

**AGREEMENT**

**Between**

**GREATER RICHMOND TRANSIT COMPANY**

**And**

[                    ]

**For**

**TRANSPORTATION SERVICES**

**Effective**

[                    ]

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### ATTACHMENTS

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## A G R E E M E N T

This Agreement (“Agreement”), effective as of December 1, 2017 is by and between Greater Richmond Transit Company, a Virginia corporation with offices at 301 East Belt Boulevard, Richmond, Virginia 23224 (“GRTC”), and [                    ], an [                    ] with a place of business at [                    ]. (“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 transportation 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, 2011, such Contract Year would be referred to hereunder as the Contract Year 2011.)

**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** – December 1, 2017

**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 4.2.

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

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

**Renewal Term** – as further defined in Article 2, any 12-month 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 Article 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 for three (3) Contract Years thereafter (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 period of one (1) Contract Year (a “Renewal Term”). At the end of the first Renewal Term, this Agreement shall expire unless GRTC, in its sole discretion, provides notice to Contractor of its intention to continue this Agreement for an additional Renewal Term.

**2.3.** GRTC may elect to renew this Agreement for up to one (1) Renewal Term following the first Renewal Term. For the avoidance of doubt, in no event shall the Term hereof exceed five (5) Contract Years.

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

**2.5.** 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”), at the GRTC Facilities (“Facilities”) or such other locations as may be set forth on Attachment A. 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.** Aside from the GRTC-furnished equipment specified in Attachment A, 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. Goods in Connection with the Services.** GRTC may also purchase Goods, as described generally on Attachment A, from Contractor in connection with the Services. "Goods" shall mean the 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. GRTC shall not be obligated to purchase any minimum quantity of Goods from Contractor. GRTC reserves the right to specify Goods suppliers to be used by Contractor, and Contractor agrees to use best efforts to utilize GRTC's specified Goods suppliers. All Goods purchased from Contractor shall be governed by the Supplemental Terms and Conditions for Goods Purchases set forth on Attachment C.

**4.3. Purchase Orders.** GRTC may use its purchase order forms to request Additional Services, order Goods, or facilitate payment for any Services or Goods. 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.

**4.4. Acceptance of the Work.**

**4.4.1. 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

(f) GRTC shall have delivered written notice to Contractor of its acceptance of the Services, as described below.

Upon the satisfaction of all of the conditions set forth in this Section 4.4.1, GRTC shall accept the Services by delivering to Contractor written notice of such acceptance. Upon such acceptance, Contractor shall turn over control and operation of the Services and Goods to GRTC, whereupon GRTC shall assume risk of loss for the Services and Goods.

**4.4.2. 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 4.4.1 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 4.4.2; 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 or Goods shall not constitute acceptance of that portion of the Services or Goods, or shorten the remedial periods otherwise provided in this Agreement.

## **5. COMPENSATION.**

**5.1.** GRTC shall compensate Contractor for the performance of the Services and purchase of Goods 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 and Goods provided during the immediately preceding month. No advance payment shall be made or accepted for Services performed or Goods provided 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, including, but not limited to, originals of GRTC-approved time sheets, and, as applicable, a copy of the Service Order or Contractor's Offer, invoices for subcontractor services and Goods. All applicable rebates, discounts and liquidated damages 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 or Goods, nor shall they relieve Contractor of its obligations to perform the Services and deliver the Goods 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 Article 10.1, and (b) agreeing to indemnify GRTC as provided in Article 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.

**7.5.** In procuring Services from a subcontractor hereunder, where possible, Contractor should actively seek to qualify new subcontractors to obtain the best overall value for GRTC. If the Services being subcontracted are of the type typically performed by Contractor or within Contractor's expertise, Contractor's charge for such Services must be the lesser of the actual amount paid by Contractor to such subcontractor or the amount that would have been charged by Contractor to GRTC for such Services pursuant to Attachment B had Contractor performed the Services itself.

## **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 Article 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 and Goods 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 Article 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 D. 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 days 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 Article 10 shall apply to Contractor's indemnity obligations under this Article 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 Article 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 Article 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 E. If a conflict shall arise between the provisions of this Agreement and any FTA requirement in Attachment E, 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 for any or no reason upon 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. Effect of Termination or Cancellation.**

**17.2.1.** When Contractor receives notice of termination or cancellation for any reason, 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.

**17.2.2.** 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.

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

**17.2.4.** 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.

## **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 Article 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 Article 13 hereof or the terms and conditions of the Parties' Confidentiality Agreement set forth in Attachment D 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 Goods delivered and 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: 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

**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 Articles 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 E.
- (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 E.

**25. OTHER PROVISIONS.**

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

**25.2.** 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.

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

**25.4.** 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.

**25.5.** 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.

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

**26. ENTIRE AGREEMENT.** This Agreement, which includes this cover contract, the attachments, policies and rules referenced herein, and any purchase orders issued by GRTC for Goods, 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

### SUPPLEMENTAL TERMS AND CONDITIONS FOR GOODS PURCHASES

**1. Inconsistent Terms.** Notwithstanding Article 0 of the Agreement, in the event of any inconsistency or conflict among an purchase order issued pursuant to the Agreement, the Agreement, or this Attachment, the inconsistency or conflict shall be resolved by using the following order of precedence: (1) the terms and conditions on the face of such purchase order, (2) the FTA Requirements set forth in Attachment E, (3) the terms and conditions of the Agreement, and (4) the terms and conditions of this Attachment C.

**2. Variations in Quantities.** Any variation between the quantities specified and the quantities accepted by GRTC shall not constitute a failure by GRTC to comply with the Agreement, a purchase order or this Attachment. Payment shall be adjusted accordingly.

**3. Right to Inspect.** Payment before inspection of Goods shall not constitute acceptance. GRTC may, but need not, inspect the Goods at all reasonable times and places during their manufacture and before and after delivery. Goods shall be subject to final inspection by GRTC and acceptance at destination.

**4. Transportation.** All Goods shall be delivered F.O.B. to the Facility identified on the purchase order. Contractor shall make all arrangements for transportation of Goods to GRTC's designated Facility. Contractor shall bear the risk of damage to or loss of Goods during transportation until the Goods are delivered to GRTC's Facility and accepted by GRTC.

**5. Time of Essence.** All Goods shall be delivered within the time or times specified in a purchase order; provided, however, Contractor shall not be in breach to the extent any delay is due to force majeure as set forth in Article 18 of the Agreement provided Contractor acts in accordance with the obligations contained therein. Time is of the essence.

**6. Packing.** Contractor shall package all shipments in accordance with the requirements specified in each purchase order or, if not specified on an purchase order, in accordance with standard commercial practices. Each shipment must contain a packing list indicating the purchase order number, item numbers and other identifying information as may be directed by GRTC or reasonably necessary to facilitate timely delivery.

**7. Warranties.** Contractor warrants that all Goods supplied hereunder shall (a) be new and shall conform strictly to the description and specifications, if any, contained herein and (b) be free from defects in design (unless the design is provided or specified by GRTC or an agent acting on behalf of GRTC), workmanship and Goods.

**8. Insurance.** In addition to the insurance referenced in Article 10.1 of the Agreement, Contractor shall maintain adequate liability, employers' liability and workers' compensation insurance to protect GRTC and its agents, employees and contractors with respect to the indemnity contained in the Agreement. If requested, Contractor shall furnish evidence of such insurance in form and substance satisfactory to GRTC.

**9. Bankruptcy.** Subject to applicable bankruptcy law, in the event of any proceeding by or against Contractor in bankruptcy, reorganization or insolvency or for the appointment of a receiver or any assignment for the benefit of creditors, GRTC may terminate the purchase order without further liability except for conforming deliveries previously made.

**10. Title and Security Interests.** Title to Goods shall transfer from Contractor to GRTC at GRTC's Facility. If full or partial payment is made to Contractor prior to the delivery of all Goods hereunder, title to all Goods shall pass to GRTC, and Contractor shall be deemed a bailee of all Goods remaining in its possession, but in no event shall the risk of loss pass to GRTC until the Goods are delivered to the destination specified herein and accepted by GRTC. Additionally, Contractor grants to GRTC a security interest in all such Goods, which security interest shall be in addition to all other rights of GRTC under any purchase order or applicable law, and Contractor agrees to execute financing statements or such other documents as GRTC may reasonably require to perfect and protect that interest.

**11. Invoices and Payment.** If freight charges are to be paid by GRTC, they shall be shown as a separate item on the invoice and the paid freight bill or receipt must be attached. Delay in receiving accurate invoices shall be considered cause for withholding payment without loss of cash discount privilege. Discount periods shall begin when invoices are received at GRTC's address indicated herein or on the face of a purchase order issued pursuant to the Agreement. Payment for Goods shall not constitute acceptance of defective Goods.

**12. Miscellaneous.** Payment of any sum to Contractor by GRTC with knowledge of any breach shall not be deemed to be a waiver of such breach or any other breach.



**ATTACHMENT D**  
**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)	\$5,000,000
Personal and Advertising Injury Limit	\$5,000,000
General Aggregate Limit	\$5,000,000
Products and Completed Operations Aggregate Limit	\$2,000,000
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)	\$15,000,000
General Aggregate Limit (Other than Products –	

Completed Operations)	\$15,000,000
Products and Completed Operations Aggregate Limit	\$15,000,000

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

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**ATTACHMENT E**  
**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. False or Fraudulent Statements or Claims**

The Contractor acknowledges and agrees as follows:

- A. The Contractor recognizes that the requirements of the Program Civil Remedies Act of 1986, as amended, 31 U.S.C. subsection 3801 *et seq.* and U.S. Department of Transportation regulations, "Program Fraud Civil Remedies," 49 CFR Part 31, apply to its activities in connection with this Agreement. Accordingly, by signing the contract, the Contractor certifies or affirms the truthfulness and accuracy of each statement it has made, it makes, or it may make pertaining to the contract. In addition to other penalties that may apply, the Contractor also acknowledges that if it makes 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, as amended, on the Contractor to the extent the Federal Government deems appropriate.

- B. The Contractor also acknowledges that if it makes a false, fictitious or fraudulent claim, statement, submission, or certification to the Federal Government in connection with an urbanized area formula project financed with Federal assistance authorized by 49 U.S.C. section 5307, the Government reserves the right to impose on the Contractor the penalties of 18 U.S.C. section 1001 and 49 U.S.C. section 5307 (n) (1), to the extent the Federal Government deems appropriate.

## **5. Access to Records**

In addition to the requirements of the Cover Agreement, in accordance with 49 U.S.C. Section 5325(a) the Contractor agrees to provide GRTC, the FTA Administrator, the U.S. Secretary of Transportation, the Comptroller General of the United States, or their duly authorized representatives with access to all books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.

The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

The 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 GRTC, the FTA Administrator, the U.S. Secretary of Transportation, the Comptroller General of the United States, 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).

The Contractor agrees to include the above clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

## **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 (Form FTA MA (17) dated October, 2010) 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. Equal Employment Opportunity**

In connection with this project, the Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, or disability. The Contractor will take affirmative action to insure that qualified and approved applicants are employed, and that employees are treated during employment without regard to their race, religion, color, sex, age, or national origin. Such action will include, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment advertising, layoff or termination, rates of pay or other compensation, and selection for training, including apprenticeship. The Contractor will also notify any and all subcontractors or suppliers of its obligations under this contract related to this provision.

## **8. Civil Rights Requirements**

- A. Nondiscrimination in Federal Transit Programs – Contractor agrees to comply, and assures the compliance of each subcontractor, with the provisions of 49 U.S.C. section 5332, which prohibits discrimination on the basis of race, color, creed, national origin, sex, or age, and prohibits discrimination in employment or business opportunity.
- B. Nondiscrimination – Title VI of the Civil Rights Act – Contractor agrees to comply, and assures the compliance of each subcontractor, with all requirements prohibiting discrimination on the basis of race, color, or national origin of Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d *et seq.*, and U.S. DOT regulations, “Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of Civil Rights Act,” and 49 CFR Part 21, and any implementing requirements FTA may issue.
- C. Equal Employment Opportunity - The Contractor agrees to comply, and assures the compliance of each subcontractor, with all requirements of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, and 49 U.S.C. § 5332 and any implementing requirements FTA may issue. Those equal employment opportunity requirements include, but are not limited to, those listed in the Master Agreement (Form FTA MA (17) dated October, 2010) Section 12c(1) between GRTC and FTA.
- D. Access Requirements for Persons with Disabilities – The Contractor agrees to comply with the requirements of 49 U.S.C. § 5301(d), which states the Federal policy that the elderly and persons with disabilities have the same right as other persons to use mass transportation service and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement that policy. The Contractor also agrees to comply with all applicable requirements of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of handicaps, with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 *et seq.*, which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments to that Act, and with the Architectural Barriers Act of 1968, as amended, 42 U.S.C. §§ 4151 *et*

seq., which requires that buildings and public accommodations be accessible to persons with disabilities, including any subsequent amendments to that Act. In addition, Contractor agrees to comply with all applicable requirements of those regulations and any subsequent amendments listed in the Master Agreement (Form FTA MA (17) dated October, 2010) Section 12g between GRTC and FTA.

- E. 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.

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

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.

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.

## **10. Contract Assurance**

The Contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the 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.

## **11. Prompt Payment**

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than thirty days from the receipt of each payment the prime contractor receives from GRTC. The prime contractor agrees further to return retainage payments to each subcontractor within thirty days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above-referenced timeframe may occur only for good cause following written approval of GRTC. This clause applies to both DBE and non-DBE subcontractors.

- A. If the prime Contractor fails to pay the subcontractor within thirty days, the prime Contractor must notify GRTC and the subcontractor, in writing, of its intention to

withhold all or a part of the subcontractor's payment with the reason for nonpayment.

- B. The Contractor is obligated to pay interest to the subcontractor on all amounts owed by the Contractor that remain unpaid after thirty days following receipt by the Contractor of payment from GRTC for work performed by the subcontractor under that contract, except for amounts withheld as allowed in paragraph A of this section. Unless otherwise provided under the terms of the contract, interest shall accrue at the rate of one percent per month, except for the amounts withheld. Notification of failure by the Contractor to make prompt payment to the subcontractor hereinbefore provided will result in notification to the Contractor's bonding company by GRTC.
- C. Should either the prime Contractor or subcontractor advise GRTC of a payment issue involving a DBE Contractor, the DBELO officer shall be notified so as to investigate, as appropriate.

## **12. Energy Conservation**

Contractor agrees to comply with the mandatory energy efficiency standards and policies within the applicable State energy conservation plans issued in compliance with the Energy Policy and Conservation Act, 42 U.S.C. Subsection 6321 *et seq.*

## **13. Clean Air**

The Contractor agrees to comply with all applicable regulations, standards or orders implementing the Clean Air Act, as amended, 42 U.S.C. Subsection 7401 *et seq.* In addition:

- A. The Contractor agrees to comply with applicable requirements of U.S. EPA regulations, "Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed Funded or Approved Under Title 23 U.S.C. or the Federal Transit Act," 40 CFR Part 51 Subpart T; and "Determining Conformity of Federal Actions to State or Federal Implementation Plans," 40 CFR Part 93. To support the requisite air quality conformity finding for the Project, the Contractor agrees to implement each air quality mitigation and control measure incorporated in the Project. The Contractor further agrees that any project identified in an applicable State Implementation Plan (SIP) as a Transportation Control Measure will be wholly consistent with the description of the design concept and scope to the Project described in the SIP.
- B. U.S. EPA also imposes requirements implementing the Clean Air Act, as amended, that may apply to transit operators, particularly operators of large transit bus fleets. Accordingly, the Contractor agrees to comply with the following U.S. EPA regulations to the extent they are applicable to the project: "Control of Air Pollution from Motor Vehicles and Motor Vehicle Engines," 40 CFR Part 85; "Control of Air Pollution from New and In-Use Motor Vehicles and New and In-

Use Motor Vehicle Engines: Certification and Test Procedures,” 40 CFR Part 86; and “Fuel Economy of Motor Vehicles,” 40 CFR Part 600.

- C. Contractor agrees to comply with the notification of violating facilities requirements of Executive Order No. 11738, “Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans,” 42 U.S.C. § 7606 note.

The Contractor agrees to report and require each subcontractor at any tier to report any violation of these requirements resulting from Project implementation activity of any subcontractor or itself to FTA and the appropriate U.S. EPA office.

#### **14. Clean Water**

The 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.* In addition:

- A. The Contractor agrees to protect underground sources of drinking water consistent with the provisions of the Safe Drinking Water Act of 1974, as amended, 42 U.S.C. Subsection 300f *et seq.*
- B. The Contractor agrees to comply with the notification of violating facilities requirements of Executive Order No. 11738, “Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans,” 42 U.S.C. § 7606 note.
- C. The Contractor agrees to report and require each subcontractor at any tier to report any violation of these requirements resulting from Project implementation activity of any subcontractor or itself to FTA and the appropriate U.S. EPA office.

#### **15. Preference for Recycled Products**

To the extent applicable, the Contractor agrees to comply with U.S. Environmental Protection Agency (U.S. EPA) “Comprehensive Procurement Guidelines for Products Containing Recovered Materials,” 40 CFR Part 247, implementing section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. Section 6962, and otherwise provide a competitive preference for products and services that conserve natural resources and protect the environment and are energy efficient.

#### **16. Debarment, Suspension and Other Responsibility Matters**

- A. Contractor agrees to comply, and assures the compliance of all subcontractors, with Executive Orders Nos. 12549 and 12689, “Debarment and Suspension,” 31 U.S.C. § 6101 note, and U.S. DOT regulations, “Governmentwide Debarment and Suspension (Nonprocurement),” within 49 CFR Part 29.



- B. By signing this Agreement, Contractor provides a signed Certification Regarding Debarment, Suspension, and Other Responsibility Matters - Primary Covered transactions.
- C. The signed certification is a material representation of fact upon which reliance was placed when GRTC determined to enter into this transaction. If it is later determined that the Contractor knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, GRTC may terminate this transaction for cause of default.
- D. The Contractor shall provide immediate written notice to GRTC if at any time the Contractor learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- E. The terms “covered transaction,” “suspended,” “ineligible,” “lower tier covered transaction,” “participant,” “person,” “primary covered transaction,” “principal,” “proposal,” and “voluntarily excluded,” as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549.
- F. By signing this Agreement, the Contractor further certifies that all subcontractors are not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction.
- G. The Contractor further agrees that it and its subcontractors will provide immediate written notice if at any time the Contractor learns that their subcontractor’s certification was erroneous when submitted or has become erroneous because of changed circumstances.
- H. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- I. Except for transactions authorized under Paragraph E of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to all remedies available to the Federal Government, GRTC may terminate this transaction for cause or default.

**17. Lobbying Activities**

- A. The 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. The 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, the Contractor is required to have all subcontractors providing more than \$100,000 in services to also complete this certification.

**18. Fly America**

The Contractor understands and agrees that the Federal Government will not participate in the costs of international air transportation of any persons involved in or property acquired for the project unless that air transportation is provided by U.S.-flag air carriers to the extent service by U.S.-flag air carriers is available, in accordance with the International Air Transportation Fair Competitive Practices Act of 1974, as amended, 49 U.S.C. § 40118, and with U.S. GSA regulations, “Use of United States Flag Air Carriers,” 41 CFR §§ 301-10.131 through 301-10.143.

**19. 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.

## **20. Prevention of Substance Abuse by Safety Sensitive Employees**

- A. Drug Abuse – To the extent that the Contractor, any subcontractor at any tier, or their employees, perform a safety sensitive function under the Project, the Contractor agrees to comply with, and assures the compliance of each affected subcontractor at any tier, and their employees with U.S. DOT regulations, “Drug-Free Workplace Requirements (Grants),” 49 CFR Part 29, Subpart F, as modified by 41 U.S.C. subsection 712 *et seq.*
- B. Alcohol Abuse – To the extent that the Contractor, any subcontractor at any tier, or their employees, perform a safety sensitive function under the Project, the Contractor agrees to comply with, and assures the compliance of each affected subcontractor at any tier, and their employees with FTA regulations, “Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations,” 49 CFR Part 655.

## **21. Privacy**

Should Contractor, or any of its subcontractors, or their employees administer any system of records on behalf of the Federal Government, the Privacy Act of 1974, 5 U.S.C. § 552a, imposes information restrictions on the party administering the system of records.

For purposes of the Privacy Act, when the Agreement involves the operation of a system of records on individuals to accomplish a government function, the recipient and any Contractors, third party Contractors, Subcontractors and their employees involved therein are considered to be government employees with respect to the government function. The requirements of the Act, including the civil and criminal penalties for violations of the Act, apply to those individuals involved. Failure to comply with the terms of the Act or this provision of this Agreement will make this Agreement subject to termination.

Contractor agrees to include this clause in all subcontracts awarded under this Agreement, which involve the design, development, operation, or maintenance of any system of records on individuals subject to the Act.

## **22. Transit Employee Protective Arrangements**

If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5310(a)(2), and if the U.S. Secretary of Transportation has determined or determines in the future that the employee protective requirements of 49 U.S.C. § 5333(b) are necessary or appropriate for the state and the public body subrecipient for which work is performed on the underlying contract, the Contractor agrees to carry out the Project in compliance with the terms and conditions determined by the U.S. Secretary of Labor to meet the requirements of 49 U.S.C. § 5333(b), U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the U.S. DOL's letter of certification to FTA, the date of which is set forth in the Grant Agreement or Cooperative Agreement with the state. The Contractor agrees to perform transit operations in connection with the underlying contract in compliance with the conditions stated in that U.S. DOL letter. The U.S. DOL certification and any documents cited therein are incorporated by reference and made part of the Grant Agreement or Cooperative Agreement.

The Contractor also agrees to include any applicable requirements in each subcontract involving transit operations financed in whole or in part with Federal assistance provided by FTA.

## **23. Charter Service Operations**

The contractor agrees to comply with 49 U.S.C. 5323(d) and 49 CFR Part 604, which provides that recipients and subrecipients of FTA assistance are prohibited from providing charter service using federally funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except under one of the exceptions at 49 CFR 604.9. Any charter service provided under one of the exceptions must be "incidental," i.e., it must not interfere with or detract from the provision of mass transportation.

## **24. School Bus Operations**

Pursuant to 49 U.S.C. 5323(f) and 49 CFR Part 605, recipients and subrecipients of FTA assistance may not engage in school bus operations exclusively for the transportation of students and school personnel in competition with private school bus operators unless qualified under specified exemptions. When operating exclusive school bus service under an allowable exemption, recipients and subrecipients may not use federally funded equipment, vehicles, or facilities.

## **25. 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. The 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.

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