

**AGREEMENT**

**Between**

**GREATER RICHMOND TRANSIT COMPANY**

**And**

**[CONTRACTOR]**

**For**

**COPIERS**

**Effective**

**[DATE]**

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### ATTACHMENTS

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## A G R E E M E N T

This Agreement (“Agreement”), effective as of \_\_\_\_\_, 2017, is by and between Greater Richmond Transit Company, a Virginia corporation with offices at 301 East Belt Boulevard, Richmond, Virginia 23224 (“GRTC”), and [CONTRACTOR NAME], a [STATE OF INCORPORATION] [type of entity] with a place of business at [ADDRESS] (“Contractor”).

### R E C I T A L S

1. GRTC is engaged in the business of providing public transportation service in the Greater Richmond area.
2. In the conduct of its transit service activities, GRTC requires consulting services (“Services”).
3. Contractor is capable of providing Services and any related goods for GRTC.
4. GRTC and Contractor desire to enter into an agreement pursuant to which Contractor shall provide Services and related goods for GRTC’s transit service activities.

**N O W T H E R E F O R E**, the parties agree as follows:

#### 1. DEFINITIONS

**Additional Services** – GRTC-requested services in addition to the Services set forth on Attachment A, but of the same general type as the Services, or the performance of the Services at a facility leased or owned by GRTC but not listed on Attachment A, as defined in Section 4.1.

**Change Order** – written order issued by GRTC, with or without notice to sureties, making changes, additions or deletions to the scope of Services, as defined in Section 8.1.

**Contract Administrator** – the individual designated by GRTC to administer the Agreement and be the Contractor’s primary point of contact. The Contract Administrator will approve orders, receipts, invoices, and document Contractor’s performance, as defined in Section 3.2.

**Contract Year** – a 12-month period beginning on the Effective Date and any anniversary thereof. A Contract Year shall be designated by the calendar year in which the Contract Year begins. (For example, if a Contract Year began on November 1, 2010, such Contract Year would be referred to hereunder as the Contract Year 2010.)

**Contractor** – [•].

**Contractor Personnel** – duly licensed and fully trained and competent personnel or approved subcontractors having a skill level appropriate for the tasks assigned to them, as defined in Section 7.1.

**Effective Date** – [DATE]

**Facilities** – GRTC-owned facilities or other sites identified in Attachment A at which Contractor shall perform Services.

**Goods** – materials and supplies necessary for the performance of the Services, but shall not include any small tools or consumables used by Contractor to perform the Services, as defined in Section 3.1.

**Indemnitees** – as further defined in Section 10, GRTC, Old Dominion Transit Management Company, their elected officials, officers, officials, agents, and employees.

**Initial Term** – as further defined in Section 2, the first time period during which this Agreement shall be in effect, beginning on the Effective Date, as defined in Section 2.

**Renewal Term** – as further defined in Section 2, any time period commencing on the day after the Initial Term or the previous Renewal Term ends, during which this Agreement shall remain in effect.

**Service Order** – as further defined in Section 4.1, GRTC’s written directions to Contractor to perform Additional Services,.

**Services** – the services described on Attachment A that are to be performed by Contractor hereunder.

**Term** – the period during which this Agreement shall be in effect, which shall include the Initial Term and any Renewal Term(s), as defined in Section 2.

## **2. TERM**

**2.1.** This Agreement shall be effective as of the Effective Date and, unless earlier terminated or cancelled, shall continue in effect until [ ] (the “Initial Term”).

**2.2.** At the end of the Initial Term, this Agreement shall expire unless GRTC, in its sole discretion, provides written notice to Contractor of its intent to renew this Agreement for an additional time period (a “Renewal Term”). At the end of the first Renewal Term, this Agreement shall expire.

**2.3.** At the end of the Initial Term, GRTC and Contractor may mutually agree upon modifications to Attachment B of this Agreement to be effective in the subsequent Renewal Term.

**2.4.** GRTC’s notice(s) of its intention to continue this Agreement must be provided to Contractor not less than thirty (30) days prior to the expiration of the Initial Term or the then-current Renewal Term, as applicable.

## **3. SERVICES**

**3.1. Performance of Services** - Contractor shall perform the services described in Attachment A hereto (the “Services”). Contractor shall perform the Services on an ongoing basis during the Term, in accordance with the schedule, if any, set forth on Attachment A. Performance hereunder shall be governed by the terms and conditions of this Agreement, and

GRTC's or Contractor's use of pre-printed forms for any purpose shall be for administrative convenience only. All Services shall be performed in strict accordance with the terms and conditions of this Agreement, including the schedule, if applicable. GRTC reserves the right, upon reasonable notice to Contractor, to audit and observe Contractor's performance hereunder at the facility where the Services are being performed. Time is of the essence for the performance of all Services.

**3.2. Materials and Equipment** - Contractor shall provide all materials, tools and equipment ("Supplies") that may be necessary for the proper performance of the services, without additional compensation. Contractor shall be responsible for and shall bear the risk of loss or damage to its Supplies while at GRTC's facilities, unless such loss or damage results from the gross negligence of GRTC or its employees or agents. Contractor shall require all of its personnel to waive all claims against GRTC for lost or damaged Supplies and shall indemnify GRTC against any claims arising in connection with lost or damaged Supplies belonging to any Contractor personnel. Nothing herein shall require Contractor to indemnify GRTC against any claims demonstrated by Contractor to have resulted solely from GRTC's negligence or willful misconduct.

**3.3. Contract Administrator** - Contractor's performance under this Agreement may be monitored and reviewed by a representative designated by GRTC to administer the Agreement and be the Contractor's primary point of contact ("Contract Administrator"). Reports and data required to be provided by Contractor shall be delivered to the Contract Administrator. Questions by Contractor regarding interpretation of the terms, provisions, and requirements of this Agreement shall be addressed to the Contract Administrator for response.

#### **4. ADDITIONAL SERVICES, GOODS AND PURCHASE ORDERS**

##### **4.1. Additional Services**

**4.1.1.** In addition, from time to time during the Term, GRTC may, but is not obligated to, request that Contractor provide services in addition to the Services set forth on Attachment A, but of the same general type as the Services, or provide Services at a facility leased or owned by GRTC but not listed on Attachment A (collectively called "Additional Services"). When GRTC desires Contractor to perform Additional Services, it shall issue a written "Service Order" to Contractor.

**4.1.2.** Upon receipt of a Service Order, Contractor shall promptly prepare a response to such Service Order, indicating the commercial terms and conditions under which Contractor would perform such Additional Services ("Contractor's Offer"). Contractor's Offer shall become a part of this Agreement and Contractor shall be obligated to perform the services described in Contractor's Offer when Contractor receives written acceptance of Contractor's Offer from GRTC. Contractor shall not, however, begin performance unless the acceptance of Contractor's Offer is delivered by GRTC. Once accepted, Additional Services shall be deemed Services hereunder.

**4.2. Purchase Orders** - GRTC may use its purchase order forms to request Additional Services or facilitate payment for any Services. Any preprinted terms appearing on GRTC's

purchase order forms, as distinguished from terms written by hand or typed by GRTC, shall be void and have no force with respect to this Agreement. In accordance with Section 3.1 above, the use of Contractor's forms for any purpose shall be for administrative convenience only and any terms and conditions contained on Contractor's forms shall be void and have no force with respect to this Agreement.

### **4.3. Acceptance of the Work**

**4.3.1. Completion of Services** - GRTC shall be deemed to have accepted the Services as complete upon the satisfaction of all of the following conditions, as applicable:

(a) Any performance tests specified by GRTC shall have been completed by Contractor in conformance with such specifications, the results of which shall have been accepted by GRTC;

(b) The Services shall be 100% complete, unless and to the extent GRTC agrees otherwise in writing;

(c) Contractor shall have delivered to GRTC all documents required to be delivered to GRTC pursuant to this Agreement;

(d) Contractor shall have delivered to GRTC a notice signed by Contractor certifying that all of the preceding conditions set forth in this Section have been satisfied;

(e) There shall exist no event of default, or an event which, with the passage of time or the giving of notice or both, would constitute an event of default pursuant to this Agreement; and

**4.3.2. Partial Turnover Prior to Acceptance** - If directed by GRTC or if so provided in Attachment A, Contractor shall turn over to GRTC certain portions of the Services or Goods prior to GRTC's acceptance pursuant to Section 4.3.1 above. GRTC shall assume control and custody over, and risk of loss for, such portions of the Services that may be turned over to GRTC pursuant to this Section 4.3.2; provided, however, nothing herein shall be deemed to limit Contractor's liability or otherwise excuse Contractor for any portion of the Services that fails to conform to this Agreement or that is subsequently damaged or destroyed as the result of any negligent or intentional act or omission of Contractor or its subcontractors or suppliers. A partial turnover of any portion of the Services shall not constitute acceptance of that portion of the Services, or shorten the remedial periods otherwise provided in this Agreement.

## **5. COMPENSATION**

**5.1.** GRTC shall compensate Contractor for the performance of the Services in accordance with the fees and rates set forth on Attachment B (the "Charges").

**5.2.** The Charges represent the full and complete compensation for the proper performance of the Services, and include compensation for all services, labor, supervision, transportation, supplies and Goods necessary for the performance of the Services and for all

taxes (except sales and use taxes, if any), fees, fringe benefits, insurance, profit and overhead in connection with Contractor's performance of the Services.

## **6. INVOICES AND PAYMENT**

**6.1. Invoices** - Contractor shall submit an invoice to GRTC, Accounts Payable, each month for the Services performed during the immediately preceding month. No advance payment shall be made or accepted for Services performed by Contractor pursuant to this Agreement. Contractor's invoices shall include the applicable purchase order number and must be accompanied by all required documentation to support all charges. All applicable rebates and discounts shall be identified separately on Contractor's invoice. Any invoice submitted to GRTC in an improper format or without the required information or documentation will be returned unpaid to Contractor for correction and resubmission.

### **6.2. Payment**

**6.2.1.** GRTC shall pay all undisputed portions of properly documented invoices within 30 days after receipt of Contractor's invoice. If GRTC disputes any portion of an invoice, GRTC shall provide written notice to Contractor indicating the reason GRTC is withholding any amount, and GRTC shall pay the undisputed portion of the invoiced amount. Neither the payments made to Contractor, nor the method of such payments, shall be deemed GRTC's acceptance of the Services, nor shall they relieve Contractor of its obligations to perform the Services in strict compliance with the requirements herein.

**6.2.2. Set-Off** - If Contractor breaches any provision of this Agreement or any Service Order for Additional Services, or if any person or entity asserts a claim or lien against GRTC or any of GRTC's property that arises out of this Agreement, GRTC shall have the right to retain out of any payments due or to become due to Contractor hereunder an amount sufficient to protect GRTC completely from all such claims (including costs and attorneys' fees). GRTC shall provide notice to Contractor explaining GRTC's reasons for such retainage. When the claim has been released or resolved to GRTC's satisfaction, GRTC shall release the retained amounts to Contractor, net of any costs GRTC incurred as a result of such claim. GRTC shall also have the right to set-off any costs, damages, expenses or other monies, the payment for which Contractor is responsible, against any amounts that GRTC owes Contractor hereunder. GRTC's right to withhold monies pursuant to this Section 6.2 shall be in addition to all other rights and remedies available to it under this Agreement, at law or in equity.

## **7. CONTRACTOR PERSONNEL, FACILITY REQUIREMENTS AND SUBCONTRACTORS**

**7.1. Personnel** - Contractor shall provide the Services through duly licensed and fully trained and competent personnel or approved subcontractors having a skill level appropriate for the tasks assigned to them ("Contractor Personnel"). No subcontractor shall perform Services hereunder unless approved in advance by GRTC. Contractor shall use best efforts to ensure the continuity of all Contractor Personnel providing Services. Contractor shall not charge GRTC for the time associated with training any new Contractor Personnel. GRTC, in its sole discretion,

shall have the right upon written notice to Contractor to require Contractor to remove any of Contractor's Personnel from the performance of the Services for any reason.

**7.2. Facility Requirements** - GRTC shall provide reasonable access to its Facilities for Contractor Personnel provided such Contractor Personnel comply with GRTC's safety and health environmental rules, as well as any Facility-specific site requirements which may be provided by GRTC to Contractor.

**7.3. Interference with GRTC's Operations** - Contractor acknowledges that GRTC shall continue its normal operations during the performance of the Services. Contractor shall schedule the Services so as not to interfere with GRTC's operations where possible, and shall be responsible for any damage caused by its failure to do so, except as follows. If any of the Services is of a nature that will necessitate interference with GRTC's operations, the Contractor shall notify GRTC of such interference before starting to perform the Services. Contractor shall prepare a proposed schedule and submit it to GRTC for GRTC's approval. Contractor shall not start to perform the Services until GRTC approves the schedule. Contractor shall also coordinate its Services to eliminate interference with the work of other GRTC contractors at GRTC's Facility and shall notify GRTC of any potential or actual interferences that Contractor cannot resolve satisfactorily before proceeding with its Services.

**7.4. Subcontractors** - No approved subcontractor shall perform any Services hereunder without first (a) providing evidence of insurance as required by Section 10.1, and (b) agreeing to indemnify GRTC as provided in Section 10. GRTC, in its sole discretion, shall have the right upon written notice to Contractor to require Contractor to remove any subcontractor from the performance of the Services for any reason. All subcontractors shall act solely as agents of Contractor. Contractor agrees that it is as fully responsible to GRTC for the acts and omissions of any of its subcontractors and of persons either directly or indirectly employed by such subcontractor as it is for the acts and omissions of persons directly employed by Contractor. Nothing herein shall create any contractual or agency relationship between any such subcontractor and GRTC, and GRTC shall have no obligation to pay or ensure the payment of any monies owed by Contractor to any such subcontractor. GRTC reserves the right to review and approve any subcontracts between Contractor and its subcontractors relating to this Agreement.

## **8. MODIFICATIONS, EQUITABLE ADJUSTMENTS AND SUSPENSION**

**8.1. Change Orders** - GRTC may at any time, by written notice to Contractor from the Contract Administrator, make changes in, additions to or deletions from the scope of the Services by issuing a written change order ("Change Order"). Contractor shall perform the Services as so changed. Contractor shall not honor any oral request for a change and shall not be entitled to an equitable adjustment with respect to any work that is not authorized by a Change Order from GRTC's Contract Administrator. All Services performed pursuant to a Change Order shall be subject to all the applicable terms and conditions herein.

## **8.2. Equitable Adjustments**

**8.2.1.** If any Change Order results in an increase or decrease in the Charges or time required to perform the Services, an equitable adjustment will be made, at the sole discretion of GRTC, to the Charges, schedule or both, and the Agreement will be modified in writing accordingly. Every Change Order may require a cost analysis to determine the reasonableness of the proposed change.

**8.2.2.** All changes to the Agreement that are a result of legislation or regulations that become effective after the date of proposal and prior to final completion, which might require an adjustment to the Charges, upward or downward, shall be evaluated by both parties. An adjustment to the Charges shall be negotiated between the Contract Administrator and the designated representative of Contractor.

**8.2.3.** Any claim by Contractor for an equitable adjustment under this Section 8.2 must be asserted within 14 calendar days from the date of receipt by Contractor of the notification of change. The request for equitable adjustment must be in writing and state the general nature and monetary extent of the claim. The Contract Administrator may require additional supporting documents and cost or price analysis to determine the validity of the claim.

**8.2.4.** No claim by Contractor for an equitable adjustment hereunder will be allowed if asserted after final payment under this Agreement. No claim will be allowed for any costs incurred more than 20 calendar days before Contractor gives written notice, as required in this section.

**8.2.5.** Contractor shall continue to perform the Services in accordance with this Agreement, without delay or interruption, during any period that GRTC is considering a request for an equitable adjustment and during the pendency of any dispute over an equitable adjustment. GRTC shall notify Contractor of its decision regarding the equitable adjustment in writing. Failure by GRTC and Contractor to agree upon an equitable adjustment shall not constitute a basis for Contractor to suspend performance of the Services but shall be resolved pursuant to Section 18, Dispute Resolution.

**8.3. Suspension** - Upon oral or written notice from GRTC, Contractor shall suspend all or any part of its performance hereunder for such time as GRTC may direct. Any oral notice of suspension shall be confirmed in writing. GRTC shall not be liable for the cost of any unauthorized work performed by Contractor during any period of suspension, and upon receipt of GRTC's suspension notice, Contractor shall neither place further orders nor enter into further subcontracts relating to the suspended performance. A suspension by GRTC pursuant to this Section 8.3 shall be considered a change by GRTC for which Contractor may be entitled to an equitable adjustment in the Charges in accordance with the procedures in Section 8.2.

## **9. WARRANTIES**

**9.1. Warranties** - Contractor warrants that it has experience and expertise in performing services of the type required herein and that the Services performed hereunder shall (a) be performed in strict accordance with all conditions and requirements herein, (b) be performed in strict accordance with all applicable laws and regulations, (c) be performed in a

diligent and workmanlike manner by qualified and skilled personnel appropriately supervised and (d) reflect the highest level of care, skill, knowledge and judgment required or reasonably expected of providers of comparable services.

**9.2. Remedies** - If GRTC discovers that any Services either prior to or after acceptance by GRTC performed by Contractor fail to conform to the above warranties, then Contractor shall, at GRTC's option and at no cost to GRTC, promptly correct or re-perform such non-conforming Services so that they conform to the above warranties. The re-performed Services shall be subject to the same warranties as the original Services. Without limiting the generality of the preceding sentence, Contractor shall provide all labor, engineering, supervision, equipment, tools and materials necessary to remedy the nonconformity and shall bear all expenses in connection therewith. Contractor shall perform its remedial obligations hereunder in a timely manner consistent with GRTC's reasonable requirements. If Contractor fails or is unable to do so, GRTC may remedy the nonconforming Services and Contractor shall reimburse GRTC for any remedial costs and expenses (including GRTC internal costs) GRTC may incur.

## **10. INDEMNITY**

**10.1. Indemnification** - To the greatest extent permitted by law, Contractor shall indemnify and hold harmless GRTC, Old Dominion Transit Management Company, their elected officials, officers, officials, agents, and employees (each, an "Indemnitee"), from and against any and all claims, actions, causes of action, losses, liabilities, damages (including punitive damages), costs and expenses, including reasonable attorneys' fees, arising out of a claim or claims an Indemnitee may incur in connection with this Agreement or any of the Services supplied hereunder, whether such claims arise in contract, tort or otherwise. This indemnification obligation shall include, but is not limited to, all claims against GRTC by Contractor's subcontractors or suppliers, or an employee or former employee of Contractor or its subcontractors; and Contractor, by mutual negotiation, expressly waives all immunity and limitation of liability, with respect to GRTC only, under any industrial insurance act, other Worker's Compensation act, disability benefit act, or other employee benefit act of any jurisdiction which would otherwise be applicable in the case of such claim. This indemnification obligation shall also obligate Contractor to protect, indemnify, defend, and save harmless the Indemnitees from any and all claims or lawsuits alleging a violation of a third party's copyright or patent rights arising out of or in connection with Contractors provision of Services under this Agreement. Notwithstanding anything provided in this section, GRTC retains the right to provide its own defense against any suits, claims, or actions, and to assess any costs of such defense to Contractor, including attorney's fees, expert witness fees, and court costs.

**10.2. Assumption of Defense** - Contractor shall, at GRTC's option, assume the defense of the Indemnitees in all legal or claim proceedings arising out of, in connection with, or incident to the indemnification obligation set forth in Section 10.1 above and shall pay all defense expenses, including reasonable attorney's fees, expert fees, and costs incurred by the Indemnitee on account of such litigation or claims.

**10.3. Right to Defense** - Notwithstanding anything provided in this Section 10, the Indemnitees retain the right to provide their own defense against any suits, claims, or actions, and to assess any costs of such defense to Contractor, including reasonable attorney's fees, expert witness fees, and court costs.

## **11. INSURANCE**

**11.1.** Contractor shall obtain, pay for and keep in force during the Term hereof, and thereafter as provided, the coverages in the amounts listed in Attachment C. All insurance policies shall be written with a company or companies licensed to conduct business within the Commonwealth of Virginia and holding a current Best's Key Rating of A- VII or better. Contractor shall name GRTC and Old Dominion Transit Management Company, as additional insureds on General, Business Automobile and Excess or Umbrella liability policies by endorsement to the policies. Insurance policies shall be endorsed to give GRTC 30 day's written notice (10 days in case of Workers Compensation) of cancellation for any reason, non-renewal or material change in coverage or limits. In case of non-payment of premium by Contractor, GRTC retains the right, but is not obligated, to pay any premiums and deduct such amounts from any payments due Contractor.

**11.2.** There shall be no exclusions for punitive damages in the General or Business Automobile policies.

**11.3.** Complete, certified copies of all insurance policies applicable to this Agreement shall be sent to GRTC within 60 days of each inception or anniversary date, so that these insurance policies may be reviewed by GRTC. Until copies of policies are received, Evidence of Coverage in the form of an original Certificate of Insurance shall be submitted to GRTC. Contractor also agrees to have deficiencies in the insurance policies amended as per the directions of GRTC or its representatives.

**12. INTELLECTUAL PROPERTY** - Contractor shall, at its expense, indemnify, hold harmless and defend any suit or proceeding brought against GRTC based in whole or in part on an allegation that any process or material employed by Contractor during performance of the Services hereunder, constitutes an infringement of any method or patent, trademark, trade secret or copyright, provided GRTC notifies Contractor in writing in a timely manner and gives Contractor authority, information and assistance (such assistance to be administrative, not financial) for the defense of the suit or proceeding. Contractor shall (a) pay all damages and costs (including reasonable attorneys' fees) awarded in any suit or proceeding so defended as well as the cost and fees associated with the defense of such a suit or proceeding and (b) indemnify GRTC against any expenses incurred by GRTC in providing information and assistance to Contractor for the defense of the suit or proceeding. The provisions for indemnity set forth in Section 10 shall apply to Contractor's indemnity obligations under this Section 12.

## **13. CONFIDENTIALITY**

**13.1. Confidential Information** - Contractor shall employ practices no less than those used for Contractor's protected information, to maintain the confidentiality of information regarding GRTC's licensed technology, software, documentation, drawings, schematics, manuals, data or other materials marked "Confidential," "Proprietary," or "Business Secret" (collectively "Confidential Information"), and shall not disclose such Confidential Information without the prior written consent of GRTC, to any person or entity not a party hereto. Upon obtaining such consent from GRTC, Contractor may disclose Confidential Information only to those entities (a) who need it in connection with subcontracts to perform portions of the Services

and (b) who have agreed in writing to be bound by the terms of this Section 13. Contractor shall provide GRTC a copy of an executed confidentiality agreement for each such entity. Notwithstanding the foregoing, if Contractor is required to disclose this Agreement or any of its terms and conditions by law, a court or agency order or a proper discovery request, Contractor shall (a) use its best efforts to make such disclosure on a confidential basis and (b) in the case of disclosure required as the result of any court or agency order or proper discovery request, give GRTC prompt notice so that GRTC may, if it so chooses, assert any rights it may have to maintain confidentiality or obtain relief from public disclosure.

**13.2. Public Release** - Contractor shall not release any Confidential Information concerning this Agreement for publication, advertising or any other purpose without GRTC's prior consent. Contractor shall require all subcontractors to agree that no information concerning this Agreement or any agreement between Contractor and its subcontractors relating to this Agreement shall be released for publication, advertising or any other purpose without GRTC's prior consent.

#### **14. PUBLIC DISCLOSURE REQUESTS**

**14.1. Public Documents** - GRTC Agreements shall be considered public documents and, with exceptions provided under public disclosure laws, will be available for inspection and copying by the public.

**14.2. Contractor's Confidential Information** - If a Contractor considers any portion of any documents which may be delivered to GRTC pursuant to this Agreement to be protected under the law, Contractor shall clearly identify each such item with words such as "Confidential," "Proprietary," or "Business Secret." If a request is made for disclosure of any such document, GRTC will determine whether the document should be made available under the law. If the document or parts thereof are determined by GRTC to be exempt from public disclosure, GRTC will not release the exempted document. If the document is not exempt from public disclosure law, GRTC will notify Contractor of the request and allow Contractor five days to take whatever action it deems necessary to protect its interests. If Contractor fails or neglects to take such action within said period, GRTC will release the document deemed subject to disclosure. By signing this Agreement, Contractor assents to the procedure outlined in this Section 14 and shall have no claim against GRTC on account of actions taken under such procedure.

#### **15. COMPLIANCE WITH LAWS; NONDISCRIMINATION; FINES**

**15.1. General** - Contractor shall comply with all foreign and United States (federal, state and local) laws, rules, regulations and ordinances applicable to the performance of its obligations under this Agreement. In addition, Contractor shall obtain, maintain in good standing and be liable for all taxes, fees, governmental licenses, permits and approvals necessary for the operation of Contractor's Facility required in the performance of Contractor's obligations under this Agreement. Upon request, Contractor shall furnish to GRTC certificates of compliance with all such laws, rules, regulations, and ordinances.

**15.2. Compliance with Federal Transit Administration Requirements** - Contractor shall comply with all requirements of the Federal Transit Administration (“FTA”), attached hereto in Attachment D. If a conflict shall arise between the provisions of this Agreement and any FTA requirement in Attachment D, the FTA requirement shall take precedence and be controlling.

**15.3. Business Conduct and Conflicts of Interest** - No member, officer, or employee of GRTC during their tenure or for two years thereafter shall have any financial interests, direct or indirect, in this Agreement or the proceeds thereof. Contractor shall notify GRTC’s Contract Administrator of current or former GRTC employees who may become involved in the Agreement at any time during the term of the Agreement.

**15.4. Fines and Fees** - Any fines, legal costs or other penalties incurred by Contractor or its agents or employees for noncompliance with any laws, rules, regulations or ordinances with which compliance is required herein shall not be reimbursed by GRTC, but shall be the sole responsibility of Contractor. If fines, penalties or legal costs are assessed against GRTC by any government authority or court due to noncompliance by Contractor or its agents or employees with any laws, rules, regulations or ordinances, or if GRTC’s operations or any part thereof is delayed or stopped by order of any government authority or court due to Contractor’s noncompliance or the noncompliance of Contractor’s agents or employees, Contractor shall indemnify and hold harmless GRTC against any and all losses, liabilities, damages, claims and costs (including reasonable attorneys’ fees) suffered or incurred because of the failure of Contractor or its agents or employees to comply therewith.

## **16. RECORDS; REPORTS; AUDITS**

**16.1. Records** - During the Term of this Agreement, Contractor shall keep and maintain (a) complete and accurate records, in accordance with Generally Accepted Accounting Principles (GAAP), books of account, reports and other data necessary for the proper administration of this Agreement, including all rebate programs and any other special pricing program extended to Contractor by any subcontractors in connection with the Agreement and (b) all data, documents, reports, contracts and supporting materials relating to this Agreement as the Federal Government may require. Contractor shall retain such records and all other written materials prepared by Contractor, during the Term of this Agreement and for three years after the expiration, termination or cancellation of this Agreement and for any additional time required by governmental authorities with jurisdiction over Contractor.

**16.2. Reports** - Contractor agrees to provide to the FTA those reports required by U.S. DOT’s grant management rules and any other reports the Federal Government may require. In addition, Contractor shall, upon request, provide GRTC with satisfactory reports and documentation of Contractor’s compliance with the Agreement

**16.3. Right to Audit** - Federal, state, local or GRTC designated auditors shall have the right, upon reasonable notice to Contractor, during the Term of this Agreement and for three years following the expiration, termination or cancellation hereof, to audit and inspect Contractor’s books, records and other materials as described in Section 16.1 with respect to Compensation and Services. Contractor shall require its subcontractors to agree to allow GRTC

to audit and inspect such subcontractors' books and records pertaining to Compensation and Services during the Term of this Agreement and for three years following the expiration, termination or cancellation of this Agreement or any agreement between Contractor and such subcontractor. If any audit or inspection reveals an error or irregularity in the Compensation payable to Contractor hereunder or a breach of the warranty set forth in Section 9.1 hereof, an appropriate adjustment shall be made (a) by Contractor within 30 days after the conclusion of the audit or inspection or (b) at GRTC's option, by GRTC to amounts properly due Contractor hereunder. Contractor shall permit GRTC, and if federally funded, the FTA and the Comptroller General of the United States, or a duly authorized representative, to inspect all work, materials, payrolls, and other data and records involving the Agreement at Contractor's facility.

## **17. TERMINATION AND CANCELLATION**

**17.1. GRTC Rights of Termination** - GRTC may terminate this Agreement at its sole discretion and for any or no reason upon 30 days' prior written notice to Contractor. The parties understand and agree that GRTC's ability to make payments under this Agreement is subject to and dependent upon financial assistance provided by the U.S. Department of Transportation, the Virginia Department of Rail and Public Transportation, and the City of Richmond, Virginia. The parties further understand and agree that if any of these governmental entities withdraws, reduces, or limits expected or actual funding to any extent, GRTC may, upon written notice to Contractor, immediately terminate this Agreement in whole or in part.

### **17.2. Right to Cancel for Default**

**17.2.1.** Either party may cancel this Agreement effective immediately upon written notice to the other in the case of the bankruptcy, insolvency or appointment of custodian, receiver, trustee or liquidator of the other party, or a breach by the other party of any of the terms and conditions of this Agreement, without prejudice to any other rights or remedies the non-breaching party may have, provided the breaching party fails to remedy such breach within 30 days of receiving notice of such breach.

**17.2.2.** In the event either party shall engage the services of an attorney or other professional due to the default of the other party, the defaulting (non-prevailing) party shall pay all legal costs and fees, including reasonable attorney fees, incurred by the non-defaulting (prevailing) party in enforcing its rights.

### **17.3. Effect of Termination or Cancellation**

**17.3.1.** When Contractor receives notice of termination or cancellation, it shall (a) discontinue its performance of the Services in accordance with GRTC's instructions, (b) not place further orders or enter into further subcontracts relating to the terminated Services, (c) to the extent possible, terminate all existing orders with its suppliers and any subcontractors, and (d) settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the consent of the GRTC's Contract Administrator (as defined in Section 3.2) or other expressly designated representative.

**17.3.2.** Upon termination pursuant to Section 17.1, Contractor shall be entitled to the compensation payable hereunder (but not yet paid) for conforming Services provided

through the effective date of termination. GRTC's obligation to compensate Contractor for the Services shall be deemed to have been discharged upon termination.

**17.3.3.** After termination or cancellation, GRTC shall have no further liability other than to pay for Services performed prior to the effective date of termination or cancellation.

**17.3.4.** Neither termination nor cancellation shall affect any rights either party may have with respect to any Services performed prior to termination or cancellation, any pending dispute, or any rights either party may have with respect to any breach occurring prior to termination or cancellation.

## **18. DISPUTE RESOLUTION**

**18.1. Intent** - It is the intention of the parties to make a good faith effort to resolve, without resort to litigation, any dispute, controversy or claim arising out of or relating to this Agreement or any breach hereof (a "Dispute") according to the procedures set forth in this Section 18; provided, however, that the procedures set forth herein shall not preclude either party from exercising any right of termination or cancellation of the Agreement as provided herein or as available at law or in equity.

**18.2. Procedure** - Contractor shall address any question or claim arising from this Agreement in writing to the Contract Administrator within ten calendar days of the date in which Contractor discovers or has reason to discover the question or claim. Unless Contractor receives a written notification with the determination of the Contract Administrator prior to the tenth day following the Contract Administrator's receipt of the question or claim, such question or claim is denied. In the event Contractor disagrees with any determination or decision of the Contract Administrator, Contractor may, within five calendar days of the date of such determination or decision, appeal the determination or decision in writing to the Chief Executive Officer of GRTC (the "CEO"). Such written notice of appeal shall include all documents and other information necessary to substantiate the appeal. The CEO shall review the appeal and transmit a decision or determination in writing. The decision will be considered final. Appeal to the CEO shall be a condition precedent to litigation hereunder.

**18.3. Mediation and Arbitration** - If a Dispute cannot be settled through direct discussions, the parties shall first endeavor to settle the dispute in an amicable manner by mediation. Thereafter, any unresolved controversy or claim arising out of or relating to this Agreement, or breach thereof, may be settled by arbitration, and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The parties may seek to resolve disputes pursuant to arbitration, but are not required to do so. Nothing in this Section 18.3 precludes any party from seeking further relief once the required alternative dispute resolution efforts have failed.

**18.4. Performance During Dispute** - Subject to the rights of the parties to cancel this Agreement or suspend their performance as set forth in this Agreement, Contractor shall continue to perform its obligations under this Agreement during the pendency of any Dispute; provided, however, that GRTC may seek preliminary and permanent injunctive relief, including specific performance or other interim or permanent relief, if the Dispute involves (a) threatened

or actual breach by Contractor of the confidentiality provisions of Section 13 hereof or (b) risk to the safety or security of persons or property, if in GRTC's judgment such relief is necessary to prevent injury or damage; provided further, that despite any such action by GRTC, the parties shall continue to proceed in good faith in the dispute procedures outlined herein.

## **19. FORCE MAJEURE**

**19.1. Events of Force Majeure** - Neither GRTC nor Contractor shall be liable for its failure to perform or for any delay in performance of its obligations hereunder to the extent that such performance is delayed or prevented by circumstances beyond its reasonable control, without its fault or negligence and that despite its reasonable efforts is unable to overcome (a "Force Majeure Event"). Either party's right to be excused pursuant to the preceding sentence shall be conditioned upon the party experiencing the Force Majeure Event providing prompt written notice to the other party of the occurrence of the Force Majeure Event. This written notification shall give a full and complete explanation of the Force Majeure Event and its cause, the status of the Force Majeure Event, and the actions the party is taking and proposes to take to overcome the Force Majeure Event. Subject to the foregoing conditions, events that may constitute Force Majeure Events include, but are not limited to, acts of God; unusually severe weather conditions; war; riots; requirements, actions or failures to act on the part of governmental authorities; inability despite due diligence to obtain required licenses, permits or approvals; fire; damage to or breakdown of necessary facilities; or unusual transportation delays or accidents. Strikes and other labor difficulties are not Force Majeure Events. The party experiencing the Force Majeure Event shall exercise due diligence to overcome any Force Majeure Event.

**19.2. Force Majeure Procedure** - The party experiencing the Force Majeure shall exercise due diligence in endeavoring to overcome and mitigate any resulting delay in, or prevention of, its performance. If Contractor is experiencing the Force Majeure, it shall, in addition to the above actions, implement any applicable contingency plan. The party experiencing the Force Majeure shall also give prompt written notification to the other party, which notice shall include a full and complete explanation of the Force Majeure and its cause, the status of the Force Majeure, and the actions such party is taking and proposes to take to overcome and mitigate any resulting delay in, or prevention of, its performance.

**19.3. Termination for Extended Force Majeure** - If Contractor's ability to perform hereunder is delayed or prevented, in whole or in part, for a period of 14 consecutive days as a result of an event of Force Majeure, GRTC shall have the right, at its sole option, to terminate this Agreement, in whole or in part, by giving written notice of termination to Contractor. Such termination shall be effective no earlier than 10 days after Contractor's receipt of such notice and without regard to whether the event of Force Majeure ends prior to the date on which the termination becomes effective.

## **20. WAIVER OF LIENS**

To the maximum extent permitted by law, Contractor waives, and shall require its suppliers and subcontractors of any tier to waive, all liens and claims, and the right to file and enforce or

otherwise assert any liens and claims, against GRTC's facilities or any other GRTC property (real or personal) in connection with the Services performed hereunder.

## **21. INDEPENDENT CONTRACTOR**

Contractor is an independent contractor for all purposes in connection with this Agreement and is solely responsible for workers' compensation, unemployment compensation, social security, payroll taxes and all similar obligations affecting its employees. This Agreement is not intended to be one of hiring under the provisions of any workers' compensation or other laws and shall not be so construed. None of Contractor's employees shall be deemed to be a GRTC employee for any purpose, nor shall GRTC be in any way responsible for delegating responsibility between Contractor and its subcontractors. Nothing herein shall be deemed to constitute a partnership or joint venture between the parties. Contractor shall keep all necessary employment-related records and make all necessary payments to its employees.

## **22. ASSIGNMENT**

**22.1. Assignment by Contractor** - This Agreement and each and every covenant, term and condition hereof, shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and permitted assigns. Contractor shall not assign, subcontract or otherwise delegate any interest, right or obligation, whether by assignment or novation, hereunder without GRTC's prior written consent. Any such assignment without GRTC's consent shall be void. If GRTC consents to the assignment in writing, this Agreement shall be binding upon and inure to the benefit of the successors of Contractor. This provision shall not prevent Contractor from pledging any proceeds from this Agreement as security to a lender. An assignment may be conditioned upon the posting of bonds, securities and the like by the assignee and the assignee must assume this Agreement and be responsible for the obligations and liabilities of Contractor, known and unknown, under this Agreement and applicable law.

**22.2. Assignment by GRTC** - GRTC may assign its rights and obligations under the Agreement to any successor to the rights and functions of GRTC or to any governmental agency to the extent required by applicable laws or governmental regulations, or to the extent GRTC deems necessary or advisable under the circumstances.

## **23. GOVERNING LAW AND VENUE**

This Agreement, and any Orders or other contracts resulting therefrom, shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia. For the adjudication of any disputes arising under this Agreement, all actions shall be filed in the City of Richmond.

## **24. NOTICES**

All notices sent under this Agreement shall be in writing and (a) hand delivered; (b) transmitted by legible telecopy with a copy sent concurrently by certified mail, return receipt requested; or (c) delivered by prepaid priority delivery service. Notices shall be sent to the following representatives or such other representatives as the parties may subsequently provide.

**Notices to Contractor:**

**Notices to GRTC:**

Greater Richmond Transit Company  
Attn: David Green, CEO  
301 E. Belt Boulevard  
Richmond, VA 23224

**With a copy to:**

Greater Richmond Transit Company  
Attn: Director of Procurement  
301 E. Belt Boulevard  
Richmond, VA 23224

**25. ORDER OF PRECEDENCE**

All attachments, policies and rules referenced herein are hereby incorporated by reference and made a part of this Agreement. If there is a discrepancy or conflict between or among the handwritten or typed information in a purchase order, the Sections of this Agreement or the Attachments and policies and rules referenced herein, they shall be given precedence in the following order:

- (a) The FTA Requirements, set forth in Attachment D.
- (b) Handwritten or typed information contained on the front of an Order.
- (c) The provisions of this Agreement, and any amendments hereto.
- (d) All Attachments, which shall each be given precedence over each other in the order in which they are attached, with the exception of Attachment D.

**26. OTHER PROVISIONS**

**26.1.** All warranties, remedial obligations, indemnities, and confidentiality rights and obligations provided herein shall survive the cancellation, expiration or termination hereof.

**26.2.** Where remedies for breach of contract are provided herein, those remedies are in addition to all other available remedies in the Agreement, at law or in equity, unless otherwise expressly provided herein. Where no specific remedy for a breach of contract is specified, the non-breaching party shall be entitled to pursue all available remedies in this Agreement, at law or in equity.

**26.3.** No amendment, modification or waiver of any term hereof shall be effective unless set forth in a writing signed by both parties.

**26.4.** The failure of either party to demand strict performance of the terms hereof or to exercise any right conferred hereby shall not be construed as a waiver or relinquishment of its rights to assert or rely on any such term or right in the future.

**26.5.** In the event that any provision of this Agreement is deemed as a matter of law to be unenforceable or null and void, such provision shall be deemed severable from the Agreement and the rest of the Agreement shall continue in full force and effect.

**26.6.** Headings set forth herein are inserted for convenience and shall have no effect on the interpretation or construction of this Agreement.

**27. ENTIRE AGREEMENT**

This Agreement, which includes this cover contract, the attachments, policies and rules referenced herein, and any purchase orders issued by GRTC, constitutes the entire agreement of the parties with respect to the subject matter herein and supersedes any prior or contemporaneous agreements or understandings between the parties with respect to such subject matter. No course of dealing, usage of trade or course of performance shall be used to, or be deemed to, amend, supplement or explain any term or condition of this Agreement.

**[Signatures Appear on the Following Page.]**

WITNESS the signatures of the authorized representatives of the parties.

**Greater Richmond Transit Company**

[ \_\_\_\_\_ ]

BY: \_\_\_\_\_

BY: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

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**ATTACHMENT A**  
**SCOPE OF SERVICES**

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**ATTACHMENT B**

**COMPENSATION**

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## ATTACHMENT C

### INSURANCE

Contractor agrees to provide the following insurance coverage:

- A. **Commercial General Liability** (Occurrence Form), either singly or in combination with Excess or Umbrella Liability Insurance policy **covering all operations** with the following limits:

Each Occurrence (Bodily Injury, Property Damage)	\$1,000,000
Personal and Advertising Injury Limit	\$1,000,000
General Aggregate Limit	\$1,000,000
Products and Completed Operations Aggregate Limit	\$1,000,000
Fire Damage Limit	\$ 50,000
Medical Payments – Any One Person	\$ 5,000

- B. **Business Automobile Policy** either singly or in combination with Excess or Umbrella Liability Insurance policy **covering all operations** with the following limits:

Owned, Hired or Non Owned (Per Accident)	\$1,000,000
Uninsured Motorist (Per Accident)	Minimum State Limits
Medical Payments (Each Person)	\$ 5,000
Comprehensive (\$5,000 Deductible – Maximum)	Actual Cash Value
Collision (\$5,000 Deductible – Maximum)	Actual Cash Value

In the case of policies that list specific vehicles or specific drivers, proof of coverage is required to be provided to GRTC for each vehicle or driver before it can be used in service. Contractor shall be fully responsible for all physical damage deductibles to GRTC owned vehicles. In addition, Contractor shall be fully responsible for all rental costs and other costs associated with any vehicles that replace any vehicle that sustains any type of physical damage.

- C. **Workers Compensation**

Part A	Statutory
Part B – Employers Liability	
Bodily Injury by Accident	\$500,000
Bodily Injury by Disease (Policy Limit)	\$500,000
Bodily Injury by Disease (Each Employee)	\$500,000

All States and Voluntary Compensation endorsements shall be included in the Workers Compensation policy. Workers Compensation shall be provided to all employees of Contractor.

- D. **Excess or Umbrella Liability** (Occurrence Form) covering all operations with the following limits:

Each Occurrence (Bodily Injury, Property Damage, Personal and Advertising Injury)	\$5,000,000
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General Aggregate Limit (Other than Products – Completed Operations)	\$5,000,000
Products and Completed Operations Aggregate Limit	\$5,000,000

Excess or Umbrella policies shall list the Vehicle, Commercial General Liability and Employers Liability policies as underlying policies.

- E. **Professional Liability (i.e., Errors and Omissions) Insurance** with limits of not less than \$1,000,000 per occurrence.

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## **ATTACHMENT D**

### **FEDERAL TRANSIT ADMINISTRATION (FTA) REQUIREMENTS**

#### **1. Applicability and Federal Grant Contract**

This Agreement between Contractor and GRTC is subject to financial assistance provided by the U.S. Department of Transportation, the Virginia Department of Rail and Public Transportation, and the City of Richmond. Contractor is required to comply with all terms and conditions prescribed in third party contracts in the grant contract between the U.S. Department of Transportation and GRTC.

New federal, state, and local laws, regulations, ordinances, rules, policies, and administrative practices may be established after the date this Agreement is established and may apply to this Agreement. To achieve compliance with changing requirements, Contractor agrees to accept all changed requirements that apply to this Agreement and require subcontractors to comply with revised requirements as well. Changed requirements will be implemented through the Change Order procedures detailed in Section 8.1 of the Cover Agreement.

#### **2. Interest of Members or Delegates of Congress**

In accordance with 41 U.S.C. Section 22, the Contractor agrees that it will not admit any member of or delegate to the United States Congress to any share or part of its performance under this Agreement or any benefit derived therefrom.

#### **3. No Federal Government Obligations to Third Parties**

Contractor agrees that, absent the Federal Government's express written consent, the Federal Government shall not be subject to any obligations or liabilities to any subrecipient, any third party Contractor, or any person not a party to the Grant Agreement or Cooperative Agreement in connection with the performance of the Project. Notwithstanding that the Federal Government may have concurred in or approved any solicitation, subagreement, or third party contract, the Federal Government has no obligations or liabilities to any party, including any subrecipient or any third party Contractor.

#### **4. Program Fraud and False or Fraudulent Statements or Claims**

A. Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 *et seq.* and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or

fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on Contractor to the extent the Federal Government deems appropriate.

- B. Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on Contractor, to the extent the Federal Government deems appropriate.
- C. Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

## **5. Access to Records and Reports**

- A. Contractor agrees to provide GRTC, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C.F.R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.
- B. Where any Purchaser which is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the Contractor shall make available records related to the contract to the Purchaser, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.
- C. Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- D. Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator,

the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).

E. FTA does not require the inclusion of these requirements in subcontracts.

## 6. Federal Changes

Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between GRTC and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this Contract.

## 7. Civil Rights Requirements

A. Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

B. Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

1) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq ., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including

apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

2) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

3) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

C. The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

## **8. Disadvantaged Business Enterprises (DBEs)**

A. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The agency's overall goal for DBE participation is 8.6%. A separate contract goal of 10% DBE participation has been established for this procurement.

B. It is the policy of GRTC that DBEs as defined in 49 CFR Part 26 shall have a level playing field to compete fairly for DOT-assisted contracts. Contractor shall take all necessary and reasonable steps to ensure that DBEs have a level playing field to compete for and perform services on the contract, including participation in any subsequent supplemental contracts. If Contractor intends to subcontract a portion of the Services on the project, Contractor is encouraged to contact DBEs to solicit their interest, capability and qualifications.

C. It is the policy of GRTC to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, to make reasonable efforts to use these institutions, and to encourage prime contractors on DOT-assisted contracts to make use of these institutions. Therefore, GRTC encourages Contractor to use DBE financial institutions whenever possible.

**9. Contract Assurance**

Contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as GRTC deems appropriate. Each subcontract Contractor signs with a subcontractor must include the assurance in this paragraph.

**10. Prompt Payment**

- A. Contractor is required to report its DBE participation obtained through race-neutral means throughout the period of performance.
- B. Contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after Contractor's receipt of payment for that work from GRTC. In addition, Contractor may not hold retainage from its subcontractors. This clause applies to both DBE and non-DBE subcontractors.
- C. Contractor must promptly notify GRTC, whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. Contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of GRTC.

**11. Energy Conservation Requirements**

Contractor agrees to comply with the mandatory energy efficiency standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

**12. Clean Air**

- A. Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 *et seq.* Contractor agrees to report each violation to GRTC and understands and agrees that GRTC will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
- B. Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

**13. Clean Water**

- A. Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. Subsection 1251 *et seq.* Contractor agrees to report each violation to GRTC and understands and agrees that GRTC will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
- B. Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

**14. Recycled Products**

Contractor agrees to comply with all requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

**15. Debarment, Suspension and Other Responsibility Matters**

- A. This Agreement is a covered transaction for purposes of 49 CFR Part 29. As such, Contractor is required to verify that none of the contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.
- B. Contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.
- C. By signing this Agreement, Contractor provides a signed Certification Regarding Debarment, Suspension, and Other Responsibility Matters - Primary Covered transactions.
- D. The signed certification is a material representation of fact relied upon by GRTC. If it is later determined that Contractor knowingly rendered an erroneous certification, in addition to remedies available to GRTC, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. Contractor agrees to comply with the requirements of 49 CFR 29, Subpart C while this Agreement is valid and throughout the period of performance. Contractor further agrees to include a provision requiring such compliance in its lower tier covered transactions.

**16. Lobbying**

- A. Contractor agrees that it will not use Federal assistance funds to support lobbying.

- B. Contractor agrees to comply, and assure the compliance of subcontractors, with U.S. DOT regulations, “New Restrictions on Lobbying,” 49 CFR Part 20, modified as necessary by 31 U.S.C. § 1352.
- C. Contractor agrees to comply with Federal statutory provisions to the extent applicable prohibiting the use of Federal assistance funds for activities designed to influence Congress or a State legislature on legislation or appropriations, except through proper, official channels.
- D. No appropriated funds may be expended by the recipient of a federal contract, grant, loan, or cooperative agreement to pay any employee of any agency, member of congress, or an officer or employee of congress in connection with any of the following covered federal actions: the awarding of federal grants; the making of any federal loan; the entering into of any cooperative agreement; the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- E. Contractor agrees that it has reviewed the above regulations and submitted with its proposal a certification of compliance with federal lobbying regulations. Pursuant to federal regulations, Contractor is required to have all subcontractors providing more than \$100,000 in services to also complete this certification.

**17. Fly America**

Contractor agrees to comply with 49 U.S.C. 40118 (the “Fly America” Act) in accordance with the General Services Administration’s regulations at 41 CFR Part 301-10, which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

**18. Disputes, Breaches, Defaults, or Other Litigation**

The Contractor agrees that FTA has a vested interest in the settlement of any dispute, breach, default, or litigation involving the project. Accordingly:

- A. Notification to FTA – GRTC shall notify FTA of any current or prospective major dispute, breach, default, or litigation that may affect the Federal Government’s interests in the project or the Federal Government’s administration or enforcement of Federal laws or regulations. If GRTC seeks to name the Federal Government

as a party to litigation for any reason, in any forum, GRTC shall inform FTA before doing so.

- B. Federal Interest in Recovery – The Federal Government retains the right to a proportionate share, based on the percentage of the Federal share awarded for the project, of proceeds derived from any third party recovery, except that GRTC may return any liquidated damages recovered to its project account in lieu of returning the Federal share to the Government.
- C. Enforcement – GRTC agrees to pursue all legal rights provided within any third party contract.
- D. FTA Concurrence – FTA reserves the right to concur in any compromise or settlement of any claim involving the project and GRTC.
- E. Alternative Dispute Resolution – FTA encourages GRTC to use alternative dispute resolution procedures, as may be appropriate.

#### **19. Incorporation of FTA Terms**

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, dated November 1, 2008, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. Contractor shall not perform any act, fail to perform any act, or refuse to comply with any GRTC requests which would cause GRTC to be in violation of the FTA terms and conditions.

#### **20. Americans with Disabilities Act**

Contractor agrees to comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA) 42 USC § 11401 et seq: Section 504 of the Rehabilitation Act of 1973, as amended, 19 USC § 792, 49 USC § 5301(d); and the Federal Regulations including any amendments thereto: 49 CFR Part 27, 49 CFR Part 38; 28 CFR Part 35; 28 CFR Part 36; 41 CFR Subpart 101-19; 29 CFR Part 1630; 47 CFR Part 64, Subpart F; and 49 CFR Part 609.

#### **22. Termination and Cancellation**

1. GRTC Rights of Termination – GRTC may terminate this Agreement at its sole discretion and for any or no reason upon 30 days' prior written notice to Contractor. The parties understand and agree that GRTC's ability to make payments under this Agreement is subject to and dependent upon financial assistance provided by the U.S. Department of Transportation, the Virginia Department of Rail and Public Transportation, and the City of Richmond, Virginia. The parties further understand and agree that if any of these governmental entities withdraws, reduces, or limits expected or

actual funding to any extent, GRTC may, upon written notice to Contractor, immediately terminate this Agreement in whole or in part.

2. Right to Cancel for Default – Either party may cancel this Agreement effective immediately upon written notice to the other in the case of the bankruptcy, insolvency or appointment of custodian, receiver, trustee or liquidator of the other party, or a breach by the other party of any of the terms and conditions of this Agreement, without prejudice to any other rights or remedies the non-breaching party may have, provided the breaching party fails to remedy such breach within 30 days of receiving notice of such breach.

In the event either party shall engage the services of an attorney or other professional due to the default of the other party, the defaulting (non-prevailing) party shall pay all legal costs and fees, including reasonable attorney fees, incurred by the non-defaulting (prevailing) party in enforcing its rights.

Except with respect to defaults of subcontractors, the Contractor shall not be liable for any excess costs if the failure to perform the Contract arises out of causes beyond the control and without the fault or negligence of the Contractor. Examples of such clauses include, but are not limited to, (1) Acts of God or of the public enemy, (2) acts of the Government in its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes, and (9) unusually severe weather. In each instance, the failure to perform must be 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 such default arises out of causes beyond the control of the Contractor and subcontractor, the Contractor shall not be liable for any excess costs for failure to perform, unless the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required delivery schedule.

3. Effect of Termination or Cancellation – When Contractor receives notice of termination or cancellation, it shall (a) discontinue its provision of Goods or Services in accordance with GRTC's instructions, (b) not place further orders or enter into further subcontracts relating to the terminated Goods or Services, (c) to the extent possible, terminate all existing orders with its Contractors and any subcontractors, and (d) settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the consent of GRTC's Contract Administrator or other expressly designated representative.

Upon termination, Contractor shall be entitled to (a) the compensation payable hereunder (but not yet paid) for Services rendered and conforming Services supplied through the effective date of termination and (b) the reasonable costs incurred by Contractor to terminate any executory subcontracts and to demobilize (the "Termination Payment"); provided, however, in no event shall the sum of any compensation previously paid and the Termination Payment exceed the compensation that would have otherwise been payable absent such a termination by GRTC. The Termination Payment shall not include any compensation for unabsorbed overhead or lost profits. Except for such Termination

payment, GRTC's obligation to compensate Contractor for Goods or Services shall be deemed to have been discharged upon termination.

After termination or cancellation, GRTC shall have no further liability other than to pay for Services performed and Goods delivered prior to the effective date of termination or cancellation.

Neither termination nor cancellation shall affect any rights either party may have with respect to any Goods delivered or Services performed prior to termination or cancellation, any pending dispute, or any rights either party may have with respect to any breach occurring prior to termination or cancellation.

**23. Buy America**

The Contractor agrees to comply with 49 U.S.C. § 5323(j), with FTA regulations, "Buy America Requirements," 49 CFR Part 661, and with implementing guidance FTA may issue.

The equipment to be purchased for this Contract is subject to the Federal Transit Administration Buy America Requirements in 49 CFR 661. The Contractor agrees that it has completed the Buy-America Certification made part of the Request for Proposals, and certifies that the products subject to this section used in connection with this Contract will comply with the requirements of Section 165 and the regulation as set forth. The Contractor understands that a false certification is a criminal act and in violation of 18 U.S.C. 1001. Willful refusal to comply with the certification by a Contractor may lead to initiation of debarment proceedings under 49 CFR Part 29.

**24. Cargo Preference – Use of U.S. Flag Vessels or Air Carriers**

The Contractor agrees to comply with U.S. Maritime Administration regulations, "Cargo Preference – U.S.-Flag Vessels," 46 CFR Part 381, to the extent those regulations apply to the project. The Contractor also agrees:

To utilize privately owned United States Flag Commercial vessels to ship at least 50% of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners and tankers) involved, whenever shipping any equipment, materials, or commodities pursuant to the section, to the extent such vessels are available at fair and reasonable rates to United States Flag Commercial vessels.

To furnish within thirty days following the date of loading for shipments originating within the United States, or within thirty working days following the date of loading for shipment originating outside the United States, a legible copy of a rated, "On Board" Commercial Ocean Bill-of-Lading in English for each shipment of cargo described in paragraph one above to the recipient (through the prime Contractor in case of sub-Contractor Bills-of Lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, 400 7th Street, S.W., Washington, D.C. 20590, marked with appropriate identification of the project.