the Contractor. No alteration or modification of the Contract terms, including substitution of product, shall be valid or binding against the Customer. The Contractor may not unilaterally modify the terms of the Contract by affixing additional terms to product upon delivery (e.g., attachment or inclusion of standard preprinted forms, product literature, "shrink wrap" terms accompanying or affixed to a product, whether written or electronic) or by incorporating such terms onto the Contractor's order or fiscal forms or other documents forwarded by the Contractor for payment. The Customer's acceptance of product or processing of documentation on forms furnished by the Contractor for approval or payment shall not constitute acceptance of the proposed modification to terms and conditions.

**43. Cooperative Purchasing.** Pursuant to their own governing laws, and subject to the agreement of the Contractor, other entities may be permitted to make purchases at the terms and conditions contained herein. Non-Customer purchases are independent of the agreement between Customer and Contractor, and Customer shall not be a party to any transaction between the Contractor and any other purchaser. State agencies wishing to make purchases from this agreement are required to follow the provisions of s. 287.042(16)(a), F.S. This statute requires the Department of Management Services to determine that the requestor's use of the contract is cost effective and in the best interest of the State.

**44. Waiver.** The delay or failure by the Customer to exercise or enforce any of its rights under this Contract shall not constitute or be deemed a waiver of the Customer's right thereafter to enforce those rights, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right.

**45. Annual Appropriations.** The State's performance and obligation to pay under this contract are contingent upon an annual appropriation by the Legislature.

**46. Execution in Counterparts.** The Contract may be executed in counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**47. Severability.** If a court deems any provision of the Contract void or unenforceable, that

provision shall be enforced only to the extent that it is not in violation of law or is not otherwise unenforceable and all other provisions shall remain in full force and effect.

# EXHIBIT B

## METHOD OF COMPENSATION



### Central Florida Rail Corridor (CFRC) Signal Maintenance of Way Services

Financial Project ID: 412994-8-82-05

Central Florida Rail Corridor  
Signal Maintenance of Way Services  
EXHIBIT "B"  
RFP-DOT-12-13-5005-MOW

**1.0 PURPOSE**

This Exhibit B defines the method and limits of compensation to be paid to the Vendor for the services described in Exhibit "A", Scope of Services, and Exhibit "D", Signal Maintenance of Way Requirements and the procedure by which payments will be made.

**2.0 FUNDING**

For the satisfactory performance of the Services detailed in the Contract, the Vendor shall be paid up to the Amount as shown in each Letter of Authorization, Emergency Work Order, or Supplemental Agreement.

The total amount of this agreement is expected to be funded by multiple appropriations and the State of Florida's performance and obligation to pay under this contract is contingent upon annual appropriation by the Legislature. The Department, based on need and availability of budget, may increase or decrease the amount of funding available and may add additional funding as the Department determines is appropriate.

The Department will provide a written Letter of Authorization if and when subsequent funding is approved and encumbered for this contract.

Currently Funding in the amount of \$1,400,000.00 has been approved and encumbered for this contract. Therefore, it is agreed that the Vendor will not be obligated to perform services nor incur costs which would result in exceeding the funding currently approved, nor will the Department be obligated to reimburse the Vendor for costs or make payments in excess of currently established funding.

Letters of Authorization will be used for the annual appropriation of funds necessary for Services. Each Letter of Authorization shall show the amount authorized under that specific Letter of Authorization, and the Total contract amount authorized to date for Services.

At the Department's option additional services or commodities necessary for the successful completion of the contract may be added through one or more Task Work Orders contingent upon legislative appropriation, budget and funding approval. The Department, based on need and availability of budget, may increase the Contract amount by Letters of Authorization. The amount for each Letters of Authorization will be negotiated between the Vendor and Department. Once an amount is agreed to by both the Department and Vendor funding will be authorized and a Task Work Order will be issued for the required services. Additions and changes to the funding, services or commodities required by Exhibit "A" Scope of Services will be made by Letters of Authorization.

**3.0 COMPENSATION**

This is a term Agreement for a definite quantity whereby the Vendor agrees to furnish services during a prescribed period of time.



### 3.1 Basis of Compensation

3.1.1 Vendor shall be compensated at the Monthly and Hourly amounts as shown in Table 1 below for the Base Year. Vendor will be paid the lump sum amount in full for proper completion of all the work as required by Exhibit "A", Scope of Services, and Exhibit "D", Signal Maintenance of Way Requirements. The Monthly amount shall be inclusive of all time, effort, and expenses of the Vendor in performing that work. The Vendor will be paid when the work has been accepted by the Department, and properly invoiced by the Vendor during the billing period. Payment of the lump sum amount will constitute full compensation for the work and no additional compensation will be paid for overhead, operating margin, expenses, travel, costs, or any other matter.

Table 1		
Description	Unit	Amount
Maintenance Mobilization Services (MMS)*	Month	\$118,165.00
Maintenance Services (MS)	Month	\$208,334.00
Signal Support for Construction Services **	Hour	\$112.95

\* Maintenance Mobilization Services (MMS) will be paid a minimum of three months.

\*\*All work performed by the Signal Maintenance Firm which is reimbursable at the Hourly Signal Support for Construction Services rate will be billed at 8 hours minimum per employee, per day. Rate is subject to adjustment per 3.1.2 below.

3.1.2 Signal Maintenance Services and Signal Support for Construction Services Years two through seven:

During years two through seven the Vendor shall be compensated as follows:

The Lump Sum amount for the first twelve month period shall be considered the base year for payment and future indexing for "Signal Maintenance Services", and the hourly rate established in Table 1 below shall be the base year for payment and future indexing for "Signal Support for Construction Services". The annual Lump Sum amount for Signal Maintenance Services and the hourly rate for Signal Support for Construction Services for the second through seventh years of the contract shall include an adjustment in compensation based on the Base Year Lump Sum amount for Signal Maintenance Services and the base year hourly rate for Signal Support for Construction Services. Annually the Lump Sum amount for Signal Maintenance Services and the hourly rate for Signal Support for Construction Services shall be adjusted based on the Association of American Railroads (AAR) cost index as follows. Consistent with the AAR Cost Indexes, the base year for payment adjustment purposes shall be established as a cost index of 100 for the first full year of the Signal Maintenance Contract. After the completion of the base year and annually throughout the life of the Contract the Contract payments shall be adjusted on the Signal Maintenance of Way Commencement Date from the base year 100 index based on the previous four quarter average of the published AAR All-Inclusive Index Less Fuel with Forecast Error adjustment. The amount of the AAR Index adjustment may be positive or negative. The adjustment will be based on the calculation below:

BY = Base year = the average of the first four quarters of Signal Maintenance services (Revenue Service for the O&M) as reported in the AAR all inclusive index less fuel. This will be constant throughout the contract term.

CY = Current Year = Average of the most current four quarters index as reported in the AAR all inclusive index less fuel.

Using the base year and current year information as reported in the AAR all inclusive index less fuel

Annual Price adjustment percentage =  $((CY - BY)/BY) \times 100$

No extra work, optional services, supplemental work or liquidated damages will be included in the calculation of the annual cost adjustment.

#### **4.0 DETAILS OF COSTS AND FEES**

##### **4.1 Emergency Work Orders and Supplemental Agreements:**

The Lump Sum Amount for the performance of the Emergency Work Orders and Task Work Orders will be negotiated by the Department and Vendor. The amount of each Task Work Orders and will be included in the contract Total Amount upon execution. Payment of the vendor for this work will constitute full compensation for the work and no additional compensation will be paid for overhead, operating margin, expenses, travel, costs, or any other matter.

##### **4.2 Actual Cost Inventory Items:**

Invoices for Actual Cost Inventory items shall be delivered to and approved at the sole discretion of the Department. The Vendor shall submit monthly invoices in a format acceptable to the Department.

#### **5.0 INVOICING PROCEDURE**

The Vendor will be eligible for payments under this agreement at intervals not less than monthly. Invoices will be prepared by the Vendor and submitted in quintuplicate in a format prescribed by the Department. The Vendor will maintain for this purpose a job cost accounting system that is acceptable to the Department.

If requested by the Department, the final invoice for this agreement will be accompanied by a certified job cost summary report generated by the accounting system. The report will include at a minimum the total number of hours and salary cost actually charged to the project. The Department will render a decision on the acceptability of services within 5 working days of receipt of either the services or invoice, whichever is later. The Department reserves the right to withhold payments for work not completed, or work completed unsatisfactorily, or work that is deemed inadequate or untimely by the Department. Any payment withheld will be paid to the Vendor on the next invoice submitted for that work after the work is subsequently completed satisfactorily and adequately.

Invoices shall be submitted to: Florida Department of Transportation

SunRail Project Manager

719 S Woodland Blvd

DeLand, Florida 32720

#### **6.0 PROJECT CLOSEOUT**

If requested, the Vendor will permit the Department to perform or have performed an audit of the records of the Vendor and any or all sub-vendors to support the compensation paid the Vendor. The audit will be performed as soon as practical after completion and acceptance of the contracted services. In the event funds paid to the Vendor under this Agreement are subsequently properly disallowed by the Department because of accounting errors or charges not in conformity with this Agreement, the Vendor agrees that such disallowed costs are due to the Department on demand. Further, the Department will have the right to deduct from any payment due the Vendor under any other contract any amount due the Department.

## **7.0 TANGIBLE PERSONAL PROPERTY**

This contract does not include the purchase of Tangible Personal Property as defined in Chapter 273, F.S.

EXHIBIT D

**SIGNAL MAINTENANCE OF WAY  
REQUIREMENTS**

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## **SECTION 1. DEFINITIONS**

For purposes of this Attachment:

“AAR” means the Association of American Railroads.

“A.D.A.” means the Americans with Disabilities Act of 1990, 42 U.S.C. §12101 et seq.

“Amtrak” means the National Railroad Passenger Corporation.

“APTA” means the American Public Transportation Association.

“Chief Operating Officer” means the occupant of that position at the Department or designated by the Department, responsible for management and oversight of the Department’s railroad operations and maintenance.

“Computer Equipment” means the hardware, firmware, and all related devices, articles, components, peripherals, materials and incidentals that are necessary for the continuous and proper operation, management and maintenance of the RMIS.

“Computer Network” means a system of end-user computers, network servers, a network operating system, storage devices, backup devices, peripherals, cabling, routers, switches, wireless communications devices, and incidentals that function together as a platform for operating the RMIS.

“Computer Services” means the services necessary to develop, operate, manage and maintain a fully operational RMIS, including without limitation the services and work outlined in Exhibit 4, Information Management.

“Data” means all records in any database, data record, or other information contained in the RMIS or used in the performance of Maintenance Services, all files generated by the Software and the Third Party Software, and any digital or hard copy reports or other outputs generated by records from any such database, or the results of queries of any such database, or the Software or Third Party Software.

“Delay Reports” means the reports described in the Incident and Emergency Management Plans, Exhibit 3.

“Design/Build/Maintain Firm” means the firm retained by the Department responsible for the design and construction of Phase 1 improvements in the CFRC as well as the maintenance of all non-signal elements in the CFRC.

“Dispatcher” means the Central Florida Dispatcher Desk as defined in the Transition Agreement between the State of Florida Department of Transportation and CSX Transportation, Inc. prior to the transition to the CFRC Dispatch Operation at the Operations Control Center (OCC) in accordance with the Central Florida Operations and Maintenance Agreement

(CFOMA). After the transition to the OCC, “Dispatcher” means the Central Florida Dispatcher located at the CFRC OCC.

“DOT” means the U.S. Department of Transportation.

“Emergency” means an event that, in the sole discretion of the Department, involves or exposes the Department, Other Contractors, Signal Maintenance Firm Personnel, Freight Users, or the general public to the risk of service disruption, personal injury, property damage, liability for regulatory noncompliance, or environmental hazard. Emergency includes, but is not limited to (1) derailment; (2) fatality or other incident at a grade crossing; (3) employee fatality, or a serious illness or injury to one or more employees requiring admission to a hospital; (4) an evacuation of a passenger train; (5) vandalism; (6) strike or work stoppage; (7) fire; (8) oil spill or threat of release of hazardous material; or (9) severe weather conditions.

“Environmental Services” means, without limitation, the operation, maintenance, and service of all Environmental Systems located throughout the Service Property; the maintenance of all environmental permits, certificates and licenses; the proper disposal of any waste or hazardous material; and all other services related to compliance with all applicable environmental laws and regulations.

“Environmental Services Work Item” means any task included in the Signal Maintenance of Way Services.

“Environmental System” means any system or equipment on the Service Property that is operated or designed to improve environmental quality, or reduce the environmental impacts of Department Maintenance Services, including but not limited to underground and aboveground tank systems, oil/water separator systems, catch basins, onsite subsurface disposal systems, wastewater pretreatment facilities and wastewater reuse facilities.

“EPA” means the U.S. Environmental Protection Agency.

“Extra Work” means any work which is required by the Department to be performed and which is not otherwise covered or included by the existing contract documents, whether it be in the nature of additional work, altered work, deleted work, work due to differing site conditions, or otherwise. This term does not include “delay.”

“FDEP” means the Florida Department of Environmental Protection.

“FPSC” means the Florida Public Service Commission.

“FRA” means the Federal Railroad Administration.

“FTA” means the Federal Transit Administration; formerly the Urban Mass Transit Administration or UMTA.

“Information Management Plan” means the plan referred to in Section 12.2 herein.

“Initial Joint Audit” means the audit of the Service Property and Support Inventory performed jointly by the Department and Signal Maintenance Firm and required by this Signal Maintenance of Way Services.

“Signal Maintenance of Way Agreement Year” means the twelve- month period starting on the Signal Maintenance Commencement Date.

“Signal Maintenance of Way Commencement Date” means the date Signal Maintenance Firm begins providing Signal Maintenance of Way Services as defined herein.

“Signal Maintenance of Way Mobilization Period” means the period beginning on the Notice to Proceed Date and ending at the Signal Maintenance of Way Commencement Date.

“Signal Maintenance Mobilization Services” means, without limitation and as more fully described in the Maintenance Mobilization section of this Signal Maintenance of Way Requirements, all preparation for the commencement of Maintenance Services, including taking all steps necessary to establish a seamless transition from existing signal maintenance staff; preparing all operational plans required by the Department; develop plan to transition the Signal elements of the existing RMIS; hiring and training Signal Maintenance Firm Personnel; developing procedures and internal guidelines; and transitioning equipment and facilities from the existing signal staff.

“Material Damage” means damage, other than normal wear and tear to Service Property or Support Inventory, excluding Signal Maintenance Firm-owned or leased property or equipment.

“Non-Signal Maintenance of Way” means, without limitation: inspecting, managing, repairing, replacing, maintaining and reporting on all of the Department’s railroad non-signal infrastructure; inspecting, repairing and maintaining equipment; inspecting, maintaining, repairing and managing structures, buildings as relating to non-signal infrastructure; operating non-revenue rail vehicles and railroad work equipment vehicles; providing information management, materials management, performance analysis and reporting; maintaining a comprehensive and up-to-date inventory; and enforcing third-party warranties.

“On-Time Performance” has the meaning set forth in each railroads Operating Agreement with Department for railroads operating on Service Property.

“Operating Agreement” means an agreement between Department and each non-Department railroad operating on the Service Property.

“Other Contractor” means any Firm retained by the Department, other than the Signal Maintenance Firm, for the design, construction and non-signal maintenance services, or for any other services or work, on the CFRC.

“Rail Management Information System” (or “RMIS”) means the integrated network comprising the Computer Network, the Computer Services, the Computer Equipment, the Software, and additional hardware and software including without limitation a reliable Internet based e-mail system, wireless communications devices, end-user computers, network servers, storage devices, backup devices, cabling, routers, switches, and incidentals that function together as a platform for the performance of the Maintenance Services.

“Right of Way Assets” means without limitation railroad rights of way, track and structures, surface, subsurface, and aerial property (including utilities), bridges and related structures, and communication and signal systems, which may be added or deleted by the Department during the Term of the Contract, owned or controlled by the Department and used in providing Maintenance Services.

“Service Delay” means any delay or combination of delays that result in a train arriving or departing any station platform late and is not considered on-time in accordance with the Operating Agreement with the Railroad operating the delayed train, which shall trigger the notification procedures.

“Service Disruption” means a delay to one or more trains due to the following causes: Emergencies, wrecks, derailments, fires, fatalities, injuries, serious mechanical problems, or other disruptions that cause a significant impact on service.

“Service Property” means the wayside signals, grade crossing warning systems and communications equipment that are owned, controlled, or used by the Department, or the Signal Maintenance Firm in providing the Signal Maintenance of Way Services.

“Service Schedules” means the Amtrak’s schedules for the arrival and departure times of Amtrak rail trains, as displayed in the public timetables.

“Signal Maintenance of Way Services” means, without limitation and as further described in this Signal Maintenance of Way Requirements: inspecting, managing, repairing, replacing, maintaining and reporting on all of the Department’s railroad signal infrastructure; operating and maintaining the non-revenue non-rail vehicles; providing information management, materials management, performance analysis and reporting; maintaining a comprehensive and up-to-date inventory control system; enforcing third-party warranties; and performance of Environmental Services.

“Signal Maintenance of Way Services Plan” means the plan described in this Signal Maintenance of Way Requirements.

“Signal Maintenance Firm” or “Vendor” means the firm providing the services as outlined in this Signal Maintenance of Way Requirements.

“Signal Maintenance Services Lump Sum Price” means the amount that Department agrees to pay Signal Maintenance Firm for the performance of Signal Maintenance of Way Services.

“Software” means all custom software and all Third Party Software including without limitation source code, data files and System Documentation necessary to operate, manage, maintain and, if necessary, regenerate, the integrated RMIS.

“State of Good Repair” means safe, fully functional, not in need of repair, and meeting or exceeding the minimum threshold for Department standards or other applicable regulations or standards, as detailed in this Signal Maintenance of Way Requirements.

“Successor O & M Firm” means an Operations and Maintenance Firm providing operations and non-signal maintenance services subsequent to the Design/Build/Maintain Firm completing Phase 1 construction.

“Successor Signal Maintenance Firm” means a Signal Maintenance Firm providing signal maintenance services subsequent to the services under this contract.

“Support Inventory” means spare parts, consumables, removed and rebuilt spare parts, capital spares, manuals, forms, keys and other property and materials that may be used or consumed in the provision of the Signal Maintenance of Way Services.

“Support Property” means equipment, tools, machines (including the RMIS interface, Computer Equipment, and Software), non-revenue vehicles (including automobiles, work equipment), Computer Equipment, and other equipment related to the maintenance of the Service Property or otherwise used in the provision of the Signal Maintenance of Way Services.

“System Documentation” means user documentation and user manuals related to the RMIS.

“Third Party” means any individual or entity other than the Department, a Department authorized representative, or Other Contractor.

“Third Party Software” means commercial, off-the-shelf software that is part of the integrated RMIS.

“Transition Services” means all services necessary to ensure a seamless transition between the Signal Maintenance Firm and a Successor O&M Firm and a successor Signal Maintenance Firm.

## **SECTION 2. SIGNAL MAINTENANCE OF WAY SERVICES.**

### **2.1 Overview/Description**

(a) The Signal Maintenance Firm shall inspect, service, repair, and maintain the signal components of the Service Property and Support Inventory owned and controlled by the Department and included in this Signal Maintenance of Way Requirements in accordance with the procedures and standards set forth herein. The work efforts described in herein are included

in the Signal Maintenance Firm's Signal Maintenance Services Lump Sum Price unless otherwise noted.

(b) The Department's Service Property has ongoing rail service that operates every day of each year. The Signal Maintenance Firm must understand the existing, ongoing and future operating environment of the rail service. This operating environment includes:

- All weather conditions,
- Highway and railroad interfaces,
- Derailments and accidents,
- Vandalism, trespassing, and other crimes,
- Operations among other railroad traffic, including Amtrak and freight carriers, and
- Regulatory requirements and standards of the Federal Railroad Administration, Federal Transit Administration, APTA, FPSC, Department, U.S. Coast Guard, and state and local authorities.

(c) In the performance of the Signal Maintenance of Way Services, the Signal Maintenance Firm shall maintain the signal related infrastructure assets of the Department and shall not defer maintenance of these assets so as to reduce the Signal Maintenance Firm's costs, or for any other reason. These assets include the Service Property and Support Inventory assets; the signal related inventories of material and spares; the intellectual and engineering property; the control of the assets' configuration; and the information required for a safe, quality, and economical rail service. The Department may at its discretion direct the Signal Maintenance Firm to perform extra work ("Extra Work"). All Extra Work shall be performed in full and strict compliance with all applicable terms and conditions of this Signal Maintenance of Way Requirements. The Signal Maintenance Firm shall assign personnel to perform Extra Work, to the extent that such assignment does not adversely affect the provision of other Signal Maintenance of Way Services. The Signal Maintenance Firm shall use available Support Property for the performance of Extra Work as long as such use does not interfere with the performance of other Signal Maintenance of Way Services. This shall include such Support Property as is made available by relocating or rescheduling other work of a non critical nature. Extra Work activities are those that are not included in the Lump Sum Price for the Signal Maintenance of Way Services.

(d) The Signal Maintenance Firm shall maintain the condition and availability of the Service Property and Support Inventory for the operation of the Department's trackage. This effort requires the Signal Maintenance Firm to coordinate and cooperate with Other Contractors and Third Parties; with the Department's efforts to procure, renew, and dispose of Service Property and Support Inventory; and with various public agencies and communities.

(e) All of the services set forth in this Signal Maintenance-of-Way Requirements are part of the Signal Maintenance of Way Services and shall be performed by Signal Maintenance Firm as part of the Signal Maintenance Services Lump Sum Price unless specifically otherwise noted.



## **2.2 Maintenance Mobilization**

(a) After receiving a Notice to Proceed for Maintenance Mobilization Services the Signal Maintenance Firm shall perform Maintenance Mobilization in preparation for performing Signal Maintenance of Way Services.

(b) Facilities and Equipment - The Department, through Other Contractors, shall provide office space for the Signal Maintenance Firm personnel for use in performance of Signal Maintenance of Way Services, including procurement of all furniture and office equipment necessary to perform such maintenance services.

(c) Other Contractors shall provide all office phone lines, internet access, and security, for the Signal Maintenance Firm. The Signal Maintenance Firm shall provide to the Department a complete telephone list of Signal Maintenance Firm personnel.

(d) The Signal Maintenance Firm shall provide its own computers, vehicles and maintenance equipment necessary for the performance of the Signal Maintenance of Way Services. The Signal Maintenance Firm shall provide all mobile phones for personnel and shall provide a complete telephone list to the Department and Other Contractors providing maintenance services or performing construction activities within the Service Property. The Department shall provide the Signal Maintenance Firm five (5) laptop computers during maintenance mobilization.

(e) CFRC Signal and Switch keys will be provided to the Signal Maintenance Firm by the CFRC Safety and Security Manager for use in the performance of the Signal Maintenance of Way Services. The Signal Maintenance Firm shall develop a list of personnel who are to be issued keys for the Department's approval. Keys shall be distributed by the CFRC Safety and Security Manager prior to the Maintenance Commencement Date to approved keyholders. The CFRC Safety and Security Manager will maintain the security and control of the distribution of keys. All keys shall be returned to the CFRC Safety and Security Manager.

(f) Information on procedure and pattern numbers to order replacement locks shall be provided to the Signal Maintenance Firm. The Signal Maintenance Firm shall maintain the Support Inventory of Signal locks as provided in the Initial Support Inventory. Spare locks shall be kept in a secure location to prevent theft.

(g) The Department and Other Contractors will have installed Crossing Identification signs in accordance with the Transition Agreement. Crossing Identification signs identify the DOT#, Milepost, and Emergency Contact Information at each crossing. The Signal Maintenance Firm shall maintain a Support Inventory of twenty-four (24) blank Crossing Identification signs as provided in the Initial Support Inventory, as replacement signs.

### *2.2.1 Mobilization Services*

(a) Maintenance Mobilization Services shall include, without limitation, all preparation for the commencement of Signal Maintenance of Way Services, including taking all

steps necessary to establish a seamless transition; preparing all operational plans required by the Department; coordinating the Signal related portions of the RMIS with Other Contractors; hiring and training Signal Maintenance Firm personnel; developing procedures and internal guidelines; and receiving Support Property and facilities, including initial Support Inventory.

(b) Mobilization Services Plan - Not more than fifteen (15) days after the Notice to Proceed the Signal Maintenance Firm shall submit to the Department a Mobilization Services Plan. The Mobilization Services Plan shall identify all Mobilization Services to be performed by Signal Maintenance Firm prior to the Signal Maintenance of Way Commencement Date, and shall include a detailed schedule identifying the progress and sequence for completing all tasks detailed within the plan. The Mobilization Services Plan shall include a schedule of submittals that are required by Signal Maintenance of Way Scope of Services. The Mobilization Services Plan shall also include an organizational chart, which shall list the individuals filling the positions listed. During Maintenance Mobilization Services, the updated Mobilization Services Plan will be submitted to the Department monthly.

(c) Operating Rules Training - The Department, through Other Contractors, shall provide the initial Roadway Worker Protection Training and Operating Rules Training for Signal Maintenance Firm personnel and shall record such training for up to ten (10) Signal Maintenance Firm personnel into the RMIS. Initial Roadway Worker Protection Training and reporting training records for additional Signal Maintenance Firm personnel, as well as any subsequent follow-up training of Signal Maintenance Firm personnel, shall be performed by and at the Signal Maintenance Firm's sole cost and expense.

(d) The Signal Maintenance Firm shall maintain a single telephone number to contact the Signal Maintenance Manager or an approved alternate should an emergency arise (24 hour per day, 7 day per week, 365 day per year). The Signal Maintenance Firm shall enter all communication regarding trouble calls, equipment failures, alarms, or any unusual occurrence into the appropriate Management Information System or control system. The Central Florida Rail Coordination Center ("CFRCC") will contact the Signal Maintenance Manager, or an approved alternate, for any signal related emergency and the Signal Maintenance Manager shall coordinate a response to emergencies. The Signal Maintenance Firm shall provide the CFRCC with contact information and responsibilities for each maintainer. In the event of equipment failure or signal malfunction, the CFRCC will contact the responsible maintainer or an alternate to respond. The Signal Maintenance Firm shall conduct follow-up investigations to determine the root cause for any signal equipment failures.

## **2.3 Emergencies and Service Disruptions**

(a) Upon the occurrence of an Emergency which causes serious damage to Service Property or Support Property or obstructs railroad operations, or results in a fatality or serious personal injury, Signal Maintenance Firm shall coordinate with Other Contractors performing maintenance services or construction activities and shall immediately notify the Department following the Incident Management and Notification Procedures provided in this Signal Maintenance of Way Scope of Services.

(b) Signal Maintenance Firm management employees authorized to conduct all phases of the operation shall be available to the Department without interruption during storm events and Emergencies. The Signal Maintenance Firm shall respond to Emergencies and Service Disruptions with sufficient resources without regard for time, day or otherwise, to resolve all such situations. Overtime, night, weekend and holiday work is expected and shall not be restricted for monetary reasons.

(c) The Signal Maintenance Firm shall respond to reported crossing related failures in accordance with the FRA CFR Part 234 Regulations with sufficient resources without regard for time, day or otherwise, to resolve all such situations.

(d) The Signal Maintenance Firm shall, wherever possible with a site responder on site, respond to emergencies and incidents within 30 minutes of initial notification. In all cases they shall initiate actions to restore service within 30 minutes. Where the Signal Maintenance Firm does not provide 24-hour on-duty coverage in any functional area, Signal Maintenance Firm shall provide key Signal Maintenance Firm Personnel with the appropriate vehicles, equipment, tools and materials in order to respond directly to a service problem or interruption at all times, from locations including their primary residence. The Signal Maintenance Firm shall provide a list of key employees, assigned vehicles, and the reason for their inclusion on this list.

## **2.4 Roadway Worker Protection and Track Outages**

(a) Signal Maintenance Firm shall provide all Roadway Worker Protection including, but not limited to, Employee-In-Charge, Point-of-Contact, and Watchman/Look-out, for all Signal Maintenance of Way Services at the Signal Maintenance Firm's expense as part of the Signal Maintenance Firm's Lump Sum Price. If the signal maintenance occurs in an area where Other Contractors have work limits in effect, the Signal Maintenance Firm shall coordinate use of the Other Contractor's personnel for Roadway Worker Protection.

(b) The Signal Maintenance Firm shall perform all Signal Maintenance of Way Services in a manner that does not delay or cause disruption to rail service whenever possible. Track outages for Signal Maintenance will only be allowed under the terms of the "Central Florida Operating and Management Agreement between the State of Florida Department of Transportation and CSX Transportation, Inc.", the "Transition Agreement between the State of Florida Department of Transportation and CSX Transportation, Inc." and the "Operating Agreement between Amtrak and State of Florida Department of Transportation". Track outages shall be requested by Signal Maintenance Firm in writing to the Department at least 75 days in advance of the date needed and in accordance with any notification requirements in the Operating Agreements with other railroads. The track outage request shall identify any alternative transportation requirements, and shall be submitted following the requirements. Signal Maintenance Firm shall explore all available alternatives to the outages and shall provide the reasons that such alternatives are not viable. Track outages exceeding the agreed upon time windows for the end of the outage are subject to delay penalties. In the case when a track outage is required to respond to an Emergency, Signal Maintenance Firm may commence such work immediately, and shall provide notification to the Chief Operating Officer (COO) as soon as practicable. The inability of the Department to provide requested track outages shall not reduce

Signal Maintenance Firm's obligations. Signal Maintenance Firm shall provide a weekly report of scheduled track outages to the Department.

## **2.5 Performance and Maintenance of Way Services Standards**

(a) The Signal Maintenance Firm shall maintain the performance level of the Service Property to meet or exceed the FRA requirements as stated in Parts 234 and 236 of the 49 CFR, and in accordance with the recommendations detailed in the latest version of the AREMA Signal Manual and the Maintenance of Way Service Standards, and in a State of Good Repair during the term of the Contract. All signal related Service Property, Support Property, and associated systems shall be maintained by Signal Maintenance Firm in accordance with all applicable state, and federal codes, laws and regulations.

(b) The Signal Maintenance Firm shall be provided a copy of the Maintenance of Way Service Standards prepared by the Department. The Signal Maintenance Firm shall prepare a Signal Maintenance of Way Services Plan and shall adhere to and implement this Plan. The Signal Maintenance of Way Services Plan shall identify the inspection and maintenance activities to be undertaken by the Signal Maintenance Firm, Signal Maintenance of Way Service Standards, frequencies of tasks, staffing plan, specific schedules for accomplishing such work, and proposed work windows or service diversions. These maintenance standards and procedures must be in compliance with all laws and regulations, including all those specific to the railroad industry. They must at a minimum meet or exceed the FRA requirements as stated in Parts 234 and 236 of the 49 CFR, and in accordance with the recommendations detailed in the latest version of the AREMA Signal Manual. The Signal Maintenance Firm shall submit the Signal Maintenance of Way Service Standards to the Department for approval 30 days following Notice to Proceed and shall submit an updated plan 30 days prior to the anniversary date of its initial submittal. .

(c) The Signal Maintenance Firm will provide CFRC Standard Operating Procedures (SOP) and manuals for all signal facilities and systems for the Department's and CFRC Signal Maintenance personnel. The Department will provide the Signal Maintenance Firm with existing SOP's for their use.

(d) Inspection and test cycles shall be tied to FRA regulations or Department standards, whichever is more stringent. Inspection and test dates shall be scheduled from the last inspection date. Additional testing may be required, as specified in this Signal Maintenance of Way Requirements, prior to the regulated test date.

(e) The Signal Maintenance Firm shall provide inspection and maintenance service for all signal aspects of the Service Property in order to maintain the Service Property in a condition equal to or greater than minimum maintenance standards. Maintenance of the Service Property and Support Property shall be Signal Maintenance Firm's responsibility. The Service Property shall be kept clean and Service Property and Support Property shall be maintained in a State of Good Repair. The Signal Maintenance Firm shall maintain any new or reconstructed assets that are added or modified after the Signal Maintenance of Way Commencement Date to the level at which Signal Maintenance Firm received such property. Prior to receiving such

property, the Department, Other Contractor responsible for the installation of the new equipment and the Signal Maintenance Firm shall perform a joint inspection and each shall sign off on the transfer of the signal installations from the Other Contractor to the Signal Maintenance Firm.

(f) Levels of maintenance to the Service Property shall be performed per any manufacturer's recommendations and instructions to the extent that they exist or as otherwise directed herein.

## **2.6 General Property Condition Requirements**

(a) The Signal Maintenance Firm shall provide cleaning, including without limitation rubbish removal, sand and dirt removal, and vandalism-related repairs that affect the safety, security or operation of the signal systems.

(b) The Department does not allow dumping or stockpiling of debris and spoils on its property. The Signal Maintenance Firm shall secure and use legal disposal locations to ensure the Service Property is kept clean. The Signal Maintenance Firm shall remove all trash and debris generated as a result of the Signal Maintenance of Way Services immediately. In the event that Signal Maintenance Firm fails to remove such trash or debris following written notice by the Department of the continued existence of the condition, the Department shall have the right to take corrective measures at the Signal Maintenance Firm's expense.

(c) Graffiti shall be removed expeditiously, and in no event longer than twenty-four (24) hours after receipt of a report of graffiti at any location on the Service Property. The removal of graffiti shall be prioritized by the Department but in every case graffiti containing ethnic, racial, obscene or otherwise offensive content shall be removed immediately upon notification or discovery. Graffiti can be temporarily covered until the entire surface can be cleaned or repainted as weather permits.

(d) All Department supplied sites used by Signal Maintenance Firm shall be kept clean and maintained, or repaired, so as to be kept in a State of Good Repair.

(e) Waste or hazardous material shall be captured, labeled and disposed of by Signal Maintenance Firm in accordance with environmental regulations.

## **2.7 Right-of-Way Maintenance**

(a) Railroad materials and equipment removed from service shall be removed from the right of way within thirty (30) days except where otherwise specified.

(b) Signal Maintenance Firm shall report to the local law enforcement, and shall attempt to control, illegal dumping activities, trespassing, and unauthorized use of the Service Property. In addition, Signal Maintenance Firm shall also participate with Department in programs to educate the public to the dangers of trespassing on the railroad rights of way.

(c) Signal Maintenance Firm shall apply herbicides to prevent weed growth from around signal houses and signal equipment and other approved areas, to the extent that environmental regulations allow. All work shall be performed in accordance with applicable state and federal regulations as well as applicable Department environmental and health and safety policies.

(d) Signal Maintenance Firm shall maintain and install signal related signage pursuant to Department standards, and shall repair or replace damaged or missing signs.

## **2.8 Structures Maintenance Assistance**

At a minimum, Signal Maintenance Firm's inspectors shall be responsible for the following:

(a) Emergency inspections of signal related components immediately after a railroad bridge has been struck or after noticeable defects are reported.

(b) Participate in quarterly inspections of the moveable bridges, performed jointly with Other Contractor's communications, structures, track and electrical personnel as scheduled by the Other Contractor and the Department. The Signal Maintenance Firm shall provide Other Contractor with the requirements to address the signal components for each drawbridge to provide a comprehensive Bridge Inspection and Maintenance Plan. The Other Contractor shall submit such plan to the Department for acceptance as part of the annual Maintenance of Way Services Plan.

## **2.9 Signal Maintenance**

(a) The Signal Maintenance Firm shall, at a minimum, maintain all existing, reconstructed, or newly accepted signal systems located within the Service Property in accordance with FRA 49 CFR Parts 233, 234, 235, and 236 Regulations, the recommendations detailed in the latest version of the AREMA Signal Manual, the Signal Maintenance of Way Service Standards, and in a State of Good Repair.

(b) The Signal Maintenance Firm will manage safety sensitive software for all crossing and train control systems in accordance with the CFRC Software Management Control Plan.

(c) Signal systems shall not be installed, modified, or permanently removed from service without prior written approval from the Department. When such an approval is requested by the Signal Maintenance Firm, it shall fully detail through drawings and/or text the request being made. The Signal Maintenance Firm is responsible for providing to the Department all information necessary for the Department to obtain any federal approvals required under the 49 CFR.

(d) Emergency modifications may be performed in the interest of safety. The Signal Maintenance Firm shall promptly notify the Department by telephone of such modifications within one (1) hour after the event becomes known to the Signal Maintenance Firm. The Signal Maintenance Firm shall provide a written request for final modifications within twenty-four (24)

hours of such initiation and shall include a detailed explanation of the required modifications and the reason emergency modification was initiated.

(e) All permanent modifications made to the signal system shall be recorded in MicroStation format (latest version compatible with Department) and submitted to the COO no later than thirty (30) days after the modification is placed in service. The Signal Maintenance Firm shall obtain all applicable warranty agreements for permanent modifications in the name of the Department and provide any and all associated documentation to the Department. The Signal Maintenance Firm shall administer those warranties.

(f) The Signal Maintenance Firm shall be responsible for coordination with neighboring railroads on boundary or division of territory circuits. The recognition of the signaling system being a complete "end to end" system shall be accepted by the Signal Maintenance Firm. All testing, maintenance, and trouble resolution that may affect multiple railroads shall be done only after a complete understanding has occurred between the Signal Maintenance Firm and the neighboring railroad.

(g) Signal cases and apparatus shall be kept sealed, locked, clean and free of all foreign material, such as:

1. Brush
2. Rodents
3. Insects
4. Rust
5. Graffiti

(h) Signal cases and apparatus shall be painted in accordance with the following painting schedule:

1. One-third of all apparatus shall be painted each calendar year. Paint colors shall be determined by the Department.
2. Aluminum equipment will not require paint, unless necessary to improve visibility (such as in the case of signal backgrounds and hoods), or to obscure graffiti that cannot be removed by other means.
3. Switch Machines shall be painted and numbered for identification on the machine cover.
4. Acid resistant paint shall be used to protect signal cases and housings from battery acid damage. This paint shall be applied as required to prevent corrosion.

(i) Only Original Equipment Manufacturers (OEM) replacement parts and procedures shall be used to repair broken signal and communication equipment. Temporary repairs shall be permanently repaired commencing on the next business day after the installation of the temporary repair. Material that can be much more economically repaired, or has proprietary rights or patents established, or is covered by warranty, may be repaired by an outside vendor.

(j) The Signal Maintenance Firm shall follow applicable FRA regulations regarding investigation and reporting of false proceeds. Signal Maintenance Firm shall also submit the following reports to the Department after every false proceed:



1. A preliminary report within twenty-four (24) hours of the reported false proceed, in both hardcopy and electronic formats.
2. A final report within 15 days of the false proceed, filed on form FRA F 6180-14, in both hardcopy and electronic formats.

(k) A monthly Train Delay Report shall be forwarded to the COO no later than the date of the submission by Signal Maintenance Firm of its monthly invoice to the Department.

1. The report shall include a breakdown of preventable and non-preventable signal failures.
2. Adjustments to the report shall be made only after review and with concurrence of both Signal Maintenance Firm and the COO.

## **2.10 Tests and Inspections**

(a) All signal systems in use on the Service Property shall be tested and inspected by Signal Maintenance Firm in accordance with the Signal Maintenance of Way Service Standards and the FRA 49 CFR to assure that they are maintained in a State of Good Repair.

(b) Inspection and test cycles shall be tied to FRA regulations or Department standards, whichever is more stringent. Inspection and test dates shall be scheduled from the last inspection date. Additional testing may be required, as specified in this Scope of Services or the Maintenance of Way Service Standards, prior to the regulated test date.

(c) The Signal Maintenance Firm shall submit the following reports to the Department after every FRA signal and train control test or inspection:

1. A preliminary written report by the end of the next business day of the test or inspection in a format acceptable to the Department.
2. A final written report indicating the corrective action taken, or plan to correct by Signal Maintenance Firm, within two (2) business days of the preliminary written report in a format acceptable to the Department.

(d) All corrections or repairs shall be made within time limits specified by FRA Parts 234 and 236 for correction.

(e) Test and inspection dates and results, including digital photographs where appropriate, shall be recorded in the Maintenance of Way MIS and summarized in the monthly Report on FRA Test Compliance.

(f) The Signal Maintenance Firm shall provide for an off-site location where signal repair facilities shall repair relays, switch machines, switch circuit controllers, and other signal apparatus necessary to maintain the Service Property in a State of Good Repair Condition.

(g) The Signal Maintenance Firm shall maintain as-in-service, up-to-date, and legible circuit plans at all wayside signal locations as required by FRA Parts 234 and 236 regulations. The Signal Maintenance Firm shall be responsible for updating all circuit plans. Any changes to the existing circuit plans shall be revised to comply with FRA requirements within 30 days.

(h) The Signal Maintenance Firm shall coordinate Circuit Plan updates and revisions with Other Contractors responsible for new signal construction to ensure compliance with the applicable FRA regulations.

(i) Updated field plans reflecting changes made by Other Contractors shall be supplied to the Signal Maintenance Firm within thirty (30) calendar days of the time such field change is placed in service.

(j) One complete electronic copy of current line plans, track charts, and interlocking layouts within the Service Property shall be provided to the Department by anniversary date of each Signal Maintenance of Way Agreement Year.

## **2.11 Grade Crossing Maintenance**

(a) All at-grade crossings shall be inspected and maintained in order to maintain the Service Property in a State of Good Repair by the Signal Maintenance Firm. Crossings, including without limitation Automatic Highway Crossing Warning Systems (“AHCWS”), shall be maintained in a manner that is safe, convenient and compliant with all applicable uses, rules and regulations including without limitation FRA, USDOT MUTCD.

(b) The Signal Maintenance Firm shall ensure that all components of the warning system are in place and functioning. The Signal Maintenance Firm shall notify Other Contractors and Third Parties as necessary to remedy noted deficiencies.

(c) Department may direct the Signal Maintenance Firm to participate in the upgrade of grade crossings under the Department grade crossing improvement program. The Signal Maintenance Firm shall submit estimated costs for participation in the program for approval. Costs associated with participation shall be paid under Extra Work.

(d) The Signal Maintenance Firm shall provide all resources and maintain inventory and parts required for the maintenance of highway-rail grade crossing warning systems on the Service Property in a timely fashion.

(e) Grade crossing gates, lights, and wires shall be properly attached to apparatus following appropriate AREMA Section 3 Standards and in accordance with FRA CFR Part 234 Regulations. Grade crossing warning systems shall be maintained in accordance with the Signal Maintenance of Way Standards in conformance with the appropriate sections of the USDOT MUTCD Current Edition. Only 12” Light Emitting Diode (LED) signal lamps are approved for use on Service Property.

(f) The Signal Maintenance Firm shall ensure all appropriate devices and appurtenances are in place and functioning, including but not limited to striping and advance warning lights. The Signal Maintenance Firm shall notify the agency having jurisdiction to remedy noted deficiencies.

(g) The Signal Maintenance Firm shall remove vegetation from the Service Property and roadways so that the view of the warning system from an approaching train or motorist is not obstructed. The Signal Maintenance Firm shall be responsible for removal of vegetation within 100 feet of the edge of the road. Other Contractors shall be responsible for removal of vegetation beyond 100 feet. The Signal Maintenance Firm shall notify the COO of vegetation removal required beyond 100 feet of the edge of the road for scheduling its removal.

(h) The Signal Maintenance Firm shall immediately report to the Department all gate and grade crossing malfunctions that result in an Activation Failure. The Signal Maintenance Firm shall submit a report within twenty-four (24) hours to the Department that provides the failure cause and all planned corrective actions. The Signal Maintenance Firm shall be responsible for providing information for the Department to submit reports to the FRA regarding the Activation Failure as described in FRA CFR Part 234 regulations.

(i) The Signal Maintenance Firm shall maintain crossing approach distances of sufficient length to accommodate the maximum authorized track speeds and adjust them as necessary in the event that changing track conditions warrant track speed changes.

(j) The Signal Maintenance Firm shall maintain signs listing the crossing name, milepost designation, and emergency contact phone number for each highway-grade crossing at each crossing gate so the information is visible when approaching the crossing from either direction.

(k) As new highway-crossing technology is installed by the Signal Maintenance Firm or Other Contractor, the Signal Maintenance Firm shall accept and maintain these systems. Technology included in Signal Maintenance Firm's responsibility shall include maintenance of the following systems:

1. Warning gate systems
2. Quiet zone systems (if installed)
3. Vehicle detection systems
4. Traffic light preemption systems coordinated with the highway crossings
5. Visual monitoring systems
6. Police and fire Department notification systems
7. Remote Terminal Units (such as SCADANet) if installed
8. Other technologies associated with highway crossing warning systems

## **2.12 Wayside Signals and Interlockings**

(a) The Signal Maintenance Firm shall provide all resources and maintain inventory and parts required for the maintenance of all wayside signal systems on the Service Property in a timely fashion.

(b) The focus of all signals shall be maintained by the Signal Maintenance Firm to provide the optimal sight distance at all times. This shall include adequate brush removal as required.

(c) Under no circumstances shall any railroad material be stored in or around signal cases or signal masts by the Signal Maintenance Firm or Other Contractor. The Signal Maintenance Firm shall notify the COO of any materials other than signal materials stored around signal cases or masts that require removal by Other Contractors

(d) Track wires and connectors shall be installed by the Signal Maintenance Firm in accordance with generally accepted rail industry practice as outlined in the AREMA Signal Manual.

(e) At a minimum, inspection and maintenance of the turnouts, crossovers and sidings shall be performed in order to maintain the Service Property in a State of Good Repair.

(f) The Signal Maintenance firm shall be responsible for verifying signal number plates are properly displayed so that signal identification cannot be mistaken. Signal interlocking bungalows shall have the interlocking identification name and milepost displayed on both sides of the bungalow at Central Instrument Locations, and at all entrances to the interlockings.

(g) The Signal Maintenance Firm shall support the existing incandescent wayside signal system until the new signal system is functional. The Signal Maintenance Firm shall create and maintain lamp change out records showing last date changed shall be kept at each location. The change out date for each lamp with an appropriate apparatus identification number shall be recorded in the RMIS.

(h) The Signal Maintenance Firm shall be responsible for keeping up to date copies of the required tests of signal apparatus in the signal instrument housing at all times, and copies maintained in an office file as required for inspection by FRA inspectors per FRA Parts 234 and 236. The Signal Maintenance Firm shall coordinate with the COO for receiving authorization from the FRA to maintain records in an electronic format. Upon authorization from the FRA and approval of the COO, hard copies of the FRA test results reports are no longer required to be maintained at the signal maintenance office.

(i) The Signal Maintenance Firm shall replace Switch Machines as required to maintain the system. The Signal Maintenance Firm shall track failures associated with both the new and old switch machines and assist the Department in prioritizing the replacement of switch machines that reflect the greatest failure rate.

### **2.13 Wire and Cable**

(a) Temporary repairs that result in temporary wires or twisted pairs shall be replaced promptly by the Signal Maintenance Firm in accordance with FRA Regulations, but not to exceed thirty (30) calendar days.

(b) All wiring and cabling shall be protected from damage, inspected, and tested in accordance with the Signal Maintenance of Way Services Standards. Wire and cable shall be replaced as part of the Signal Maintenance Services Lump Sum Price when damaged through negligence on the part of the Signal Maintenance Firm.

(c) The Signal Maintenance Firm shall maintain wire and cabling in accordance with the Signal Maintenance of Way Services Standards.

## **2.14 Communications**

(a) The Signal Maintenance Firm shall supply all radios for the performance of Signal Maintenance of Way Services. Other Contractors will program or provide programming information to enable radios to operate on the existing communication system.

## **2.15 Coordination Activities with Other Contractors or Third Parties**

(a) The Signal Maintenance Firm shall be responsible for maintaining safe operation of the highway-rail grade crossing systems in support of maintenance activities being completed by Other Contractors. This support shall include, but is not limited to, coordination with Other Contractors, disabling/enabling crossing warning systems during track maintenance activities, repairing reasonable and normal damage caused by track maintenance activities, and verification of the functionality of the wayside signal systems and the highway-rail grade crossing warning systems after track maintenance work prior to returning track to service. Support by the Signal Maintenance Firm for Other Contractors for work that is not routine maintenance shall be considered Extra Work. Excessive damage to signal equipment caused in whole or in part by the actions of Other Contractors shall be the responsibility of the Signal Maintenance Firm to repair or replace at the Other Contractor's sole expense. Determination of the extent of damage and responsibility shall be made as described in Section 4.6 of this document. This determination does not relieve the Signal Maintenance Firm from making repairs as necessary to restore the wayside signal or highway-rail grade crossing warning system to operation without regard to cause or responsibility and to prevent unnecessary delays.

(b) New systems placed in service shall be installed, cutover and both operationally and 49 CFR regulatory tested by Other Contractors. These complete systems shall be verified operational by the Department and shall be accepted by Signal Maintenance Firm for maintenance. Original FRA test results shall be provided to Signal Maintenance Firm for records maintenance and scheduling of continued FRA 49 CFR testing. Once accepted, the Signal Maintenance Firm shall be responsible for periodic testing and preventative maintenance as defined in the 49 CFR Parts 233, 234, 235, 236; in accordance with the recommendations detailed in the latest version of the AREMA Signal Manual and the Signals Maintenance of Way Standards, and in a State of Good Repair.

(c) The Signal Maintenance Firm shall coordinate with Other Contractors for any wiring work to be performed at tie-in locations to interface the existing wayside signal and highway-rail grade crossing warning systems to the new wayside and grade crossing warning systems. Other Contractors shall be responsible for installation of cables, equipment and wiring

including the connection to any wayside signal or crossing warning system circuits. Once connected to the existing circuits, all circuits shall be tested by the Other Contractors to verify proper operation and compliance with 49 CFR regulations. Documentation of the 49 CFR testing shall be the responsibility of Other Contractors. Original FRA test results shall be provided to Signal Maintenance Firm for records maintenance and scheduling of continued FRA 49 CFR testing. Temporary connections to existing circuits shall be made as described in (d) below.

(d) Other Contractors shall be responsible for installation of cables, equipment and wiring including the connection to any wayside signal or grade crossing warning system circuits. Once connected to the existing circuits, all temporary circuits shall be jointly tested by the Other Contractors to verify proper operation and compliance with 49 CFR. . Documentation of the 49 CFR testing shall be the responsibility of Other Contractors. Original FRA test results shall be provided to Signal Maintenance Firm for records maintenance and scheduling of continued FRA 49 CFR testing.

(e) The Signal Maintenance Firm shall have access to existing cases and houses for maintenance and construction activities. When access is required by the Other Contractors for construction activities, the Department shall provide such access. Other Contractors shall verify proper operation of signal equipment after construction work is completed. Other Contractors shall provide a minimum of 24 hours' notice to the Signal Maintenance Firm prior to accessing existing locations. Other Contractors shall be responsible for installation of cables, equipment and wiring including the connection to any wayside signal or grade crossing warning system circuits. Connection to existing circuits shall be made in accordance with the above paragraphs.

(f) Other Contractors shall be responsible for relocating existing equipment as necessary for construction in the CFRC. Other Contractors shall be responsible for installation of cables, equipment and wiring including the connection to any "live" wayside signal or crossing warning system circuits. Once connected to the existing circuits, all circuits shall be tested by Other Contractor to verify proper operation and compliance with 49 CFR regulations. Documentation of the 49 CFR testing shall be the responsibility of Other Contractors. . Original FRA test results shall be provided to Signal Maintenance Firm for records maintenance and scheduling of continued FRA 49 CFR testing. Once accepted, the Signal Maintenance Firm shall be responsible for periodic testing and preventative maintenance as defined in the 49 CFR Parts 233, 234, 235, 236; in accordance with the recommendations detailed in the latest version of the AREMA Signal Manual and Signal Maintenance of Way Standards; and in a State of Good Repair.

(g) The Signal Maintenance Firm shall be responsible for locating existing wayside signal and highway-rail grade crossing signals underground cable and track wires as necessary for Other Contractors and Third-Party requests. Repairs to damaged underground facilities caused by inaccurate marking of the underground facility by the Signal Maintenance Firm shall be repaired without undue delay and shall be the sole responsibility of the Signal Maintenance Firm. Damage caused by Other Contractors or Third-Parties to accurately marked cables shall be repaired without undue delay by Signal Maintenance Firm. The Signal Maintenance Firm shall be responsible for recovering its costs for such repairs from the Other Contractors or Third Parties. The Department shall support the Signal Maintenance Firm's efforts to obtain

reimbursement from Other Contractors or Third Parties for expenses incurred in repair of damaged cables caused by the actions of the Other Contractors or Third Parties.

(h) Any work performed by the Signal Maintenance Firm for third parties will not be deemed to be compensated for by payments under this contract and the Signal Maintenance Firm may charge such third parties for such services; provided, however, that under no circumstances shall the Department be a part to such an arrangement nor shall the Department have any liability to the Signal Maintenance Firm nor the third party in connection therewith.

## **2.16 Electrical**

(a) The Department, through Other Contractors, shall provide complete electrical service and maintenance thereof, and provide a reliable and adequate power source, for all of the Service Property, including but not limited to buildings, stations, layover facilities, roadways, grade crossings, substations, area lighting and draw bridges.

(b) The Signal Maintenance Firm shall be responsible for power service from the meter service or electrical disconnect point to all signal locations and crossings.

## **2.17 Environmental Services**

(a) Any regulated waste or hazardous materials located on the service property produced or generated while delivering the Signal Maintenance of Way Services shall be disposed of by the Signal Maintenance Firm in accordance with all applicable environmental regulations. Copies of all waste management documentation, including manifests, bills-of-lading, weight slips, and receiving facility receipts shall be provided to the Department.

## **2.18 Other Signal Maintenance of Way Services**

(a) Other Signal Maintenance of Way Services may include surveys, design, development of plans, layouts, sketches, pictures, staging and phasing plans, and other engineering functions that are normally required in the operation and maintenance of the signal systems for a railroad.

(b) The Signal Maintenance Firm shall investigate, respond to and attempt to resolve complaints and problems on and along the CFRC that result from or otherwise related to the performance of the Signal Maintenance of Way Services.

## **2.19 Adjustments for Substantial Economic Impact**

Annually, the Department will provide additional compensation to the Signal Maintenance Firm via Supplemental Agreement or Unilateral Payment if the Signal Maintenance Firm experiences a combined substantial economic impact during the previous year due to compliance with any of the following four (4) possible occurrences.



- (a) A change to the signal maintenance of way requirements, programs or practices for the Central Florida Rail Corridor.
- (b) A change to any of the policies, procedures, standards, manuals, handbooks, guides, specifications, or any other State, Local, or Federal documents used to monitor the performance of this contract.
- (c) Increased maintenance due to the construction of facilities beyond those required for the implementation of SunRail system (Phase I) at the time of the Signal Maintenance Firm's proposal due date.
- (d) Increased maintenance due to the transfer of ownership to the Department of additional rail facilities extending the rail corridor limits.

A substantial economic impact is defined as a documented financial burden on the Signal Maintenance Firm exceeding one percent (1%) of the annual Lump Sum Price for Signal Maintenance Services. If additional compensation is warranted, the Department will compensate only for the value of economic impact beyond the one percent (1%) threshold. The one percent (1%) is not cumulative year to year; it is reset each anniversary of the contract start date. The Signal Maintenance Firm will not receive any additional compensation for maintenance projects scheduled to accommodate the SunRail service in the Central Florida Rail Corridor (Phase I) at the time of the proposal due date.

Similarly, the Department will reduce payment to the Signal Maintenance Firm if the Signal Maintenance Firm experiences a combined substantial economic savings during the previous year due to occurrences of any of the following four (4) possibilities:

- (a) A change to the signal maintenance of way requirements, programs or practices for the Central Florida Rail Corridor.
- (b) A change to any of the policies, procedures, standards, manuals, handbooks, guides, specifications, or any other State, Local, or Federal documents used to monitor the performance of this contract.
- (c) Reduced maintenance due to the elimination or planned destruction of rail facilities.
- (d) Reduced maintenance due to the transfer of ownership of Department-owned rail facilities within the Central Florida Rail Corridor to other non-Department entities.

A substantial economic savings is defined as a cost savings exceeding one percent (1%) of the annual contract amount. If cost savings are identified, payment to the Signal Maintenance Firm will be reduced only for savings greater than the one percent (1%) threshold. The one percent (1%) is not cumulative year to year; it is reset each anniversary of contract start date.

The following occurrences shall be deemed to be occurrences covered by the provisions of this Section 2.19:

- (a) The addition of Positive Train Control features,
- (b) The addition of signal apparatus to subsequent Phases of the project (e.g. Phase 2 South and Phase 2 North).
- (c) Increased personnel needs due to the addition of passenger operations beyond Phase 1 service territory or initial operating plan.
- (d) The addition of weekend service, or
- (e) The addition of special trains.

### **SECTION 3. INCIDENT AND EMERGENCY MANAGEMENT AND NOTIFICATIONS.**

In the event of an incident or emergency that results in delays or disruptions to rail services, the Signal Maintenance Firm shall follow those procedures described in the Incident and Emergency Management Plans prepared by Other Contractors providing non-signal Maintenance of Way Services. Responsibilities of the Signal Maintenance Firm include but are not limited to restoration of service and repair of damaged signal related ROW and signal related equipment, notification of appropriate Department officials, investigation of delays and disruptions, and preparation of reports.

The Central Florida Rail Coordination Center ("CFRCC") provided by Other Contractors shall establish and maintain an emergency one call telephone number in the CFRCC that is answered twenty-four (24) hours a day, seven (7) days a week (1-877-CFL-RAIL or 1- 877-235-7245). The CFRCC is responsible to communicate information to emergency responders, government agencies and designated CFRC officials, providing instructions and information on the nature and extent of the emergency and any/all other applicable information that may be necessary or required in order to affect the proper degree of emergency response.

The CFRCC will be responsible for notifying the Signal Maintenance Firm personnel regarding emergencies and failures requiring a response from the Signal Maintenance Firm. The Signal Maintenance Firm shall notify the CFRCC upon resolution of the emergency or failure. The Signal Maintenance Firm shall also notify the Dispatcher upon resolution of the emergency or failure providing details regarding the cause of failure, delays caused by the failure and any other relevant information regarding the emergency or failure.

#### **3.1 Declared and Other Emergencies**

The Department categorizes Emergency Management into two classifications: "Governor Declared Emergencies" and "Other Emergencies". For Governor Declared Emergencies,

perform pre-event preparation and provide initial response post-event to protect the traveling public from grievous hazards created by the event. For Other Emergencies, perform all aspects of responding to the incident/event, including pre-event preparation, post-event initial response, and post-event cleanup and repair. For both classifications of Emergency Management, perform the following three (3) activities before every foreseeable Emergency Management incident/event:

(a) Contact vendors and subcontractors to verify quantity, availability, and priority of appropriate equipment and personnel. Develop a complete up-to-date list of equipment resources and staging locations and of all stockpiled materials and their location.

(b) Secure and lockdown all structures covered under this contract.

(c) In preparation for high winds, rains, and other impending elements, secure all existing equipment and worksites associated with this contract.

Unless otherwise noted in this contract, the Department will not provide additional compensation to the Signal Maintenance Firm through this contract for any Emergency Management activities, including the three activities described above.

For all Emergency Management activities, the Department reserves the right to take control of the incident and/or perform recovery work with its own or other contracted forces when the Department determines it is in the Department's best interest to do so.

### **3.2 Emergency Management Plan**

Know the applicable District Comprehensive Emergency Management Plan as well as the FRA, FTA and FEMA guidelines for federal reimbursement. Ensure compliance with all State and Federal Emergency Management Requirements. Administer all response and recovery efforts in accordance with these documents. Develop an Emergency Management Plan that sufficiently replicates the intent of the District's Comprehensive Emergency Management Plan. Include details in the Emergency Management Plan including, but not limited to:

- procedures for incident/event management
- agency & public notifications
- assurance of motorist safety
- handling of hazardous waste
- coordination with Law Enforcement and other appropriate agencies
- traffic control
- making emergency repairs
- debris removal
- submission of incident/event reports
- detailed organizational structure with the functions, qualifications, experience level, and contact information of staff assigned to respond to incidents/events.

Comply with all Department plans and with all Local, State, and Federal laws and regulations concerning evacuation routes and the handling and disposal of hazardous waste. Update the

Emergency Management Plan in April of each year by engaging an iterative process of discussion between the Department and the Signal Maintenance Firm where by lessons learned from past experience can be implemented for future use. Prior to the occurrence of any incidents/events, ensure an approved Emergency Management Plan is in effect and be prepared to act upon that plan.

### **3.3 Emergency Management Plan**

Governor Declared Emergencies are incidents/events that prompt the Governor to Florida to declare a State of Emergency in response to the incident/event. Governor Declared Emergencies will most commonly be major hurricanes and other natural disasters, but can include smaller natural disasters/events/storms (Acts of God), collisions with structures and related components, and incidents/events resulting from human interactions.

If directed by the Department in writing, perform the following Post-Event activities and separately track and invoice the Department for associated costs. The Department will compensate the Signal Maintenance Firm for their costs incurred in performing these Post-Event activities as described in the Department's written directions to the Signal Maintenance Firm.

(a) Search the rail corridor covered by this contract for grievous hazards specifically associated with the signal systems (roadway washouts/cave-ins, downed electrical lines, non-functioning signals, etc.). This may include clearing some debris from the rail corridor to access these hazardous areas. Minimal clearing required to access hazardous areas will not be reimbursed.

(b) Immediately respond to perform traffic control, set up safety devices, and identify detour routes to protect the traveling public and rail carriers from grievous hazards created by the incident/event.

(c) Notify the Department's designated contact person immediately upon occurrence of all major incidents/events and immediately upon railroad closure for all closures. Notify the Department again upon roadway and/or structure reopening.

(d) Inspect, perform any minor repairs, and ensure all signal systems are back to their original operating functions as directed by the Department. "Minor repairs" is defined as repairs not eligible for Federal reimbursement.

(e) Assist the Department in performing damage assessment reviews of signal systems.

### **3.4 Specific Signal Maintenance Firm Responsibilities for Other Emergencies**

Other Emergencies are incidents/events that do not prompt the Governor of Florida to declare a State of Emergency in response to the incident/event. Other Emergencies will most commonly be crashes (vehicle or train), derailments, broken gates, crossing warning equipment damage and

debris on the tracks, but can include natural disasters/events/storms (Acts of God), collisions with structures and related components, and incidents/events resulting from human interactions.

The Signal Maintenance Firm is responsible for responding to the incident within 30 minutes of being informed of the occurrence.

### **3.5 Recovery of Costs, Reimbursement and Coverage for Other Emergencies**

When an incident/event causes damage to the Service Property, which is subject to the terms of this Agreement, the Department authorizes the Signal Maintenance Firm to pursue recovery against any responsible party for reimbursement of costs incurred by the Signal Maintenance Firm in accordance with this agreement (hereinafter Costs). Certain Property (assets) of the Department is insured. The following procedures and terms shall apply to the recovery of Costs incurred by the Signal Maintenance Firm, and reimbursement by the Department.

Upon learning that damage has been caused to the Service Property covered by this agreement, the Signal Maintenance Firm will immediately notify the Department Project Manager and Department Claims Attorney (Office of the General Counsel) who will confirm whether the Service Property is an insured asset. The Department shall notify the Insurance Company as necessary.

The Department will proceed as follows:

If:

A. The damaged asset is not insured by the Department and Costs are equal to or less than \$500,000.

1. The Signal Maintenance Firm is authorized to pursue recovery against any and all parties responsible for Costs caused by damage to the Service Property to the extent permitted by law. The Department will assist the Signal Maintenance Firm as necessary and will confirm the Signal Maintenance Firm's authorization to pursue recovery. The Signal Maintenance Firm will be responsible for all attorneys' fees and litigation costs incurred in its recovery activities.

B. The damaged asset is not insured by the Department and Costs are in excess of \$500,000.

1. In this situation the Department may be responsible to reimburse the Signal Maintenance Firm for any costs incurred in excess of \$500,000. Under these circumstances the Department retains its rights to pursue recovery against any and all parties for the amount of any reimbursement made to the Signal Maintenance Firm in excess of \$500,000 (hereinafter Reimbursement). The Department and Signal Maintenance Firm agree to coordinate their pursuit of recovery of their respective Costs and Reimbursement from the responsible parties, and not to execute any documents or take any actions which would impair or limit the other's right to recovery. The Department and Signal Maintenance Firm may enter into an agreement for sharing attorney's fees and litigation costs. The Department and Signal

Maintenance Firm agree to share any recovery on a pro-rata basis based upon their respective Costs and Reimbursements, in accordance with Florida law, unless otherwise agreed to in a separate writing.

C. The damaged asset is insured by the Department and Costs are equal to or less than \$500,000.

1. In this situation the Insurance Company retains a subrogated interest in the recovery against any and all responsible parties to the extent of its payment for coverage under the appropriate policy (Coverage). The Coverage may include damages other than the Costs incurred by the Signal Maintenance Firm. The Signal Maintenance Firm is authorized to pursue recovery against any and all parties responsible for Costs caused by damage to the Service Property to the extent permitted by law. The Department will assist the Signal Maintenance Firm as necessary and will confirm the Signal Maintenance Firm's authorization to pursue recovery. The Department and Signal Maintenance Firm agree to coordinate their pursuit of recovery of their respective Costs and Reimbursement with the Insurance Company and its claim for Coverage from the responsible parties, and not to execute any documents or take any action which would impair or limit the others' right to recovery. The Department, Signal Maintenance Firm and Insurance Company may enter into an agreement for sharing attorney's fees and litigation costs, otherwise each will bear its own fees and costs. The Department, Signal Maintenance Firm and Insurance Company agree to share any recovery on a pro-rata basis based on their respective Costs, Reimbursement and Coverage in accordance with Florida law, unless otherwise agreed to in a separate writing.

D. The damaged asset is insured by the Department and Costs are in excess of \$500,000.

1. In this situation the Department may be responsible to reimburse the Signal Maintenance Firm for any Costs incurred in excess of \$500,000. Under these circumstances the Department retains its rights to pursue recovery against any and all parties for the amount of any reimbursement made to the Signal Maintenance Firm in excess of \$500,000.00 (hereinafter Reimbursement) and the Insurance Company retains a subrogated interest in the recovery against any and all responsible parties to the extent of its payment for coverage under the appropriate policy (Coverage). The Coverage may include damages other than the Costs incurred by the Signal Maintenance Firm. The Signal Maintenance Firm is authorized to pursue recovery against any and all parties responsible for Costs caused by damage to the Service Property to the extent permitted by law. The Department will assist the Signal Maintenance Firm as necessary and will confirm the Signal Maintenance Firm's authorization to pursue recovery. The Department and Signal Maintenance Firm agree to coordinate their pursuit of recovery of their respective Costs and Reimbursement with the Insurance Company and its claim for Coverage from the responsible parties, and not to execute any documents or take any actions which would impair or limit the others' right to recovery in accordance with Florida law. The Department, Signal Maintenance Firm and Insurance Company agree to share any recovery on a pro-rata basis based upon their respective Costs, Reimbursement and Coverage in accordance with Florida law, unless otherwise agreed to in a separate writing.

In paragraphs 5C and 5D above, the Signal Maintenance Firm shall submit all proposed settlement documentation (settlement agreement, release and order of dismissal) for review and approval by the Office of the General Counsel prior to execution. Approval by the Department shall not be unreasonably withheld.

E. Failure to coordinate and cooperate in pursuing recovery, or impairment or limitation of a party's right to recovery.

1. With regard to paragraphs 5A, B, C, and D above, if either the Department or the Signal Maintenance Firm fails to coordinate and cooperate in the pursuit of any recovery under these provisions or impairs or limits the lawful recovery of the other or the Insurance Company, it will be liable to the other and the Insurance Company for reasonable attorneys' fees and costs incurred in compelling coordination and cooperation or correcting any impairment or limitation to its lawful recovery. The Signal Maintenance Firm shall not be entitled to any Coverage which may be available to the Department from the Insurance Company.

Although the Signal Maintenance Firm is responsible for repairing damage resulting from an act that officially declared by the State of Florida as an "act of terrorism", the Department will compensate the Signal Maintenance Firm via Supplemental Agreement or Unilateral Payment for "act of terrorism" damage repair costs.

### **3.6 Financial Relief for Severe Incidents**

For any single incident, the Department will reimburse the Signal Maintenance Firm for any damage repair construction costs in excess of \$500,000.00.

Such financial relief for severe single incidents does not apply to the extent the incident was caused, created, or magnified by the Signal Maintenance Firm's negligence.

## **SECTION 4. SERVICE PROPERTY, SUPPORT PROPERTY, AND SUPPORT INVENTORY.**

### **4.1 Right of Access**

(a) The Department hereby grants the Signal Maintenance Firm the right to enter upon and use the CFRC for the purposes of performing Signal Maintenance Firm's obligations under this Signal Maintenance of Way Requirements.

(b) The Department shall use reasonable efforts to ensure that Other Contractors or Third Parties do not unreasonably interfere with Signal Maintenance Firm's performance of the Signal Maintenance of Way Services and that access by Other Contractors or Third Parties to the Service Property is limited to the degree of access granted by the Department or necessary for the performance of the duties of such parties.



(c) The Signal Maintenance Firm shall register with e-RAILSAFE SHORTLINE® and provide for e-RAILSAFE SHORTLINE® employee security clearance for Signal Maintenance Firm personnel performing Signal Maintenance Firm's obligations under this Signal Maintenance of Way Requirements.

#### **4.2 Department's Right to Inspect**

The Department and its agents, contractors and subcontractors shall have the right to enter upon the CFRC and have access to the Service Property, Support Property and Support Inventory at any time and without notice for purposes of inspecting and examining the Service Property, the Support Property or the Support Inventory, or otherwise monitoring compliance with the terms of this Signal Maintenance of Way Requirements. The Department's representatives shall coordinate any inspections with the CFRC COO and such inspections shall not interfere with the Signal Maintenance Firm's performance of the Signal Maintenance of Way Services. The Department's representatives shall carry appropriate identification while on the CFRC for such purposes. The Department shall also have the right to obtain any information related to the Signal Maintenance of Way Services, the Service Property, Support Property, or Support Inventory promptly from any management employee of the Signal Maintenance Firm.

#### **4.3 Condition of Property**

Within thirty (30) calendar days prior to the Signal Maintenance of Way Commencement Date, the Department and Signal Maintenance Firm shall conduct an Initial Joint Audit of the Service Property and Support Inventory. The purpose of such Initial Joint Audit shall be to identify and establish the condition of the Service Property (Condition Assessment) and the quantities and condition of the Support Inventory as of the date of the audit. The Department shall in its sole discretion correct, remedy, acknowledge, or resolve any previously hidden defects, missing materials, damage to, or failure of the Service Property and Support Inventory revealed by the Initial Joint Audit so as to comply with applicable safety laws or regulations.

#### **4.4 Alterations or Modifications**

The Signal Maintenance Firm shall not alter or modify, except in accordance with this Signal Maintenance of Way Requirements, any of the Service Property or Support Inventory without the prior written approval of the Department. If the Signal Maintenance Firm determines that such alteration or modification is necessary, it shall notify the Department in writing at least thirty (30) calendar days prior to the date the Signal Maintenance Firm believes such alteration or modification should commence, and shall proceed only as directed by the Department. Each such request from the Signal Maintenance Firm must describe, in detail, the reason for the proposed alteration or modification, the scope of the work, the estimated cost, the labor, materials and equipment needed, and must contain a detailed schematic of the proposed work and a project schedule identifying the start date, completion date, and significant event dates. Such alterations or modifications are Extra Work. At the completion of the work, the Signal Maintenance Firm shall submit to the Department appropriate documentation, including as-built drawings and any other documentation required by law or regulations. The Department or its subcontractors may remove, at the sole cost and expense of the Signal Maintenance Firm, any

unauthorized alteration or modification that is not removed by the Signal Maintenance Firm within twenty-four (24) hours after notice from the Department.

#### **4.5 Signal Maintenance Firms' Duty of Care**

(a) During the Term of the Contract, the Signal Maintenance Firm shall maintain the Service Property and Support Inventory in accordance with the requirements of this Signal Maintenance of Way Requirements, applicable warranties, and applicable law. Upon completion of the Term of the Contract, the Signal Maintenance Firm shall deliver the Service Property and Support Inventory to the Successor O & M Firm in a condition consistent with the maintenance standards detailed in this Signal Maintenance of Way Requirements. The Signal Maintenance Firm shall reimburse the Department for the actual costs of any repairs to or maintenance of the Service Property or Support Inventory necessary to return the same to the condition required by the standards detailed in this Signal Maintenance of Way Requirements excluding the replacement of obsolete Support Inventory or capital assets.

(b) The Department shall have the right to reject any design, workmanship, or material which does not conform to accepted practice or the design of the Department, AREMA, Original Equipment Manufacturer (OEM), any vendor supplying materials or components, or to the standards as set forth in this Signal Maintenance of Way Requirements. Any such deficiency shall be corrected by the Signal Maintenance Firm to the satisfaction of the Department. Repeated rejections may be cause for the Department to order suspension of all or a portion of the Signal Maintenance of Way Services, without commensurate relief from applicable damages or penalties, pending resolution satisfactory to the Department. The currently accepted practice or design of the Signal Maintenance Firm, OEM, or any other vendor, that in the written opinion of the Department represents a diminution of value to the user from a previous practice, or design, may be rejected by the Department.

(c) The Signal Maintenance Firm shall not, without prior Department approval, post or affix any signs, notices, bumper stickers, advertisements or documents or materials of any kind that are not necessary for the performance of Signal Maintenance of Way Services on the Service Property, Support Property, or Support Inventory. The Signal Maintenance Firm shall not post or affix any political notices or advertisements on the Service Property, Support Property, or Support Inventory and shall immediately remove any such notices or advertisements. The Signal Maintenance Firm shall post personnel or union communications only on designated bulletin boards.

#### **4.6 Damage to Service Property and Support Inventory**

(a) Responsibility for Material Damage to the Service Property and Support Inventory shall be determined by the Department after joint inspection by the Department's COO and the Signal Maintenance Manager or his or her designee and, at the discretion of the Department, representatives of Other Contractors or Third Parties. The determination of the Department pursuant to the procedures set forth in the immediately preceding sentence shall be final and binding. Material Damage deemed to have been caused in whole or in part by acts or omissions of Signal Maintenance Firm shall be repaired at the Signal Maintenance Firm's sole

expense, and shall include but not be limited to: (1) mechanical, electrical, or engineering defects not found or not corrected by Signal Maintenance Firm during the performance of Signal Maintenance of Way Services in accordance with the Signal Maintenance of Way Requirements; (2) improper, inadequate, or temporary repairs, adjustments, cleaning, inspections, and renewals carried out by Signal Maintenance Firm; or (3) unfit, inferior, un-inspected, or non-compliant material and overhaul services obtained by Signal Maintenance Firm.

(b) In calculating the aggregate amount of damage from any occurrence to determine whether damage is Material Damage, the Department and the Signal Maintenance Firm shall take into account damage to Service Property and Support Inventory, as well as other assets of the Department, substitute transportation and all other costs estimated by the Department to be necessary or desirable in order to repair or replace property that has suffered Material Damage. The Signal Maintenance Firm shall submit to the Department within twenty-four (24) hours of the occurrence of such damage a preliminary report detailing the cause and extent of the damage, an estimate of repair costs, and measures undertaken by the Signal Maintenance Firm to prevent future similar damage. Within thirty (30) Calendar days of the occurrence of the damage, the Signal Maintenance Firm shall submit to the Department a report further detailing the final estimate of costs of repair or replacement.

(c) When Material Damage to the Service Property or Support Inventory is not caused in whole or in part by the Signal Maintenance Firm's acts or omissions the Department may, in its discretion, elect to have such repair or replacement performed by Other Contractors, who may, at the Department's discretion, utilize any facility on the Service Property for the performance of such repair or replacement and such action by the Department shall not be considered a breach of this contract. The Signal Maintenance Firm shall not charge such Other Contractor for such use of facilities. Support Inventory on hand at such facility and used by Other Contractors in the repair of Material Damage shall be replaced by the Department or Other Contractors or the appropriate adjustment shall be made to the Support Inventory. In the event that such repair or replacement by Other Contractors affects the Signal Maintenance Firm's performance of the Signal Maintenance of Way Services, or its use of the Service Property, or Support Inventory, such that the Signal Maintenance Firm is unable to comply with the requirements of this Signal Maintenance of Way Requirements, the Department shall waive the penalty assessable as a result of the Signal Maintenance Firm's failure to comply.

(d) The Signal Maintenance Firm may inspect, at its sole discretion and cost, any repairs performed by Other Contractors. In the event that, in the opinion of the Signal Maintenance Firm, repairs by Other Contractors are not performed in accordance with the standards required of the Signal Maintenance Firm under this Signal Maintenance of Way Requirements, the Signal Maintenance Firm shall notify the Department in writing. Any correction or repairs that the Department determines should be made to Service Property and Support Inventory as a result of inadequate repairs by Other Contractors shall be performed by such Other Contractor at such Other Contractor's sole cost and expense.

(e) Where damage to Service Property and Support Inventory does not constitute Material Damage, the Signal Maintenance Firm shall determine, to its best ability, the extent and cause of the damage, and provide a written report to the Department no later than the

business day following the date on which the Signal Maintenance Firm became aware of such damage. All damage reports filed pursuant to this paragraph must specify in detail the cause and extent of the damage and the measures taken by the Signal Maintenance Firm to prevent similar future damage. Unless otherwise directed by the Department, the Signal Maintenance Firm shall, within sixty (60) calendar days following submission of a damage report, undertake repairs of the damaged Service Property or Support Inventory at the Signal Maintenance Firm's sole cost and expense. The Signal Maintenance Firm shall notify the Department upon completion of such repairs.

(f) The Signal Maintenance Firm shall promptly repair any damage to the signal components of the Service Property or Support Inventory caused by derailments, collisions, Other Contractor or Third Parties that materially affects rail services, without regard to cause or responsibility. The Signal Maintenance Firm shall maintain accurate cost records pertaining to these repair activities in the event they are eligible for any reimbursement.

(h) The provisions of this Section do not apply to or otherwise affect the Signal Maintenance Firm's obligation to fulfill its signal maintenance obligations as required by this Signal Maintenance of Way Requirements. All costs related to the Signal Maintenance Firm's signal maintenance obligations are included in its respective Signal Maintenance of Way Lump Sum Price.

## **SECTION 5. SIGNAL MAINTENANCE OBLIGATIONS**

### **5.1 Signal Maintenance Obligations**

(a) The Signal Maintenance Firm shall inspect, service, repair, and maintain the Service Property and Support Property in accordance with this Signal Maintenance of Way Requirements. The Signal Maintenance Firm shall, at all times, keep the Service Property and Support Property in a State of Good Repair.

(b) The Signal Maintenance Firm shall (i) comply fully with the terms of any manufacturer's warranty on the Service Property, Support Inventory and Support Property and any other property used in the provision of Signal Maintenance of Way Services; (ii) cooperate with the Department regarding the fulfillment of any warranty obligations; (iii) administer such warranties on behalf of the Department; and (iv) provide the Department with any information necessary to the administration of any such warranties.

(c) The Signal Maintenance Firm shall not jeopardize any warranty covering any portion of the Service Property or Support Inventory. The Signal Maintenance Firm shall comply with the terms and conditions of any manufacturer's maintenance and service schedules, except as otherwise modified by industry standards or otherwise explicitly directed in writing by the Department.

(d) The Signal Maintenance Firm shall make all repairs to Service Property using the standards and practices described in the Signal Maintenance of Way Services

Standards as minimum standards. In the event that Signal Maintenance Firm is found to be in violation of standards, procedures or practices described in the Signal Maintenance of Way Services Standards, the Signal Maintenance Firm shall timely rectify the deficiency at no additional cost to the Department.

(e) The Signal Maintenance Firm shall aggressively administer warranties owned by the Department. The Signal Maintenance Firm shall conduct inspections, troubleshooting, and repairs in a manner so as to reveal circumstances where the Department's warranties apply. Such activities shall be part of Signal Maintenance Firm's Signal Maintenance of Way Lump Sum Price and shall not be considered Extra Work. The Signal Maintenance Firm shall obtain all material and parts for warranty repairs from suppliers and without cost to the Department. Signal Maintenance Firm shall be responsible for all costs necessary for a complete repair.

(f) The Signal Maintenance Firm shall prepare and maintain the data necessary to advance claims, and meet locally with vendors or contractors as the Department requests. Signal Maintenance Firm shall use the Maintenance of Way MIS and the Materials MIS to prepare and maintain data and claims.

(g) Within sixty (60) calendar days after Notice to Proceed for Signal Maintenance Mobilization, the Signal Maintenance Firm shall develop and submit to the Department for acceptance a Signal Maintenance of Way Services Plan identifying both scheduled inspection, repair, signal maintenance activities and projects to be undertaken by the Signal Maintenance Firm, and detailing the Signal Maintenance Firm's specific signal maintenance schedule for accomplishing such activities and projects during the Term of this Contract. The Signal Maintenance Firm shall update the Signal Maintenance of Way Plan on an annual basis not later than thirty (30) days prior to the anniversary date of the initial Signal Maintenance of Way Plan submittal and submit same to the Department for acceptance. More frequent updating may be required by significant changes to the Plan or as may be otherwise required by the COO. The Signal Maintenance Firm shall also submit for Department approval plans for specific service disruptions required for maintenance projects. In addition, the Department may request changes to any such plans, and the Signal Maintenance Firm agrees to implement such proposed changes within ten (10) calendar days of the Department's request, or shall suggest alternatives reasonably designed to meet the Department's needs as stated in its request. The Signal Maintenance Firm shall implement agreed to changes within thirty (30) calendar days. All signal maintenance activities of the Signal Maintenance Firm under this Contract shall be conducted in accordance with the Plans and plans referred to in this Signal Maintenance of Way Requirements.

The Signal Maintenance of Way Services Plan shall include, but not be limited to, the following components:

- (1) Recommended Capital Improvement Plan
- (2) Grade Crossing Signal Improvement Plan
- (3) Switch Machine Maintenance Program
- (4) Signal Maintenance of Way Service Standards
- (5) Signal Failure response procedures

(6) Highway-Rail Grade Crossing failure response procedures

(h) The Signal Maintenance Firm shall comply with all applicable federal, state, local industry and Department safety requirements, regulations, or guidelines relating to the signal maintenance of the Service Property, Support Property, and Support Inventory.

(i) The Signal Maintenance Firm shall be responsible for responding to wayside signal and highway-rail grade crossing failures, and reports of malfunctions and damage, including but not limited to, gates down with no train present, gates and lights not operating correctly, broken gates, gate knockdowns, signal lightouts, red or incorrectly displayed signals, or vandalism. The Signal Maintenance Firm shall respond with sufficient resources without regard for time, day or otherwise, to resolve all such situations. Overtime, night, weekend and holiday performance is expected and shall not be restricted for monetary reasons.

**5.2 Support Inventory Management Obligation**

(a) The Signal Maintenance Firm shall be provided with the Initial Support Inventory and shall store, secure, issue, account for, control and manage the disposal of Support Inventory necessary for the provision of Signal Maintenance of Way Services. The Initial Support Inventory is shown in Appendix A and is subject to change.

(b) The Signal Maintenance Firm shall manage the purchasing of all Support Inventory required to perform the Signal Maintenance of Way Services, as described herein. All Support Inventory acquired by Signal Maintenance Firm in order to perform the Signal Maintenance of Way Services shall be used solely for the purpose of providing the Signal Maintenance of Way Services. The Signal Maintenance Firm shall not sell, loan, give away or use for purposes other than Signal Maintenance of Way Services, Support Inventory purchased or obtained for the Signal Maintenance of Way Services, without the express written consent of the Department. Title and ownership of such Support Inventory shall pass to the Department upon purchase by the Signal Maintenance Firm, except as otherwise provided in this Signal Maintenance of Way Requirements. The Support Inventory shall be available for inspection by the Department at all times.

(c) Other Contractors providing non-signal Maintenance of Way Services shall develop and institute a materials management process that controls all phases of the materials handling and assures adequate levels of critical inventory are maintained throughout the Term of this Contract. Access to the Material MIS and shall be provided to the Signal Maintenance Firm to provide consistency with materials management between the Signal Maintenance Firm and Other Contractors.

(d) Support Inventory must remain at a property location approved by the Department.

(e) All Support Inventory shall be properly handled to prevent damage. Support Inventory shall be protected properly during storage. Due care shall be taken to protect Support Inventory from the effects of precipitation, heat, sun, cold, damp, and other effects of time and weather. Support Inventory shall be stored so that it does not warp, twist, or otherwise distort during storage. The Department may reject as non-compliant Support Inventory not stored in conformance with this Signal Maintenance of Way Requirements. Loss of value due to improper handling or storage of Support Inventory shall be the responsibility of the Signal Maintenance Firm.

(f) The inventory maintained in the Materials MIS acquired for use in providing Signal Maintenance of Way Services shall be subject to audit and verification by the Department. At no time during the Term of the Contract shall the Support Inventory fall below ninety percent (90%) of the Support Inventory existing on the Signal Maintenance of Way Commencement Date.

(g) The Signal Maintenance Firm shall conduct an initial physical inventory and, thereafter, an annual physical inventory of the Support Inventory.

Prior to the Signal Maintenance of Way Commencement Date, the Department and the Signal Maintenance Firm shall complete an initial physical inventory of the Support Inventory to determine the quantities thereof. Such initial physical inventory and audit shall serve, among other things, as the basis for determining the Signal Maintenance Firm's compliance with the requirements herein. Upon completion of such initial physical inventory and Initial Joint Audit, a listing of such Support Inventory shall be attached to the Signal Maintenance of Way Services Plan.

(h) As part of the annual physical inventory and annual audit, and routinely in the course of performing the Signal Maintenance of Way Services, the Signal Maintenance Firm shall identify any Support Inventory that is to be considered obsolete, surplus, scrap or salvage provided that the final determination of such status shall be made by the Department.

(1) Obsolete material is Support Inventory that is no longer readily, economically, and commonly available to the Signal Maintenance Firm, is no longer available, is no longer a standard item supplied by an OEM, or is made unnecessary by an action of the Department. If an item of Support Inventory is deemed obsolete by the Department, it may continue to be utilized until depletion, unless the item has been determined to be inappropriate due to safety, failure or service reasons. Obsolete material shall be disposed of after approval to do so is obtained from the Department.

(2) Surplus material is Support Inventory for which there is more than a five (5) year supply. The inventory in excess of the five (5) year supply may be disposed of with the prior written approval of the Department.

(3) Scrap material is an item of Support Inventory where the condition, actual cost to repair or repair-and-return may exceed the economic cost to replace. In such cases, the Signal Maintenance Firm may scrap the item of Support Inventory if the Signal Maintenance Firm replaces it with a new or completely remanufactured item with prior written

approval by the Department. The Signal Maintenance Firm may also scrap-and-replace such units of Support Inventory where and when it realizes operating economies from standardized configurations, with the prior written approval of the Department. For such standardization, the Signal Maintenance Firm shall use only new or completely remanufactured items.

(4) Salvage Material is an item acquired by demolition of existing facilities or equipment, and excess construction material, which is placed into inventory.

(5) The Signal Maintenance Firm shall, at least annually, dispose of any Support Inventory identified as obsolete, surplus, or scrap. Disposal of non-capitalized units of Support Inventory shall be accomplished through sale by competitive bidding. Capitalized units of property must be disposed of in accordance with instructions from the Department. Disposal of any obsolete, surplus or scrap Support Inventory shall be on a first-in, first-out (FIFO) basis. All Support Inventory retained shall be the most recently acquired.

(6) The proceeds of sales of obsolete, surplus, scrap Support Inventory shall be credited to the Department by means of a deductive change order.

(i) Within sixty (60) calendar days after the Notice to Proceed for Signal Maintenance Mobilization, the Signal Maintenance Firm shall develop a Signal Inventory Maintenance Plan. The plan shall detail the amount of inventory required to maintain the Service Property. The plan is subject to acceptance by the Department. Such plan shall be updated annually and submitted to the Department as part of the corresponding Signal Maintenance of Way Services Plan.

(j) The Signal Maintenance Firm shall determine, subject to Department acceptance, the minimum and maximum levels of each item of Support Inventory to be maintained. The Department may, at its sole discretion, direct the Signal Maintenance Firm to adjust minimum and maximum line item inventory levels.

(k) The Signal Maintenance Firm shall at all times maintain actual levels of Support Inventory that exceeds the Department approved minimum inventory levels. In the event that the Department determines that actual Support Inventory levels fall below such Department approved minimum levels, the Department may deduct from the Signal Maintenance Firm's next monthly payment the cost of acquiring the amount of Support Inventory necessary to bring the actual Support Inventory level up to the Department approved minimum inventory level and without regard to whether the Department has ordered or purchased such inventory. The Signal Maintenance Firm shall not deplete existing stock to generate working capital for the Signal Maintenance Firm's benefit. Consumption of existing stock that results in replacement with consignment material is not permitted without prior written approval from the Department.

(l) The Signal Maintenance Firm shall be provided with the initial Support Inventory on the Signal Maintenance of Way Commencement Date. After the Term of the Contract is completed, the Signal Maintenance Firm shall turn over the same Initial Support Inventory to the Successor O & M Firm.



(m) Replacement of Support Inventory is dependent upon:

(1) Items of Support Inventory with a replacement value of less than ten thousand dollars (\$10,000) that for any reason become unavailable for use in the provision of Signal Maintenance of Way Services shall be promptly replaced by the Signal Maintenance Firm, and the cost of any such replacement shall be included in the Signal Maintenance Services Lump Sum Price.

(2) If, as a result in whole or in part of the Signal Maintenance Firm's act(s) or omission(s), as determined by the Department, an item of Support Inventory with a replacement cost of ten thousand dollars (\$10,000) or more is made unavailable for use in the provision of the Signal Maintenance of Way Services, the Signal Maintenance Firm shall replace such item solely at its own cost or reimburse the Department for the replacement cost of such item.

(3) If an item of Support Inventory with a replacement cost of ten thousand dollars (\$10,000) or more is made unavailable for use in the provision of the Signal Maintenance of Way Services as a result of causes other than an act or omission on the part of the Signal Maintenance Firm, the Signal Maintenance Firm shall promptly replace such item unless the same is, in the Department's reasonable judgment after consultation with the Signal Maintenance Firm, no longer necessary for the provision of the Signal Maintenance of Way Services. Department shall reimburse the Signal Maintenance Firm for the replacement cost of such item if such item is replaced.

(4) In the event that Support Inventory becomes unavailable as described in paragraphs (1), (2), and (3) above, the Signal Maintenance Firm shall submit a Negative Balance Report to the Department within twenty-four (24) hours of the occurrence of such unavailability.

(n) Support Inventory material and services shall be selected to achieve or exceed performance requirements of this Signal Maintenance of Way Requirements. Services, as used here, include repairing and overhauling components. All Support Inventory materials to be used in the Signal Maintenance of Way Services shall be new products and shall conform to OEM specifications. If OEM specifications are not available, other appropriate specifications or standards (such as AAR, ANSI, Aluminum Association, ASTM, AWI, NEC, NFPA, SAE, ASME, or others) should be utilized, unless otherwise specified by the Department. The Signal Maintenance Firm shall not acquire or use materials that would result in a reduction in durability, reliability, safety, regulatory compliance, or operating economy relative to the Service Property original design or as modified through upgrades or improvements.

(1) The Signal Maintenance Firm shall acquire Support Inventory that is identical to and interchangeable with parts, material, circuits, logic, ergonomics and dimensions on the existing Service Property. Unless otherwise specified in this Signal Maintenance of Way Requirements, the requirement for interchangeability shall apply to material used for repairs, maintenance, and replacements. Interchangeability shall be defined by

form, fit, and function. The cost, durability, delivery time and appearance are an integral part of function.

(2) The Signal Maintenance Firm may recommend substitutions in or changes to configurations of material and spares, however, such substitutions or changes shall not lessen the reliability, appearance, availability, operating economy, compliance, or safety of the Service Property. Should the Department provide approval for such substitution or change, the Signal Maintenance Firm shall acquire sufficient spare materials for such substitution or change.

(3) The Signal Maintenance Firm shall not remove re-buildable components and replace them with earlier, superseded, obsolete, or discontinued models taken from other sources of Service Property or supplier inventories.

(4) All Support Inventory purchased for the Signal Maintenance of Way Services shall comply with all local, state, and federal regulations.

(o) The Signal Maintenance Firm shall use the Materials MIS provided by Other Contractors to monitor materials management activities. These activities shall include, but not be limited to, maintaining an inventory of all existing materials and parts; optimizing stocking of materials and parts; calculating the costs of materials and parts used for work orders; controlling the ordering of materials and parts; and tracking specific materials, including materials for Extra Work, serialized components, budgets and project costs.

The system shall be fully operational and up-to-date within thirty (30) calendar days before the Signal Maintenance of Way Commencement Date.

## **SECTION 6. MANAGEMENT AND PERSONNEL**

### **6.1 Key Signal Maintenance Personnel**

The Signal Maintenance Firm shall provide and furnish the qualified personnel necessary to maintain and manage the Signal Maintenance Services in a safe and efficient manner. Descriptions for all key positions shall be provided to the COO for review and approval seven (7) days after Notice to Proceed for mobilization. The Signal Maintenance Firm will provide the organizational chart with names of management personnel to the COO for review and approval seven (7) days after Notice to Proceed for mobilization and shall provide the updated chart on a monthly basis, or immediately upon the request of the COO. The Signal Maintenance Firm personnel must possess all necessary technical and legal qualifications required by the U.S. Code of Federal Regulations, the Department or other federal or state regulatory agencies, for all employees to perform their job functions. All such personnel will be employees of the Signal Maintenance Firm or their subcontractor, and all personnel requirements and provisions of the Signal Maintenance Agreement will apply to subcontractor personnel, as well as Signal Maintenance Firm personnel.

The Signal Maintenance Firm shall maintain personnel at a level required to successfully and safely deliver all of the provisions of Signal Maintenance Services. The level of staffing will be as defined by Signal Maintenance Firm to meet the minimum maintenance standards, and it may become necessary over time to add or delete positions. With respect to the Signal Maintenance Firm's organizational structure, the COO shall have the right to approve the creation or deletion of any new positions prior to Signal Maintenance Firm's implementation of any such decisions. All employees of the Signal Maintenance Firm engaged in the inspection, testing and maintenance of Service Property, except for Manager(s), Supervisor(s) and Administrative Support, shall be covered employees under the Railroad Retirement Tax Act (ACT, 26 USCS 3231(A)). The Signal Maintenance Firm will give the COO written notice of any key positions that become vacant, or are anticipated to become vacant and the COO shall have the right to approve any candidate proposed for the vacant position. Unless otherwise mutually agreed, any and all vacant positions are to be filled within 30 days of vacancy.

The Signal Maintenance Firm shall not, without the prior written approval of the Department, enter into any agreements with labor organizations containing provisions that increase the number of permanent employees of the Signal Maintenance Firm or that increase the overall costs attributable to employees engaged in Signal Maintenance Services provided on behalf of the Department pursuant to the Signal Maintenance Agreement over the costs of other employees of the Signal Maintenance Firm in the same crafts. The Signal Maintenance Firm shall provide the Department with current versions of the collective bargaining agreements that the Signal Maintenance Firm has with the crafts represented in providing Signal Maintenance Services throughout the term of the Signal Maintenance Agreement.

In order to ensure that adequate personnel are available to perform the functions described in this Scope of Services, the Signal Maintenance Firm shall develop and submit to the COO for approval, an annual work force deployment plan. The plan shall indicate personnel assignments by time of day to assure that forces are deployed effectively and efficiently to complete scheduled tasks. The COO reserves the right to request changes and return the plan for revision. Personnel on duty shall, at all times, devote themselves exclusively to the provision of Signal Maintenance Services. Signal Maintenance Firm employees are expected to be on the Service Property, or en-route between locations during the work shift. Except in the case of emergency or previous written agreement between the Signal Maintenance Firm and the Department, the Signal Maintenance Firm is prohibited from performing work on behalf of others, including, without limitation, other operators on the Service Property without the written approval of the COO.

The Signal Maintenance Firm shall not assign employees designated to provide Signal Maintenance Services to perform any other services that the Signal Maintenance Firm may operate or manage without prior approval of the Department. The Department, through the COO, reserves the right to direct the removal of any individual, including Key Personnel, assigned to perform work under this Scope of Services.

Key Signal Maintenance Personnel shall include the following positions:

- Signal Maintenance Manager

- Signal Maintenance Supervisor
- Signal Systems Inspector

### **6.1.1 Signal Maintenance Manager**

(a) The Signal Maintenance Firm shall, subject to the prior approval of the Department, designate a Signal Maintenance Manager who shall be a resident in the Orlando metropolitan area during the Maintenance Mobilization Period and during the Term of the Contract the Signal Maintenance Firm has with the Department, and such Signal Maintenance Manager shall have professional and management experience providing similar services for a railroad or transit agency. Signal Maintenance Firm agrees that it will delegate to the Signal Maintenance Manager authority to make immediate decisions as necessary to maintain the safe and efficient daily performance of Signal Maintenance Services. Signal Maintenance Firm further agrees that the Signal Maintenance Manager shall be assigned exclusively to perform the Signal Maintenance of Way Services and shall not perform functions in connection with any other service or contract.

(b) The Signal Maintenance Manager shall (1) have principal responsibility for directing and coordinating Signal Maintenance Firm's performance of its obligations under this Signal Maintenance of Way Requirements; (2) serve as Signal Maintenance Firm's principal liaison with the Department for this Contract; (3) serve as the Signal Maintenance Firm's principal liaison with Other Contractors for coordination for maintenance and construction activities (4) attend any meeting (including without limitation Other Contractor, Third Party and public meetings) with the COO or other senior staff, as requested by the Department; and (4) be available at such other times as the Department may direct, to consult with representatives of the Department.

(c) In the Signal Maintenance Manager's absence, Signal Maintenance Firm will designate an Acting Signal Maintenance Manager who shall have full authority to discharge the responsibilities of the Signal Maintenance Manager. Notification prior to any absence of the Signal Maintenance Manager shall be given in any instance except for an emergency. In the event of an emergency absence or a vacancy, Signal Maintenance Firm shall fill any vacancy or absence in the Signal Maintenance Manager's position on an interim basis within three (3) working days of the day on which such absence or vacancy began. In the event of an absence by the Signal Maintenance Manager anticipated to be in excess of thirty (30) calendar days, the Signal Maintenance Firm will submit the name of the Acting Signal Maintenance Manager within two (2) working days of the date on which the initial absence or vacancy occurs to the Department for approval. A vacancy in the Signal Maintenance Manager position will be filled on a permanent basis, by an individual approved by the Department, within sixty (60) calendar days of the date on which the initial absence or vacancy occurs, unless such time period for approval is extended by the Department.

(d) The Signal Maintenance Manager shall provide management as necessary for all activities related to the Signal Maintenance of Way Services. The Signal Maintenance Manager shall oversee Signal Maintenance Firm activities, including without limitation those described in this Signal Maintenance of Way Requirements. The Signal Maintenance Manager

shall provide safety oversight of the Signal Maintenance Firm staff to ensure compliance with all safety rules, procedures and plans and shall coordinate with the CFRC Safety and Security Manager for documenting safety compliance, safety audits, and all other requirements.

#### **6.1.2 Signal Maintenance Supervisor**

(a) The Signal Maintenance Firm shall, subject to the prior approval of the Department, designate a Signal Maintenance Supervisor who shall be a resident in the Orlando metropolitan area during the Maintenance Mobilization Period and during the Term of the Contract the Signal Maintenance Firm has with the Department, and such Signal Maintenance Supervisor shall have professional and management experience providing similar services for a railroad or transit agency. Signal Maintenance Firm agrees that it will delegate to the Signal Maintenance Manager authority to make immediate decisions as necessary to maintain the safe and efficient daily performance of Signal Maintenance Services. Signal Maintenance Firm further agrees that the Signal Maintenance Supervisor shall be assigned exclusively to perform the Signal Maintenance of Way Services and shall not perform functions in connection with any other service or contract.

(b) The Signal Maintenance Supervisor shall (1) have principal responsibility for directing Signal Maintenance Firm's maintenance personnel under this Signal Maintenance of Way Requirements; (2) serve as Signal Maintenance Firm's principal liaison with the Department's or the FRA Field Inspection Staff; (3) verify compliance with the testing and documentation requirements of 49 CFR Parts 233, 234, 235, 236 and (4) be available at such other times as the Department may direct, to consult with representatives of the Department.

(c) In the Signal Maintenance Supervisor's absence, Signal Maintenance Firm will designate an Acting Signal Maintenance Supervisor who shall have full authority to discharge the responsibilities of the Signal Maintenance Supervisor. In the event of an absence by the Signal Maintenance Supervisor is anticipated to be in excess of thirty (30) calendar days, the Signal Maintenance Firm will submit the name of the Acting Signal Maintenance Supervisor within two (2) working days of the date on which the initial absence or vacancy occurs to the Department for approval. A vacancy in the Signal Maintenance Supervisor position will be filled on a permanent basis, by an individual approved by the Department, within sixty (60) calendar days of the date on which the initial absence or vacancy occurs, unless such time period for approval is extended by the Department.

(d) The Signal Maintenance Supervisor shall provide management as necessary for all activities related to the Signal Maintenance of Way Services. The Signal Maintenance Supervisor shall oversee Signal Maintenance Firm activities, including without limitation those described in this Signal Maintenance of Way Requirements. The Signal Maintenance Supervisor shall provide safety oversight of the Signal Maintenance Firm staff to ensure compliance with all safety rules, procedures and plans.

(e) The Signal Maintenance Supervisor shall implement and provide comprehensive ongoing training for all Signal Maintenance Firm personnel. The Signal Maintenance Supervisor shall provide annual Signal Maintenance of Way Services, Roadway

Worker Protection Training and Operating Rules Training and maintain training records as to each.

### **6.1.3 Signal Systems Inspector**

(a) The Signal Maintenance Firm shall, subject to the prior approval of the Department, designate a Signal Systems Inspector who shall be a resident in the Orlando metropolitan area during the Maintenance Mobilization Period and during the Term of the Contract the Signal Maintenance Firm has with the Department, and such Signal Systems Inspector shall have professional experience providing similar services for a railroad or transit agency. Signal Maintenance Firm agrees that it will delegate to the Signal Systems Inspector authority to make immediate decisions as necessary to maintain the safe and efficient daily performance of Signal Maintenance Services. Signal Maintenance Firm further agrees that the Signal Systems Inspector shall be assigned exclusively to perform the Signal Maintenance of Way Services and shall not perform functions in connection with any other service or contract.

(b) The Signal Systems Inspector shall (1) have principal responsibility for performing for periodic signal systems testing as defined in the 49 CFR Parts 233, 234, 235, 236; in accordance with the recommendations detailed in the latest version of the AREMA Signal Manual and Signal Maintenance of Way Standards; (2) serve as Signal Maintenance Firm's principal expert in the requirements and testing procedures of 49 CFR Parts 233, 234, 235, 236 for the maintenance personnel; and (3) be available at such other times as the Department may direct, to consult with representatives of the Department.

(c) In the event of an absence by the Signal Systems Inspector is anticipated to be in excess of thirty (30) calendar days, the Signal Maintenance Firm will submit the name of the Acting Signal Systems Inspector within two (2) working days of the date on which the initial absence or vacancy occurs to the Department for approval. A vacancy in the Signal Systems Inspector position will be filled on a permanent basis, by an individual approved by the Department, within sixty (60) calendar days of the date on which the initial absence or vacancy occurs, unless such time period for approval is extended by the Department.

### **6.1.4 Organizational Reporting Structure**

The COO is the Department representative for all maintenance and safety activities in the CFRC. Reporting directly to the COO is the Department's Safety and Security Manager who is responsible for CFRC Safety. The Department's Safety and Security Manager shall be responsible for the oversight of the day-to-day safety activities of the Signal Maintenance Firm personnel on the CFRC. Signal Maintenance Firm shall comply with all safety plans, rules and requirements at all times while performing Signal Maintenance of Way Services.

Close coordination shall be maintained for signal related maintenance issues between Other Contractors and Signal Maintenance Firm Manager, with the COO providing assistance with this effort as appropriate.

## **6.5 Substance Abuse Program**

The Signal Maintenance Firm shall be responsible for their random testing program as required by 49 CFR 219 and will be responsible to submit to the FRA for approval no later than 30 days prior to any covered Signal Maintenance Firm employees performing covered service under the terms of the Signal Maintenance Agreement. Prior to submission to the FRA, the Signal Maintenance Firm shall submit the program to the COO for review and acceptance. Failure to comply is a breach of contract.

The Signal Maintenance Firm shall report on the status of their random testing program to the COO monthly. The Signal Maintenance Firm shall change the drug and alcohol testing procedures as and when required by any applicable law or regulation, but shall not make any other changes to these procedures without prior notice to, and acceptance by the COO. Failure to comply is a breach of contract.

## **6.6 Availability of Personnel**

Starting times and workweek schedules for each position will be determined by the Signal Maintenance Firm and approved by the COO according to operational needs and may be changed by appropriate notice to the COO. Workdays may include the weekend to meet operational needs. Specified personnel will be required for 24-hour, on-call service.

All employees engaged in the provision of Signal Maintenance Services shall perform their duties in a safe, professional, efficient and courteous manner. The Signal Maintenance Firm shall submit a Code of Conduct and Discipline Policy for all Signal Maintenance Firm personnel consistent with the State of Florida Employee Code of Conduct for the COO's approval 30 days after Notice to Proceed for mobilization. The Department considers any conduct not consistent with the Signal Maintenance Firm's policy to be "conduct unbecoming an employee," and the Signal Maintenance Firm shall discipline accordingly an employee whose conduct is not consistent with those objectives. The Signal Maintenance, at the request of the COO, shall remove from its employment and bar from the Service Property, insofar as this Signal Maintenance Agreement is concerned, any employee who exhibits conduct unbecoming an employee.

# **SECTION 7. TRAINING OF SIGNAL MAINTENANCE PERSONNEL**

## **7.1 Training Programs**

The Signal Maintenance Firm shall develop and implement an Annual Training Program Plan to provide comprehensive ongoing training programs for all Signal Maintenance Firm personnel providing Signal Maintenance of Way Services, Roadway Worker Protection, and Operating Rules including, without limitation, all training required by the FRA for the performance of these activities. Such training shall include specific training related to the Signal Maintenance of Way Services. The Signal Maintenance Firm shall identify in its Annual Training Program Plan all legally required training and discretionary training for each functional area of the Maintenance of Way Services.

The Signal Maintenance Firm shall provide annual Signal Maintenance of Way Services, Roadway Worker Protection Training and Operating Rules Training and maintain training records as to each.

All Signal Maintenance Firm employees shall be trained to be fully qualified and competent to perform their duties for the Signal Maintenance Services. The Department reserves the right to review Signal Maintenance Firm training records and request evidence that the Signal Maintenance Firm's employees and subcontractors who are providing Signal Maintenance Services are appropriately trained and certified and have completed appropriate efficiency and competency tests. The FRA and the Department's Safety and Security Oversight (SSO) will also be provided access to audit the Signal Maintenance Firm's training programs.

## **7.2 Department Acceptance**

All training programs or portions thereof (including but not limited to the annual training schedule of all Signal Maintenance Firm's personnel) provided in connection with the Signal Maintenance of Way Services shall be submitted for review and acceptance by the Department annually each Contract Year, and will be designed, developed and implemented in accordance with established professional standards for performance-based instruction. The Signal Maintenance Firm shall provide the Department with copies of course descriptions for training designated specially for the Signal Maintenance of Way Services. The Department shall have the right to inspect copies of all training programs used for training Signal Maintenance Firm personnel who are performing Signal Maintenance of Way Services.

## **7.3 Costs**

The costs of the approved training programs required for performance of the Signal Maintenance of Way Services shall be included in the Signal Maintenance Firm's Signal Maintenance Services Lump Sum Price.

## **7.4 Failure to Complete Training**

Employees who refuse or decline training or fail to successfully complete required training included in the approved training schedule shall be the basis for removing such Signal Maintenance Firm's employee from further performance of the Signal Maintenance of Way Services requiring such training until the employee successfully completes the required training. The Signal Maintenance Firm may reinstate the removed Signal Maintenance Firm personnel to Signal Maintenance Services once the employee successfully completes the required training.

## **7.5 Reports**

The Signal Maintenance Firm will provide the Department with a Monthly Training Report, which will list and describe each training session conducted during the month; the number of



hours of training completed by each employee; and the names of each employee who participated in each such training session, as well as the employee's test results.

## **7.6 Operating Rules, Special Instructions, Safety Rules, and Dispatching Rules**

The Department will adopt the CSXT Operating Rules for the CFRC to be used during the Transition Period until CFRC Operating Rules are adopted. The Signal Maintenance Firm shall become knowledgeable in the CSXT Operating Rules and shall instruct the Signal Maintenance Firm's personnel in the CSXT Operating Rules prior to the Signal Maintenance of Way Commencement Date. The Signal Maintenance Firm shall perform its Signal Maintenance of Way Services in conformance with the conditions contained in the "Central Florida Operating and Management Agreement between the State of Florida Department of Transportation and CSX Transportation, Inc." attached to this Document. The Signal Maintenance Firm shall comply with the terms of the "Transition Agreement between the State of Florida Department of Transportation and CSX Transportation, Inc." and the "Operating Agreement between Amtrak and State of Florida Department of Transportation" both being attached to this document.

Other Contractors will provide orientation on the CSXT Operating Rules to the Signal Maintenance Firm's Trainers and Examiners, following which the Signal Maintenance Firm's Trainers and Examiners will provide all Roadway Worker Protection, Operating Rules, Safety Rules and Dispatching Rules required training and qualification of the Signal Maintenance Firm's personnel throughout the Term of the Contract.

## **7.7 Knowledge of Rules**

The Signal Maintenance Firm's personnel to serve at any time as an Employee-in-Charge, Point-of-Contact, Watchman/Look-out and other safety-sensitive personnel critical to safe rail operations shall be qualified on the applicable sections of the Operating Rules, the Special Instructions, the Safety Rules, Dispatching Manual, Bulletin Notices, Department of Safety Notices, the physical characteristics of the applicable routes, and every other document required for the safe operation of the CFRC. To be qualified as required herein, Signal Maintenance Firm personnel shall be tested as determined by the CFRC Safety and Security Manager. The Signal Maintenance Firm personnel whose familiarity and qualification are deemed acceptable by the CFRC Safety and Security Manager shall receive a written certification from the CFRC Safety and Security Manager.

# **SECTION 8. WRECK CLEARING**

## **8.1 General**

Other Contractors shall clear all wrecks on the CFRC and restore to operation all affected non-signal services. The Signal Maintenance Firm shall respond to all wrecks with a first responder on site within 30 minutes of notification.

## **8.2 Specific Other Wrecks**

Other Contractors or railroads may assist with wreck clearing involving wrecks of a railroad's equipment. The respective rights and obligations of the Other Contractors or a railroad and the Department shall be governed by the terms and conditions of agreements, if any, between Department and that Other Contractor or railroad.

## **8.3 Reimbursement**

The Signal Maintenance Firm shall pursue the Costs incurred by the Signal Maintenance Firm in clearing wrecks from the responsible parties involved in the wreck, or their insurance companies. Such costs are not included in the Signal Maintenance Services Lump Sum Price and any Costs incurred in clearing wrecks that are not otherwise reasonably recoverable from the responsible parties involved in the wreck, or their insurance companies, may be considered by the Department for reimbursement under the Contract between the Department and the Signal Maintenance Firm. The Department shall not, in any instance, reimburse the Signal Maintenance Firm for any costs incurred in clearing wrecks caused in whole or in part by the Signal Maintenance Firm. Where a wreck involves a railroad operating on Department property, the Department shall support the Signal Maintenance Firm's efforts to obtain reimbursement from such railroad for expenses incurred in clearing the wreck.

# **SECTION 9. REPORTING AND RECORDKEEPING REQUIREMENTS**

## **9.1 General**

(a) The Signal Maintenance Firm shall keep, store, and maintain, during the Term of the Contract and for three (3) years after the Term of the Contract expires, full and accurate records of all aspects of its provision of Signal Maintenance of Way Services and other activities carried out under the Contract. The Signal Maintenance Firm shall furnish to the Department, without limitation, all reports and records identified in or required by this Signal Maintenance of Way Requirements, including the reporting schedules specified herein.

(b) During the Term of the Contract and for three (3) years after the Term of the Contract expires, the Signal Maintenance Firm shall keep all records in the State of Florida.

(c) At the end of the Term of the Contract, the Signal Maintenance Firm shall notify the Department of the location at which it will keep all records relating to the provision of the Signal Maintenance of Way Services, or provide copies or originals of all such documents to the Department.

## **9.2 Financial Records and Reports**

The Signal Maintenance Firm shall keep full and accurate accounting records, including source documentation, of all expenses and revenues related to the provision of the Signal Maintenance

of Way Services. All such records shall be prepared in accordance with Generally Accepted Accounting Principles.

### **9.3 Required Reports**

The Signal Maintenance Firm shall maintain and furnish to the Department, in writing and in electronic format, the required reports set forth in this Maintenance of Way Requirements in accordance with the delivery schedules. Monthly invoices by the Signal Maintenance Firm shall not be considered complete if any required reports are missing.

(a) Daily Reports required to be submitted by the Signal Maintenance Firm to the Department shall be received by the Department no later than 8:00 a.m. of the following day.

(b) Weekly Reports shall be received by the Department no later than close of business on Monday of the following week.

(c) Monthly Reports shall be received by the Department no later than the date of the submission by the Signal Maintenance Firm of its monthly invoice to the Department.

(d) Quarterly Reports shall be received by the Department no later than the date of the submission by the Signal Maintenance Firm of the monthly invoice to the Department for the first month of each subsequent quarter.

(e) Annual Reports shall be received by the Department no later than the date of the Signal Maintenance Firm's submission of its' invoice for the thirty (30) days prior to the anniversary date of its initial submittal.

(f) As Occurs Reports shall be received by the Department no later than twenty-four (24) hours after the occurrence triggering a report.

(g) On-Demand Reports shall be prepared by the Department, or by the Signal Maintenance Firm at Department's request, using the RMIS.

### **9.4 Annual Program Plans and Deliverables**

The Signal Maintenance Firm shall deliver to the Department for acceptance all Annual Program Plans and other deliverables thirty (30) days prior to the anniversary date of its initial submittal. The Department shall review each such plan, and shall either accept such plan or, within thirty (30) calendar days of its receipt, direct the Signal Maintenance Firm to revise such plan. The Signal Maintenance Firm shall provide the Department with a plan revised accordingly within thirty (30) calendar days of receipt of such revision request from the Department. Initial program plans shall be delivered during the Signal Maintenance of Way Mobilization Period on the schedule identified in this Signal Maintenance of Way Requirements.

## **SECTION 10. INFORMATION MANAGEMENT**

### **10.1 Management Information Systems and Software.**

(a) Other Contractors shall procure, install, configure, operate and maintain software used for the Rail Management Information System (RMIS). Other Contractors shall provide necessary access and licenses to enable the Signal Maintenance Firm to provide services as required by this Signal Maintenance of Way Requirements. All licenses provided to the Signal Maintenance Firm shall be transferred to the Department at the Completion of the Contract.

(b) The Signal Maintenance Firm shall operate and maintain a reliable, efficient Internet-enabled e-mail system that performs without substantial delay. The Signal Maintenance Firm will be provided connection to an Internet Service Provider and the provision of such connection will be the responsibility of Other Contractors.

(c) It is expected that the Signal Maintenance Firm may use software and hardware to perform administrative functions not specifically required by the Department for the performance of Signal Maintenance of Way Services. Hardware and software provided by the Signal Maintenance Firm for the sole purpose of performing these non-specified administrative functions shall remain the property of the Signal Maintenance Firm. The Signal Maintenance Firm shall be entirely responsible for providing all equipment, installation, configuration, software, wiring infrastructure and maintenance for hardware and software the Signal Maintenance Firm uses solely to perform non-specified administrative functions.

### **10.2 Rail Management Information System**

Other Contractors shall procure, operate, manage and maintain a RMIS for the performance of the Signal Maintenance of Way Services. The Signal Maintenance Firm shall coordinate with Other Contractors to provide a single RMIS system containing all information necessary for the performance of services under this Signal Maintenance of Way Requirements. Other Contractors shall maintain the RMIS and provide the Signal Maintenance Firm access for the operational requirements as described in Section 10.4.

### **10.3 Information Management Plan**

Prior to the Signal Maintenance of Way Commencement Date, Other Contractors shall provide an itemized list of the Computer Equipment requirements necessary to access the RMIS and required to be purchased by the Signal Maintenance Firm (the purchase cost of which equipment is included in Signal Maintenance Firm's Signal Maintenance Services Lump Sum Price).

### **10.4 Operational Requirements**

(a) The Signal Maintenance Firm shall use the RMIS for maintaining records of signal maintenance activities including, but not limited to, maintenance, inspection, repairs, adjustments, cleaning, and renewals within 24 hours of the completion of each such activity,

unless otherwise specified in this Signal Maintenance of Way Requirements. The Signal Maintenance Firm shall use the RMIS:

- (1) On a day-to-day basis for the input, storage and retrieval of information related to the Signal Maintenance of Way Services;
- (2) To produce reports required as part of the Signal Maintenance of Way Services;
- (3) to allow and provide real-time access to data related to the Signal Maintenance of Way Services by Department staff and computers specifically identified by the COO; and
- (4) For all other tasks and services related to the provision of the Signal Maintenance of Way Services and as required by the Department.

For purposes of the Signal Maintenance of Way Services, “real-time access” means that the Signal Maintenance Firm must input into the RMIS, and the RMIS must make available to the Department, information regarding each day’s activities or occurrences as soon as practicable, but no later than twenty-four (24) hours after the activity or occurrence takes place.

(b) The Department shall use the RMIS:

- (1) To review, inspect and audit Data;
- (2) To have real-time access to Data; and
- (3) For all other purposes necessary to fulfill or maintain the Department’s rights and obligations with regard to the CFRC.

#### **10.5 Backup and Disaster Recovery**

(a) Other Contractors shall develop, provide, implement, and periodically test a disaster recovery and backup procedure for the RMIS.

(b) The Signal Maintenance Firm shall continue to meet reporting and deliverable requirements without regard to the operational status of the RMIS or any component thereof.

#### **10.6 Ownership of Hardware, Software and Data**

(a) The right to possess and use licenses for the RMIS will be made available for use by the Signal Maintenance Firm.

(b) The Signal Maintenance Firm shall retain title and ownership of its Computer Equipment.

(c) All data shall be considered the property of the Department and shall be transferred to the Successor O & M Firm at the end of the Term of the Contract. Data may only be used by the Signal Maintenance Firm for the performance of Signal Maintenance of Way Services.

#### **10.7 Warranties**

(a) System Warranties. Other Contractors shall provide warranties for the RMIS, as a whole, for the Term of the Contract.

#### **10.8 System Documentation**

Other Contractors shall provide the Department and the Signal Maintenance Firm with copies of user documentation and user manuals with respect to the RMIS, including all Computer Equipment, Software and Third Party Software (collectively “System Documentation”) which are sufficient for the Department and the Signal Maintenance Firm to use the RMIS. The Department and the Signal Maintenance Firm, at their respective own expense, may make additional copies of the System Documentation for their respective use in operating and maintaining the RMIS.

#### **10.9 Restrictions on Use of Data**

All data used in the performance of the Signal Maintenance of Way Services shall become the property of the Department. The Signal Maintenance Firm shall not copy, distribute, alter, sell or re-use any data used to meet the requirements of this Signal Maintenance of Way Requirements unless it is for the sole purpose of performing the Signal Maintenance of Way Services. Any action taken with such data outside of normal day-to-day operation shall be done only at the direction of the Department.

#### **10.10 Department Proprietary Information**

The Department retains all right, title and interest in and to all proprietary data, documentation and copies thereof furnished by it to the Signal Maintenance Firm hereunder, including all copyright and other proprietary rights therein (“Department Proprietary Information”). The Signal Maintenance Firm and its employees shall hold all such information confidential and shall not, without the prior written consent of the Department, use, disclose or offer, sell or license or otherwise transfer to others any Department Proprietary Information or disclose any Department Proprietary Information. Notwithstanding the foregoing, the Signal Maintenance Firm may provide Department Proprietary Information in response to any proper governmental or court demand therefore.

#### **10.11 Signal Maintenance Firms Inventions**

The Signal Maintenance Firm hereby grants to the Department a perpetual, non-exclusive, irrevocable, royalty-free license to use any and all features of the RMIS that are developed by the

Signal Maintenance Firm or its respective employees, subcontractors, consultants, agents or suppliers for the Department in accordance with this Signal Maintenance of Way Requirements.

### **10.12 Information Management Policies and Procedures**

The Signal Maintenance Firms' personnel shall comply with the Department Data Security Policy, as amended. The Department Network Administrator shall be the person designated by the COO to interpret information policies and procedures, including determining what software is acceptable to be installed on the RMIS.

## **SECTION 11. SYSTEM SAFETY AND SECURITY**

### **11.1 General Obligations**

In performing the Signal Maintenance of Way Services, the Signal Maintenance Firm shall at all times conduct its operations in a safe manner. The Signal Maintenance Firm shall, at its own expense, promptly take all precautions which are reasonable or necessary to safeguard against risks, and shall make regular safety and security inspections of the Service Property and Support Property, consistent with the System Safety Program detailed herein, and shall keep records of all such inspections.

The Signal Maintenance Firm shall coordinate with Other Contractors to create the following plans to ensure consistency in application of system safety and security. Signal Maintenance Firm Plans shall not conflict with nor be less restrictive than Other Contractors' plans in place prior to the Notice to Proceed for Signal Maintenance Mobilization Services.

### **11.2 System Safety Program**

(a) The Signal Maintenance Firm shall establish a Department accepted System Safety Program Plan (SSPP) as outlined in the APTA Manual for the Development of System Safety Program Plans for Commuter Railroads, May 15, 2006, including Roadway Worker Safety and all other FRA mandatory training based on appropriate FRA, FTA, FPSC, APTA and Department regulations, standards and guidelines, which will identify, eliminate, minimize, and control safety hazards and their attendant risks. The Signal Maintenance Firm's SSPP should be customized to address the safety requirements as applied to this Signal Maintenance of Way Requirements and related safety provisions as defined by the Department. Other Signal Maintenance Firm's documentation requirements applicable to the safety elements outlined in the APTA Manual are deliverables including, but not limited to, compliance with CFRC Operating and Safety Rules and Procedures, and development of a Drug and Alcohol Program, Security Plan, Training Plan, and Quality Assurance Manual. The SSPP shall meet all applicable federal and other legal requirements and regulations, and must be provided to the Department no less than sixty (60) calendar days before the Signal Maintenance of Way Commencement Date. The COO shall, in consultation with the Department, review the SSPP and shall either accept the SSPP or shall, within thirty (30) calendar days, direct the Signal Maintenance Firm to revise such

SSPP. The Signal Maintenance Firm shall revise such Plan accordingly within thirty (30) calendar days of receipt of such revisions requested from the Department.

(b) To implement the SSPP, the Signal Maintenance Firm shall establish appropriate policies and procedures, lines of authority, levels of responsibility and accountability, and methods of documentation. Upon request by the Department, the Signal Maintenance Firm shall cooperate with any audit of the Signal Maintenance Firm's SSPP conducted by the Department or a Third Party acting on behalf of the Department.

(c) A representative of the Signal Maintenance Firm shall attend quarterly meetings, and other meetings as directed by the Department and the COO, to discuss recent safety-related incidents and concerns, and the Signal Maintenance Firm's compliance with the SSPP. In the event that Signal Maintenance Firm becomes aware of an unsafe, non-secure, or potentially unsafe or non-secure condition on the Service Property, or otherwise related to the Signal Maintenance of Way Services, the Signal Maintenance Firm shall immediately take all actions required to cure such condition, notwithstanding any other provision of this Signal Maintenance of Way Requirements that requires or permits notice or any other interim measure.

### **11.3 System Security Plan**

The Signal Maintenance Firm shall provide to the Department a System Security Plan, that shall be updated annually thirty (30) days prior to the anniversary date of its initial plan submittal, and shall detail the Signal Maintenance Firm's security policies, procedures and programs. The System Security Plan shall provide for, without limitation, e-RailSafe employee verification, an identification badge system for the Signal Maintenance Firm's employees; a vehicle control system for the Signal Maintenance Firm's employee vehicles on the Service Property; and a plan for restricting access to facilities. The initial plan shall meet all applicable federal and other legal requirements, regulations, and standards, and must be provided to the Department not less than thirty (30) calendar days before the Signal Maintenance of Way Commencement Date. The COO shall, in consultation with the Department review such System Security Plan, and shall either approve the Plan or shall, within fifteen (15) calendar days, direct the Signal Maintenance Firm to revise such Plan. The Signal Maintenance Firm shall revise such Plan accordingly within fifteen (15) calendar days of receipt of such revision request from the Department.

### **11.4 Emergency Preparedness Plan**

(a) The Signal Maintenance Firm shall provide to the Department a draft of its Emergency Preparedness Plan within thirty (30) calendar days prior to the Signal Maintenance of Way Commencement Date. The Plan shall be compliant with all regulatory requirements for such Plan. The COO shall, in consultation with the Department, review such Emergency Preparedness Plan within fifteen (15) Calendar days and shall either approve the Plan or direct the Signal Maintenance Firm to revise such Plan. The Signal Maintenance Firm shall revise such Plan accordingly within seven (7) calendar days of receipt of such revision request from the Department. The Emergency Preparedness Plan shall include, but not limited to, response to derailments, fatality or other accident at a grade crossing, employee fatality, or a serious illness or injury to one or more employees requiring admission to a hospital, an evacuation of a



passenger train, vandalism, strike or work stoppage, fire, oil spill or threat of release of hazardous material, or severe weather conditions, directives for compliance with State of Florida Executive Orders, and protection of Service Property including work and materials.

(b) The Signal Maintenance Firm shall provide to the Department drafts of any subsequent Emergency Preparedness Plans, and any subsequent amendments or proposed amendments to such Plan, no less than forty-five (45) calendar days before such Plan or amendments are submitted to the FRA. The C shall, in consultation with the Department review such Plan, and shall either approve the Plan or shall, within thirty (30) calendar days, direct the Signal Maintenance Firm to revise such Plan. The Signal Maintenance Firm shall revise such Plan accordingly within seven (7) calendar days of receipt of such revision request from the Department.

(c) The Signal Maintenance Firm shall cooperate and participate in Department mock accident drills, at times to be determined by the Department. Additionally, during the Signal Maintenance Mobilization Period the Signal Maintenance Firm shall cooperate and participate in as many mock accident drills as required to demonstrate to the Department the Signal Maintenance Firm's readiness to commence Signal Maintenance of Way Services.

#### **11.5 Emergency Response Plan**

The Signal Maintenance Firm shall, at least thirty (30) calendar days after issuance of the Notice to Proceed for Signal Maintenance Mobilization Services, prepare and submit to the Department for acceptance an Emergency Response Plan to effectively address conditions resulting from major storms and other natural occurrences that could disrupt rail service. The Signal Maintenance Firm shall update the Plan annually, and shall provide it to the Department for acceptance no later than thirty (30) days prior to the anniversary date of its initial submittal. The Emergency Response Plan shall detail the specific use and assignment of all resources available and the Signal Maintenance Firm shall provide additional resources as necessary.

#### **11.6 Contingency Plan**

At least thirty (30) calendar days before the Signal Maintenance of Way Commencement Date, the Signal Maintenance Firm shall develop and provide to the Department for acceptance (through briefings or other appropriate means) a written Contingency Plan describing in detail measures to be taken by it to assure continued and uninterrupted performance of the Signal Maintenance of Way Services in the event of any strike or work stoppage engaged in by Signal Maintenance Firm personnel. The Signal Maintenance Firm shall update such Contingency Plan annually and submit to the Department for acceptance thirty (30) days prior to the anniversary date of its initial submittal.

#### **11.7 Violations**

The Signal Maintenance Firm shall be solely responsible for the discovery, determination and correction of any and all violations of the System Safety Program Plan, System Security Plan,

Emergency Preparedness Plan or any other safety or security violation related to the Signal Maintenance of Way Services.

### **11.8 Employee Non-Compliance**

The failure of any Signal Maintenance Firm personnel to comply with the System Safety Program Plan, System Security Plan, Emergency Preparedness Plan, Emergency Response Plan or Contingency Plan or to otherwise comply with applicable safety requirements, shall be considered reason for removal of such personnel from the CFRC and performance on the project.

## **SECTION 12. TRANSITION PROCESS**

### **12.1 General**

The Department may initiate a Request For Proposals (“RFP”) process prior to the expiration of the Term of the Contract to select a Successor Signal Maintenance Firm or Other Contractor to provide the Signal Maintenance of Way Services. The Department requires that prospective proposers for the role of Successor Signal Maintenance be provided with the information necessary to prepare complete and competitive proposals. The Signal Maintenance Firm shall fully cooperate with the Department in the RFP process for a Successor Signal Maintenance Firm.

### **12.2 Inspection of Service Property**

Prospective proposers for the role of Successor Signal Maintenance Firm(s) shall have access to the Service Property and Support Property during the RFP process for the purposes of inspecting same so as to understand, without limitation, the operation, maintenance, repair and condition of the Service Property and Support Property. The Department shall schedule and conduct the site visits by the prospective proposers for the Successor Signal Maintenance Firm of the Service Property and Support Property after consulting with the Signal Maintenance Firm. The Signal Maintenance Firm shall fully cooperate with the Department during such site visits and shall make available such Signal Maintenance Firm personnel and records as the Department requests.

### **12.3 Successor Signal Maintenance Firm Access**

The Signal Maintenance Firm shall provide the awarded Successor Signal Maintenance Firm full and complete access to the Service Property in accordance with this Signal Maintenance of Way Requirements. Such access shall commence prior to the expiration of the Term of the Contract, in conjunction with the Successor Signal Maintenance Firm’s mobilization period, and may include, without limitation, the Successor Signal Maintenance Firm having one or more representatives on-site until the expiration of the Term of the Contract hereunder.

#### **12.4 Turnover Requirements**

(a) A minimum of six (6) months prior to the expiration of the Term of the Contract hereunder, or, in the event of termination, within thirty (30) calendar days of the Department's notification to Signal Maintenance Firm of its intent to terminate the Contract, the Signal Maintenance Firm shall provide to the Department a complete and accurate inventory of all categories of documents related to the Signal Maintenance of Way Services including but not limited to drawings, specifications, calculations, manuals, procedures, reports, and databases.

(b) Upon expiration of the Term of the Contract hereunder, the Signal Maintenance Firm shall remit to the Department all Support Inventory, spare parts, and consumables related to the Signal Maintenance of Way Services. The Support Inventory, spare parts and consumables shall be in a State of Good Repair. Prior to the expiration of the Term of the Contract, the Signal Maintenance Firm shall move to the Service Property and store in a secure manner all Support Inventory, spare parts and consumables, if any, that are not located on the Service Property. The Signal Maintenance Firm shall provide a list of repair and return items not located on the Service Property. Upon expiration of the Term of the Contract, the Signal Maintenance Firm shall transfer possession of the Support Inventory to the Department in a State of Good Repair and shall return the Support Inventory that is equivalent in type, value, and condition to the Support Inventory provided to the Signal Maintenance Firm by the Department, as adjusted by sales or acquisitions pursuant to the Maintenance of Way Requirements. The Signal Maintenance Firm shall pay the Department the fair market value, as determined by the Department, of any Support Inventory not returned in accordance with this paragraph.

(c) Upon expiration of the Term of the Contract hereunder, the Signal Maintenance Firm shall remove all office equipment and supplies from the Service Property used in performing the Signal Maintenance of Way Services.

#### **12.4 Contract Close-Out Requirements of Final Inspection/Review**

The Department may conduct an inspection to determine the status of the requirements for close-out. Within thirty (30) calendar days of such inspection, the Department shall deliver in writing to the Signal Maintenance Firm a list of items where deficiencies were found ("Punch List"). The Signal Maintenance Firm shall correct such deficiencies within thirty (30) calendar days of receipt of the Department's Punch List. The Department may exercise its rights under the Signal Maintenance Firm's Performance Bond if it determines that the Signal Maintenance Firm has not complied with the provisions of this Section.

### **SECTION 13. REPLACEMENT SERVICES**

#### **13.1 General**

If the Signal Maintenance Firm is excused from performing their obligations under this Signal Maintenance of Way Requirements for any of the reasons listed, or in the event of any interruption of rail service resulting from a breach by the Signal Maintenance Firm of any of

their obligations hereunder or any labor disputes involving the Signal Maintenance Firm personnel, the Department may provide notice to the Signal Maintenance Firm of its intent to begin providing the Signal Maintenance of Way Services, and may provide those services itself with its own or other personnel without liability to the Signal Maintenance Firm (“Replacement Services”). The Department may utilize Replacement Services as a substitute for all or any part of the Signal Maintenance of Way Services that the Signal Maintenance Firm is prevented from performing by virtue of a force majeure event or fails or refuses to perform in breach of any provision of this Signal Maintenance of Way Requirements, and may maintain such Replacement Services in effect until the Signal Maintenance Firm is able to resume performance of the Signal Maintenance of Way Services in full compliance with this Signal Maintenance of Way Requirements. In the event that Replacement Services are implemented due to a breach of this Signal Maintenance of Way Requirements, Signal Maintenance Firm shall be liable to the Department for the costs of such services. The Department shall notify the Signal Maintenance Firm in writing at least twenty-four (24) hours prior to implementing Replacement Services.

### **13.2 Coordination with Other Contractors**

In the event the Department elects to provide Replacement Services, The Department shall take such steps as may be reasonably necessary in order to coordinate the activities of its subcontractors and in-house personnel with the activities of the Signal Maintenance Firm.

### **13.3 Pro Rata Reduction in Lump Sum Price**

During the period in which the Department utilizes Replacement Services, Signal Maintenance Firm shall be entitled to compensation only for the Signal Maintenance of Way Services that they respectively actually provide, and the respective Lump Sum Price for any month in which the Department utilizes Replacement Services shall be reduced on a pro rata basis to reflect that percentage of the total Signal Maintenance Services performed as Replacement Services. The Department shall determine the pro rata share of Signal Maintenance of Way Services actually performed, and shall submit such determination to Signal Maintenance Firm.

## **SECTION 14. COORDINATION WITH FRA AND OTHER RAIL CARRIERS**

The Signal Maintenance Firm shall consult, closely coordinate with and receive approval from the Department and the COO, prior to initiating contact with any regulatory agencies, including the Federal Railroad Administration (FRA) or the Federal Transit Administration (FTA). The O&M Firm shall keep the Department fully apprised, both by immediate oral notification and in writing, of any discussions and negotiations with FRA, FTA or other regulatory personnel.

The O&M Firm shall be responsible for resolving all FRA violations including mitigating circumstances that led to violation, responding to regulators and paying fines. Any and all penalties and fines imposed regarding the violation of State and Federal codes, regulations, and laws shall be paid by the O&M Firm inasmuch as the violation occurs as a result of the O&M Firm's negligence in O&M Agreement compliance.

The Signal Maintenance Firm agrees that it will comply and cooperate with all agreements between the Department and other rail carriers operating on the Service Property.

## **SECTION 15. OTHER CONTRACTOR AND THIRD PARTY ACCESS**

### **15.1 Permit to Enter**

The Department shall enter into a standard “permit to enter” agreement with any Other Contractor or Third Party to enter on the Service Property. No Other Contractor or Third Party shall be allowed to enter onto the Service Property without first executing such a permit to enter and without the Department or such Third Party notifying the Signal Maintenance Firm of the proposed activities of such Other Contractor or Third Party. The Department may, in entering into any such agreement with such Other Contractor or Third Party, place reasonable conditions or restrictions on Other Contractors or Third Parties that exceed the normal conditions and restrictions contained in the standard permit to enter. If the Department and Signal Maintenance Firm are unable to agree upon a standard permit to enter, then the Department may allow Other Contractors or Third Parties access to the Service Property upon such terms and conditions as the Department may establish.

### **15.2 Government Authorities**

The Signal Maintenance Firm shall grant access to the Service Property, or Support Property to any duly authorized government authorities. The Signal Maintenance Firm shall immediately notify an appropriate Department official when any state or Federal inspector, law enforcement or emergency personnel enters the Service Property. In addition, the Signal Maintenance Firm shall provide the Department with copies of all reports furnished to the Signal Maintenance Firm by any regulatory agency concerning the Signal Maintenance of Way Services, within twenty-four (24) hours of the Signal Maintenance Firm’s receipt of such reports.

## **SECTION 16. EXTRA WORK**

Extra Work (Extra Work) may include, but is not limited to, the provision of labor, materials, equipment and other services to provide improvements, modifications or additions to the Service Property in addition to normal maintenance as described in this Scope of Services. Extra Work may be known and planned for in advance as part of the Department's long and short-term improvement plan or may arise from an urgent need that cannot be delayed.

Extra Work will be requested by the Department in the form of a Supplemental Agreement. Such services performed by the Signal Maintenance Firm shall follow the Department's Supplemental Agreement process set forth below. The Department will regularly meet with the Signal Maintenance Firm to discuss pending and anticipated Supplemental Agreements. The terms and conditions of the Signal Maintenance Agreement apply to each Supplemental Agreement which will also contain specific requirements pursuant to requested Extra Work.

Any work performed by the Signal Maintenance Firm prior to receipt of a Supplemental Agreement issued by the Department shall be considered as unauthorized work, and the Signal Maintenance Firm shall not be entitled to compensation for said services. In an urgent situation, the Department may issue an Emergency Work Order to the Signal Maintenance Firm authorizing them to perform specific services prior to actual receipt of a Supplemental Agreement. In those cases, the Department shall, as soon as practicable, issue a Supplemental Agreement for the ordered work.

The Department reserves all rights to perform any and all of the work with its own forces or with other Firms, consultants or subconsultants retained by the Department. The Signal Maintenance Firm shall fully cooperate with such other forces to the end that any delay or hindrance to their work will be avoided. The suspension of work or termination of a Supplemental Agreement shall be governed by the Signal Maintenance Agreement.

### **16.1 Supplemental Agreement Process**

The Department shall issue a Supplemental Agreement Proposal Request (SAPR) to the Signal Maintenance Firm which may include plans, specifications, and estimates of various quantities of work to be performed or materials to be furnished by either the Department or the Signal Maintenance Firm, and a list of deliverables to be supplied by the Signal Maintenance Firm. The SAPR will outline the desired timeline for the work to be completed, if known, or request a schedule and estimated milestones for the period of performance from the Signal Maintenance Firm. The Department will require the Signal Maintenance Firm to prepare submittals or a proposal, which shall indicate the Signal Maintenance Firm's planned method for fulfilling the terms of the SAPR. Said submittals or work plans shall be subject to the COO's approval prior to the Signal Maintenance Firm's commencement of work.

The SAPR will state the length of time the Signal Maintenance Firm has to respond to the Department with a proposal for the work. This proposal will also contain details including, but not limited to, a cost estimate for the work, the amount of hours and a schedule to perform the services, the resources to be deployed, the Signal Maintenance Firm's approach to performing the work, and a proposed total cost. Upon receipt of the proposal, the Department shall evaluate it and confer with the COO and the Signal Maintenance Firm as necessary. The Department may request the Signal Maintenance Firm to submit a revised proposal.

In the event the parties are unable to agree upon the estimated costs of the Extra Work within 30 days after the proposal is received by the Department, the Signal Maintenance Firm shall, at the direction and approval of the Department, promptly proceed to implement the Extra Work pursuant to the Department's final cost determination for the Extra Work (Refer to the Standard Written Agreement paragraph 1.F. regarding decision regarding disputes). In the event that the Signal Maintenance Firm and the Department are not able to reach an agreement as to the amount of compensation to be paid to the Signal Maintenance Firm for supplemental work desired by the Department, the Signal Maintenance Firm will be obligated to proceed with the supplemental work in a timely manner for the amount determined by the Department to be reasonable. In such event, the Signal Maintenance Firm will have the right to file a claim with the Department for such additional amounts as the Signal Maintenance Firm deems reasonable;

however, in no event will the filing of the claim or the resolution or litigation thereof through administrative procedures or the courts relieve the Signal Maintenance Firm from the obligation to timely perform the supplemental work. The Signal Maintenance Firm shall not be required to perform any Extra Work which is outside the scope of the Supplemental Agreement.

The Department shall issue a Supplemental Agreement to the Signal Maintenance Firm that contains details of the services or materials to be provided. The Signal Maintenance Firm's execution of the Supplemental Agreement shall be conclusive evidence that the Signal Maintenance Firm has investigated and is satisfied as to the site conditions to be encountered, the character, quality, and scope of work to be performed, the quantities of materials to be furnished, and the requirements of the Supplemental Agreement.

## **16.2 Compensation**

The Signal Maintenance Firm shall be compensated for each Supplemental Agreement pursuant to the terms of the Supplemental Agreement. During the progress of each Supplemental Agreement, the Signal Maintenance Firm shall carefully monitor its incurred costs in the performance of the work, shall keep full and complete records of such costs and shall submit those records along with a progress report to the Department on a monthly basis.

The Signal Maintenance Firm shall submit to the COO within the time specified in the Supplemental Agreement a progress schedule for the Signal Maintenance Firm's work. If the Supplemental Agreement does not specify, the Signal Maintenance Firm shall still submit a progress schedule. In the event of significant changes, for whatever cause, to the Signal Maintenance Firm's work during the performance of the work, the COO may request the Signal Maintenance Firm to revise the progress schedule to reflect the current plan for the work.

The Signal Maintenance Firm's progress schedules shall be prepared by using critical path method software. Schedules shall show the order in which the Signal Maintenance Firm proposes to carry out the work, the dates on which the significant features of the work will start (including procurement of materials and equipment), and the anticipated dates for completing those significant features.

The Signal Maintenance Firm shall perform its work so as to not cause delays to work performed on Department construction and third-party projects. Should delay occur as determined by the COO, the Signal Maintenance Firm shall take immediate and appropriate steps to remedy delay to the satisfaction of the COO.

Unauthorized expenses incurred over the authorized amount shall not be reimbursed without prior written approval from the Department. An approved, amended Supplemental Agreement with new cost estimate shall be required in order to increase the authorized project amount for any Extra Work Supplemental Agreement.

The Signal Maintenance Firm will be granted an extension of time for any portion of the delay in completion of the work if the delay was not within the control of the Signal Maintenance Firm (e.g., caused by acts of God or of the public enemy, fire, floods, earthquakes, epidemics, quarantine restrictions, shortage of materials and freight embargoes, changes in scope, etc.)

provided that the Signal Maintenance Firm shall have first notified the COO in writing of the causes of delay within three (3) days from the beginning of that delay and provided that the COO thereafter agrees and grants in writing any extension of time.

No extension of time will be granted for any delay caused by a shortage of materials unless the Signal Maintenance Firm furnishes to the COO documentary proof that the cause of the delay was a direct result of circumstances outside the control of the Signal Maintenance Firm and the inability to obtain the materials when originally planned, did, in fact, cause a delay in final completion of the entire work which could not be compensated for by revising the sequence of the Signal Maintenance Firm's operations.

### **16.3 Rejected or Unauthorized Work**

The Department shall have the right, but not the obligation, to suspend the Signal Maintenance Firm's work in the event that there is a reasonable basis to conclude that Signal Maintenance Firm's work is being performed in a deficient or unsafe manner. In such event, the Signal Maintenance Firm shall immediately suspend its work at no additional cost to the Department. The Signal Maintenance Firm shall fully remedy, remove, or replace all work which has been rejected, and no additional compensation will be allowed for such removal, replacement or remedial work.

Any work performed beyond the scope of the Supplemental Agreement or without written authorization of the Department shall be considered as unauthorized work and will not be paid for by the Department. Upon direction from the Department, any unauthorized work shall be remedied, removed, or replaced at the Signal Maintenance Firm's expense. Upon failure of the Signal Maintenance Firm to comply promptly with any direction from the Department, the Department may cause the rejected or unauthorized work to be remedied, removed, or replaced, by others and the Department may deduct the costs from any monies due or to become due to the Signal Maintenance Firm.

## **SECTION 17. LIQUIDATED DAMAGES**

### **17.1 Liquidated Damages**

The Signal Maintenance Firm acknowledges that failure to meet the performance measures in this scope of work may cause the Department to incur damages. In the event the Signal Maintenance Firm fails to meet the performance measures, the Department may exercise the remedy of liquidated damages against the Signal Maintenance Firm. The Signal Maintenance Firm agrees that if the Department allows the Signal Maintenance Firm to continue to perform after failure to meet the performance measures, the Department's action shall in no way act as a waiver on the part of the Department of the liquidated damages due under this contract. The Signal Maintenance Firm shall pay said sum to the Department not as a penalty, but as liquidated damages. The Department has the right to apply, as payment on such liquidated damages, any money the Department owes the Signal Maintenance Firm.



The Signal Maintenance Firm shall be assessed liquidated damages, for each instance of non-compliance as determined by the COO. Liquidated Damages are listed in Table 17-1.

**17.1 - Liquidated Damages for Signal Maintenance**

<b>Compliance Item</b>	<b>Liquidated Damages</b>
FRA Inspection and Documentation Compliance	\$100 per inspection per day
Timely Response to Credible Report (§234.103)	\$100 per incident
Grade Crossing Activation Failure (as Defined in §234.5)	\$1000 per incident
False Proceed Signal Displayed	\$1000 per incident
FRA Inspection Violation Repairs not completed within 30 days	\$500 per incident
Hours of Service Violations	\$500 per incident
Excessive Repair Time	\$100 per incident
Personnel Availability	\$100 per incident
Excessive Response Time	\$100 per incident
Safety Rule Violations	\$100 per incident

The Signal Maintenance Firm shall be responsible for resolving all FRA violations including mitigating circumstances that led to violation, responding to regulators and paying fines. Any repairs, replacements, or resolutions to FRA violations shall be made as soon as possible after violation occurs but in no case shall the time to resolve violation exceed thirty (30) days. Any and all penalties and fines imposed regarding the violation of State and Federal codes, regulations, and laws shall be paid by the Signal Maintenance Firm inasmuch as the violation occurs as a result of the Signal Maintenance Firm's negligence in Signal Maintenance Agreement compliance.

The Liquidated Damages listed shall be in addition to any and all penalties and fines imposed regarding the violation of State and Federal codes, regulations, and laws.

**17.2 Additional Liquidated Damages**

In the event that the Signal Maintenance Firm is unable to perform the necessary Maintenance Services on the Service Property within the allocated maintenance schedule, the Signal Maintenance Firm shall be held liable for the maintenance delay condition, including all applicable damages, liquidated damages and penalties assessed by Third Parties against the Department in accordance with existing agreements, including, but not limited to the CFOMA and the Amtrak Operating Agreement.

## Appendix A – Initial Support Inventory

Qty	Vendor	Description
Wayside		
4	GETS	ASSY 7K PCB
4	GETS	ASSY 7L
4	GETS	ASSY 2L
4	GETS	ASSY 214 PCB
4	GETS	ASSY 215D
4	GETS	ASSY 2R PCB
4	GETS	ASSY 216DL
4	GETS	ASSY 230 PROCESSOR MODULE
4	GETS	ASSY 9L
4	GETS	CHASSIS ASSY EC4R W/9H & 211 J
2	GETS	VHLC +5 VDC Power Supply Module
2	GETS	VHLC VLP Module
2	GETS	VHLC ACP-3 Module
2	GETS	VHLC SSM Module
4	GETS	VHLC VSD Module
4	GETS	VHLC VGPIO Module
2	GETS	VHLC CCI Module
2	GETS	VHLC RS-232 Interface Module
2	GETS	VHLC CLA Module
4	US&S	4 ohm Track Relay
4	US&S	670 ohm Line Relay DN12
4	US&S	Power Transfer Relay
4	US&S	Biased Neutral Relay
4	US&S	Biased Neutral Relay -HD
10	US&S	Relay Code Following
10	US&S	Relay Code Transmitter 75
10	US&S	Relay Code Transmitter 120
10	US&S	Relay Code Transmitter 180
10	US&S	H-2 Signal Mechanism
5	US&S	U-5 Switch Circuit Controller
1	US&S	M23A Switch Machine RH 24 Volt
1	US&S	M23A Switch machine LH 24 Volt
2	G&B	Power Switch Layout
2	US&S	Electric Lock - SL
2	US&S	T-10 Handthrow Switch Mechanism
2	GETS	Hot Journal Detector
1	GETS	Dragging Equipment Detector
Crossing		
2	Safetran	GCP3000
4	Safetran	Island Module
4	Safetran	Transceiver Module
4	Safetran	Relay Drive Module
4	Safetran	Processor Module
4	Safetran	DAX Module

<b>Qty</b>	<b>Vendor</b>	<b>Description</b>
4	Safetran	Control Interface Module
4	Safetran	Data Recorder Module
2	GETS	PMD-3 Assembly
4	GETS	CPU module
4	GETS	Random Signature Island Module
4	GETS	Relay Drive Module
4	GETS	MDSA-1
15	GETS	NBS-1 (Various Frequencies)
10	GETS	TJC (Various Frequencies)
4	Safetran	12" Flashing Light Assembly
4	General Signals	Electronic Bell Assembly
4	Safetran	S-40 Gate Mechanism
4	Safetran	Mast w/ Jct Box Base
4		No. of Track Sign (2 Tracks)
4		Railroad Crossing Sign
40	NEG	Gate Arm 36' Extending
40	NEG	Gate Arm Lamp Kits
200		10V/25W bulb for signals
2000		Cable, 2 Cond. #6 AWG, TW
1000		Cable, 5 Cond. #6 AWG
1000		Cable, 7 Cond. #14 AWG
1000		Case Wire, #16 AWG
1000		Case Wire, #10 AWG
2000		#6 AWG Stranded Bondstrand
6	NRS	ERBC 12/20 Rectifier
6	NRS	ERBC 12/40Rectifier
24	GNB	Battery, GNB 50A11 265 AH
50	Safetran	HD Equalizer
200	Safetran	HD Lightning Arrestor
200	Safetran	Lightning Arrestor
8	Alstom	PSO Transmitter
8	Alstom	PSO Receiver

## Appendix B – Required Reports

### Engineering Reports

Report Frequency	Source System	Report Name	Report Description
Daily	MOW MIS	Daily Incident Log	Detail report on all incidents and equipment failures occurring in yesterday's service.
Daily	MOW MIS	Daily Delay Report	Listing of train delays for prior service day, sorted by cause with duration, location, responsible party, and description of delays.
Weekly, Monthly	MOW MIS	Production Report	Summary list of work activity, with quantity of work performed by asset type (e.g. feet of CWR installed, number of Frogs changed), include annual goal, period activity, Year-to-Date activity
Weekly Status Report, Request Form Due 60 days in advance of Track Outage	MOW MIS	Track Outage Report	List all locations with scheduled track outages. Include location (name and mileposts), track(s), type of project, description of work, times required and class of time (absolute or 'as much as possible'), comments.
Monthly, Annual	MOW MIS	Maintenance Activity Report	List all work activity for the time period, with location, asset identification, work performed (e.g.: inspection, test, repair, maintenance, replacement), with the labor hours, materials and work equipment used in performing the work.
Monthly	MOW MIS	Monthly Delay Report	Listing of train delays for prior service month, sorted by cause with duration, location, responsible party, and description of delays.
Monthly	MOW MIS	Accident/Incident Report Summary	List all accidents, thefts and damage to work equipment. Report contents include date of incident, type of incident, type of equipment, operator, department, responsibility, injury, and amount of damage.
Monthly	MOW MIS	Inventory Loss Report	Annually
As Occur	MOW MIS	Grade Crossing Incident/Accident Report	Annually
As Occur	MOW MIS	Maintenance Crew Daily Report	Record of activity performed by each maintenance crew
As Occur	MOW MIS	Report of Rail Failure/Replacement Due to Wear	Annually
As Occur	MOW MIS	Report of False Proceed	
As Occur	MOW MIS	Report of FRA Signal and Train Control Inspection	Annually
As Occur	MOW MIS	Written Notice of Emergency Signal Modification	Annually

<b>Report Frequency</b>	<b>Source System</b>	<b>Report Name</b>	<b>Report Description</b>
As Occur	MOW MIS	Report of FRA code violation	Report any FRA code violation.
As Occur	MOW MIS	Fixed Asset Record Form	For every asset, when acquired, information to support financial accounting of fixed asset inventory.
As Occurs	MOW MIS	Service Property and Support Inventory Damage Report	Within 30 Days of damage
Requests	MOW MIS	Track Outage Request	Request to the department for Track Outage
As Occur Retained by Contractor	MOW MIS	Track Disturbance Report	Annually
As Occur Retained by Contractor	MOW MIS	Summary to Track Disturbance	Record each incidence of tract disturbance
As Occur Retained by Contractor	MOW MIS	Report of FRA Test Compliance	List all FRA required inspections or tests on signal apparatus, with the Route, Location, FRA rule or test number, test due, test completed date.
As Occur Retained by Contractor	MOW MIS	All Signal Test and Inspection Reports	Record each test and inspection in accordance with Signal Required Forms
Retained by Contractor	MOW MIS	Quarterly Joint Drawbridge Inspection	Quarterly
Retained by Contractor	MOW MIS	Grade Crossing Condition Report	Record of each Grade Crossing Inspection; used to develop grade crossing replacement program.
As Occur Retained by Contractor	MOW MIS	Drawbridge Opening and Failures	Report any occurrences of drawbridge opening failures Monthly
Retained by Contractor	MOW MIS	Lamp Changeout Records	Apparatus Identification Number; lamp changeout date
Retained by Contractor	MOW MIS	Switch Inspection Report	Record of each monthly switch inspection and test report

All reports shall be provided in both written and electronic format.

### **Materials Reports**

<b>Report Frequency</b>	<b>Source System</b>	<b>Report Name</b>	<b>Report Description</b>
Monthly	MOW MIS	Materials Transaction Ledger	
Monthly	MOW MIS	Perpetual Inventory Difference Listing	
Monthly	MOW MIS	Material Payment Account Status	

<b>Report Frequency</b>	<b>Source System</b>	<b>Report Name</b>	<b>Report Description</b>
Monthly	MOW MIS	Inventory on Hand and Usage Analysis	
Monthly	MOW MIS	Open Transfers Pending Acknowledgement	
Monthly	MOW MIS	Item Below Reorder Point	
Monthly	MOW MIS	Transfer Activity Shipped by and Acknowledged by	Annually
Semi-Annual	MOW MIS	Inventory Valuation Report	Excel format electronic file of all inventory items, quantities, and value
On-Line	MOW MIS	Inventory Report	Annually

### **Administrative Reports**

<b>Report Frequency</b>	<b>Source System</b>	<b>Report Name</b>	<b>Report Description</b>
Monthly Annual	Human Resources MIS	Training Report Summary	Report shall contain, for each employee, identification of specific training programs, training session and names and test results of Contractor Personnel who participated

#### **Claims and Fines Reporting**

Monthly Annual		Third Party Injury Claims	Report containing all third party claims made against rail service for injury. Report shall include name, date of injury, amount claimed, location of incident, cause of incident, amount paid, nature of claim, date of claim, and settlement date.
Monthly Annual		Third Party Property Damage Claims	Annually

#### **Notification Reporting**

Daily		Service Delay Report	Annually
As Occurs within 2 hours or restoration of service		Service Disruption Summary Report	type of Service Disruption; impacts on trains; chronology of events
As Occurs within 2 weeks		Service Disruption Preliminary Analysis Report	Annually
As Occurs at completion of investigation		Service Disruption - Final Analysis Report	Annually

## Plans and Deliverables Reports

Program Plan or Deliverables Name	Due Dates	Event	Update
Mobilization Services Plan	15 days	After Notice to Proceed for Maintenance Mobilization	none
Organization Chart with Staff names of Management Personnel	30 days	After Notice to Proceed for Maintenance Mobilization	Up to date at all times
Joint Audit of Service Property, Service Equipment, Support Property, Support Inventory; document for post-contract transition	30 days	After Notice to Proceed for Maintenance	Annually
Health and Safety Plan for Contractor Personnel	90 days	After Notice to Proceed for Maintenance Mobilization	Annually
Emergency Preparedness Plan	30 Days	Prior to Maintenance Commencement	within 7 days
Emergency Responses Plan for Storms and Other Natural Occurrences	30	Prior to Maintenance Commencement	Annually
Inventory Maintenance Plan	60 days	Maintenance Commencement Date	Annually
Training Program Plan	60 days	Prior to Maintenance Commencement	Annually
Guidelines for D&A testing	60 days	Prior to Maintenance Commencement	Annually
Initial Inventory of Support Property & Support Inventory - attach as new Exhibit	7 days	Prior to Maintenance Commencement	
Electronic Asset Inventory of Service Property	6 months	After Maintenance Commencement	7 days
Signal Maintenance of Way Service Standards	60 Days	After Notice to Proceed Design	Annually
Storm Specific Plan			prior to each
<b>Annual Audit of Support Property</b>			
Annual Audit of Support Property			Annually
Capital Improvement Plan			Annually
Micro Station As-Built Plans			30 days
Micro Station Engineering and Survey Work			30 days
Micro Station Signal Modifications			30 days