

**EXHIBIT E
CONTRACTUAL TERMS AND CONDITIONS
(PROFESSIONAL SERVICES CONTRACT)**

DEFINITIONS

As used throughout this Contract, the following terms shall have the meaning set forth below:

- (a) **Acceptance or Accepted:** Written documentation of GRTC's determination that the Contractor's Work has been completed in accordance with the Contract.
- (b) **Addendum/Addenda:** Written additions, deletions, clarification, interpretations, modifications or corrections to the solicitation documents issued by GRTC during the Solicitation period and prior to contract award.
- (c) **Administrative Change:** Documentation provided by GRTC to Contractor, which reflects internal GRTC procedures not affecting the Contract terms or Scope of Work.
- (d) **"Applicable Anti-Corruption and Bribery Laws"** means international, federal, state, provincial and local laws, rules, regulations, directives and governmental requirements currently in effect and as they become effective relating in any way to the Contractor's provision of goods and/or services to GRTC, including without limitation "FCPA" or any applicable laws and regulations, including in the jurisdiction in which the Contractor operates and/or manufactures goods for GRTC, relating to anti-corruption and bribery.
- (e) **Best and Final Offer:** Best and Final Offer shall consist of the Proposer's revised proposal, the supplemental information, and the Proposer's Best and Final Offer. In the event of any conflict or inconsistency in the items submitted by the Proposer, the items submitted last will govern.
- (f) **Bidder/Proposer or Offeror:** Individual, association, partnership, firm, company, corporation or a combination thereof, including joint ventures, submitting a bid/proposal to perform the Work.
- (g) **Buyer:** Individual designated by GRTC to conduct the Contract solicitation process, draft and negotiate contracts, resolve contractual issues and support the Project Manager during Contract performance.
- (h) **Change Documentation:** A written document agreed upon by Project Managers, which if it creates a material change to the Contract term or Scope of Work shall be executed as a Contract Amendment.
- (i) **"Change Order"** means a written order to the Contractor signed by the Contracting Officer, issued after execution of the Contract, authorizing a change in the term or scope of the Contract.

- (j) "Contract" or "Contract Documents" means this written agreement between the parties comprised of all the documents listed in the Table of Contents, Change Orders and/or Contract Modifications that may be entered into by the parties.
- (k) "Contract Award Date" means the date of the Contract award notice, which may take the form of a purchase order, signed Contract or Notice of Award, issued by GRTC.
- (l) "Contract Modification" means any changes in the terms or provisions of the Contract which are reduced to writing and fully executed by both parties.
- (m) "Contract Sum" means the total compensation payable to the Contractor for performing the Services as originally contracted for or as subsequently adjusted by Contract Modification.
- (n) "Contract Term" means period of performance set forth in the paragraph entitled "Term" contained in Exhibit E.
- (o) "Contracting Officer"/" Contracts Administrator" means a person with GRTC to enter into, administer, and/or terminate contracts and make related determinations and finding on behalf of GRTC. The term includes certain authorized representatives of the Contracting Officer acting within the limits of their GRTC as delegated by the Contracting Officer.
- (p) "Contractor" means the entity that has assumed the legal obligation to perform the Services as identified in the Contract.
- (q) "Days" means calendar days. In computing any period of time established under this Contract, the day of the event from which the designated period of time begins to run shall not be included, but the last day shall be included unless it is a Saturday, Sunday, or Federal or Commonwealth of Virginia holiday, in which event the period shall run to the end of the next business day.
- (r) "Deliverables" means (i) any deliverables or other work product that will be generated, prepared, created, or developed by the Contractor (or such third parties as the Contractor may be permitted to engage) at any time following the effective date of the Contract for the use by GRTC under the Contract.
- (s) Documentation: Technical publications relating to the use of the Work to be provided by Contractor under this Contract, such as reference, user, installation, systems administration and technical guides, delivered by the Contractor to GRTC.
- (t) DOT: Department of Transportation.
- (u) "FAR" means the Federal Acquisition Regulations codified in 48 C.F.R. Title 48.
- (v) "FCPA" means the United States Foreign Corrupt Practices Act, 15 U.S.C. §§ 78dd-1, et seq., as amended.

- (w) Final Acceptance: The point when GRTC acknowledges that the Contractor has performed the entire Work in accordance with the Contract.
- (x) "Force Majeure Event" means strikes, lockouts, or other industrial disputes; explosions, epidemics, civil disturbances, acts of domestic or foreign terrorism, wars within the continental United States, riots or insurrections; embargos, natural disasters, including but not limited to landslides, earthquakes, floods or washouts; interruptions by government or court orders; declarations of emergencies by applicable federal, state or local authorities; and present or future orders of any regulatory body having proper jurisdiction.
- (y) "FTA" means the Federal Transit Administration.
- (z) "Fully Burdened Hourly Labor Rate" means an hourly rate that includes all salary, overhead costs, general and administrative expenses, and profit.
- (aa) "GRTC" means Greater Richmond Transit Company.
- (bb) "GRTC Data" means all data, content and information (i) submitted by or on behalf of GRTC or its customers to the Contractor or loaded into the System, (ii) obtained, developed, produced or processed by the Contractor or by the Application or System in connection with the Contract, or (iii) to which the Contractor has access in connection with the Contract, and all derivative versions of such data, content and information, and any derivative versions thereof, in any form or format.
- (cc) "GRTC Electronic Property" means (i) any websites controlled by GRTC, (ii) any GRTC mobile device apps, (iii) any application programming interfaces (API) to GRTC's information technology systems, (iv) any other kiosks, devices or properties for consumer interaction that are created, owned, or controlled by GRTC, and (v) versions and successors of the foregoing, any form or format now known or later developed, that may be used by customers obtaining products or services from GRTC.
- (dd) "Intellectual Property Rights" means the worldwide legal rights or interests evidenced by or embodied in: (i) any software, design, method, process, technique, apparatus, invention, discovery, or improvement, including any patents, trade secrets, and know-how; (ii) any work of authorship, including any copyrights, and any derivative works thereto; (iii) any trademark, service mark, trade dress, trade name, or other indicia of source or origin; (iv) domain name registrations; and (v) any other proprietary or similar rights. The Intellectual Property Rights of a party include all worldwide legal rights or interests that the party may have acquired by assignment or license with the right to grant sublicenses.
- (ee) "Manufacturing Materials" mean any completed or partially completed supplies and materials, parts, dies, jigs, fixtures, plans, drawings, information, and contract rights specifically produced or specially acquired by the Contractor for the performance of the Contract.
- (ff) "Notice of Award" means formal notice of award of the Contract to the Contractor issued by the Contracting Officer.

- (gg) "Notice to Proceed" means written authorization for the Contractor to start the Services.
- (hh) Person: Includes individuals, associations, firms, companies, corporations, partnerships, and joint ventures.
- (ii) "Project Manager" means the designated individual to act on behalf of GRTC, to monitor and certify the technical progress of the Contractor's Services under the terms of this Contract.
- (jj) "Proposal" means the offer of the proposer, submitted on the prescribed form, stating prices for performing the work described in the Scope of Services.
- (kk) Reference Documents: Reports, specifications, and/or drawings that are available to Proposers for information and reference in preparing proposals but not as part of this Contract.
- (ll) RFP or Solicitation: Request for proposals. Also known as the solicitation document.
- (mm) Scope of Work or Statement of Work (SOW): A section of the Contract consisting of written descriptions of Services to be performed, or the goods to be provided, or the technical requirements to be fulfilled under this Contract contained within the Scope of Work Section.
- (nn) Shall or Will: Whenever used to stipulate anything, Shall or Will means mandatory by either the Contractor or GRTC, as applicable, and means that the Contractor or GRTC, as applicable, has thereby entered into a covenant with the other party to do or perform the same.
- (oo) "Services" means the services to be performed by the Contractor under this Contract, and includes services performed, workmanship, and supplies furnished or utilized in the performance of the Services.
- (pp) Specifications or Technical Specifications: A Section of the Request for Proposals consisting of written descriptions of services to be performed under this Contract.
- (qq) "Subcontract" means the Contract between the Contractor and its Subcontractors.
- (rr) "Subcontractor" means subcontractors of any tier.
- (ss) Submittals: Information that is submitted to the Contract Administrator in accordance with the Scope of Work/Specifications.
- (tt) VDMBE: Virginia Department of Minority Business Enterprise
- (uu) "Works" means any tangible or intangible items or things that have been or will be specifically, generated, prepared, created, or developed by the Contractor (or such third parties as the Contractor may be permitted to engage) at any time following the effective date of

the Contract, for the exclusive use of, and ownership by, GRTC under the Contract, including but not limited to any (i) works of authorship (such as literary works, musical works, dramatic works, choreographic works, pictorial, graphic and sculptural works, motion pictures and other audiovisual works, sound recordings and architectural works, which includes but is not limited to manuals, instructions, printed material, graphics, artwork, images, illustrations, photographs, computer software, scripts, object code, source code or other programming code, HTML code, data, information, multimedia files, text web pages or web sites, other written or machine readable expression of such works fixed in any tangible media, and all other copyrightable works), (ii) trademarks, service marks, trade dress, trade names, logos, or other indicia of source or origin, (iii) ideas, designs, concepts, personality rights, methods, processes, techniques, apparatuses, inventions, formulas, discoveries, or improvements, including any patents, trade secrets and know-how, (iv) domain names, (v) any copies, and similar or derivative works to any of the foregoing, and (vi) all documentation and materials related to any of the foregoing.

1. FIXED PRICE CONTRACT

- (a) This is a fixed price Contract for the Services specified and stated elsewhere in the Contract.
- (b) This is an indefinite-quantity Contract for the supplies or Services specified and stated elsewhere in the Contract. The quantities of supplies and Services specified are estimates only and are not purchased by this Contract.
- (c) This indefinite quantity, indefinite delivery Contract is subject to the following minimum/maximum paragraph:
 - (1) Minimum order. GRTC will order a minimum of \$10,000 in services under this Contract.
 - (2) Maximum order. GRTC will order a maximum not to exceed \$80,000,000.
- (d) There is no limit to the number of orders that may be placed under this Contract.

2. TERM

The term of the Contract shall be Five (5) years from the Contract notice to proceed. No Services shall be performed under this Contract prior to issuance of a Notice to Proceed.

3. RESERVED

GRTC shall have the unilateral right and option to extend the Contract for up to two (2) option periods for a twelve (12) month duration each at the option prices set forth in Exhibit A - Pricing Schedule upon written notice to the Contractor.

4. ADDITIONAL OPTION TO EXTEND CONTRACT PERFORMANCE

GRTC shall have the unilateral right and option to require continued performance of any services within the limits and rates specified in the Contract. This option may be exercised more than once, but the extension of performance hereunder shall not exceed a total of 6 months. GRTC may exercise the option by written notice to the Contractor.

5. INVOICING AND PAYMENT

- a) **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 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. Invoices shall be submitted to:

Greater Richmond Transit Company
Attn: Accounts Payable
301 E. Belt Boulevard
Richmond, Virginia 23224
Or Email: ap@ridegrtc.com

Invoices shall be legible and shall contain, as a minimum, the following information:

- i. the Contract and order number (if any)
 - ii. a complete itemization of all costs including quantities ordered and delivery order numbers (if any)
 - iii. any discounts offered to GRTC under the terms of the Contract
 - iv. evidence of the acceptance of the supplies or Services by GRTC; and
 - v. any other information necessary to demonstrate entitlement to payment under the terms of the Contract.
- b) **Payment:** 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.
- c) **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 shall be in addition to all other rights and remedies available to it under this Agreement, at law or in equity.

d) PAYMENT MILESTONES

Payments shall be made in accordance with Section 6, Invoicing and Payment of this Exhibit E.

6. ORDERING AND PRICING LIMITATIONS

(a) Work to be performed under this Contract shall be ordered through issuance of written Task Orders. There is no limitation to the number of Task Orders issued under this Contract.

(b) Prior to issuance of a written Task Order GRTC shall provide notification to the Contractors of the supplies or Services required by the Task Order.

(c) When Contractor is requested to submit a pricing proposal, the Contractor shall return a complete and itemized cost breakdown, inclusive of labor hours, material/travel/other reimbursable costs, etc., and a timeline with milestones for the completion of work within the time stated in the request. Failure to timely respond may result in the award of the Task Order to the next contractor in rotation, if applicable. Fully Burdened Labor Hour Rates shall be those specified in the Contract. If GRTC does not agree with the proposed labor disciplines, number of labor hours, material/travel/other costs or timelines, GRTC reserves the right to negotiate with the Contractor so as to arrive at a final agreement for the task. Following final agreement, a written Task Order may be issued.

(d) Services under this Contract shall commence upon the issuance of each fully executed Task Order. Completion of all requirements under each and every Task Order shall correlate to an expeditious prosecution of the milestones that are not dependent upon factors beyond the direct control of the Contractor.

(e) GRTC will reimburse actual travel expenses up to the not to exceed amount provided detailed travel expense records are provided with copies of receipts. GRTC will not pay travel expenses for local travel within the Richmond metropolitan area, and all air fares cannot be reimbursed at a rate higher than coach fare. Fair and reasonable car rental rates are deemed to be \$50 per day. Any travel conducted pursuant to this Contract shall not be billed in excess of the maximum per diem rates for lodging and meals as established by the U.S. General Services Administration. First and Last Day of travel is limited to seventy-five percent (75%) of meals and

incidental expenses. Please see GSA Domestic Per Diem Rates at <http://www.gsa.gov/portal/category/100120>.

(f) Reimbursable expenses are limited to direct pass-through of all fees paid. All material/travel/other reimbursable costs (including Subcontractor costs) shall be reimbursed to the Contractor by task and at actual cost with no administrative or other mark-ups (including Subcontractor costs). In no event may the total of these costs by task exceed the total in the Task Order. In the event the Contractor believes material/other costs will be exceeded, the Contractor shall immediately notify GRTC and submit a revised estimate for these costs by task. The Contractor shall not proceed with work in excess of that described in the written Task Order unless the Task Order is modified in writing by GRTC.

(g) When a price proposal is requested, proposals must represent a complete cost projection, including Fully Burdened Hourly Labor Rates by job classification, reimbursable expenses, and other activities associated with the proposed Task Order. All Subcontractor costs must also be included and shall not be singled out as separate tasks in of themselves.

(h) Written Task Orders shall contain a complete description of the work, an itemization of the estimated material/travel and other costs and the fixed labor fee agreed to by the parties.

(i) Labor hours shall not be billed as reimbursable expenses.

(j) No payment for costs incurred prior to issuance of a written Task Order shall be payable to the Contractor.

(k) Any order issued during the effective period of this Contract and not completed within that period shall be completed by the Contractor within the time specified in the order, except that no Task Order shall be issued if the performance period in the Task Order would extend more than one hundred twenty (120) days past the Contract completion date. The Contract shall govern the Contractor's and GRTC's rights and obligations with respect to that order to the same extent as if the order was completed during the Contract's effective period.

(l) See section 10 below for the process for awarding task orders.

7. INSURANCE

GRTC MINIMUM COVERAGE REQUIREMENTS

a) **Comprehensive General Liability Insurance** Coverage with limits of not less than Five Million Dollars and No/100 Dollars (\$5,000,000) per occurrence Combined Single Limit of Liability for Bodily Injury and Property Damage with an aggregate of Five Million Dollars and No/100 Dollars (\$5,000,000) with coverage that includes:

- i. Products and Completed Operations Liability
- ii. Independent Contractors

- iii. Personal Injury Liability extended to claims arising from employees of Contractor and GRTC.
 - iv. Contractual Liability pertaining to the liabilities assumed in the agreement.
- b) **Workers' Compensation Insurance** providing statutory limits in accordance with the Virginia Workers' Compensation Act and/or other State or Federal law as may be applicable to the work being performed under this Contract.
 - c) **Business Automobile Liability Insurance** with minimum coverage limits of not less than Two Fifty Thousand Dollars and No/100 Dollars (\$250,000) with combined single limit of Two Hundred Fifty Thousand Dollars and No/100 Dollars (\$250,000), covering all owned, hired and non-owned automobiles used in connection with work for Bodily Injury and Property Damage.
 - d) **Employer Liability Insurance** with minimum limits of Five Hundred Thousand Dollars and No/100 Dollars (\$500,000).
 - e) **Professional Liability Insurance** covering negligent acts, errors and omissions arising from the Contractor's work to pay damages for which the Contractor may become legally obligated. Minimum limits of liability shall be not less than One Million Dollars and No/100 Dollars (\$1,000,000) on an annual aggregate basis.
 - f) **Umbrella liability coverage** with limits not less than Ten Million Dollars and No/100 Dollars (\$10,000,000).
 - g) **Technology Error's & Omissions Insurance:** Combined Technology & Omissions Policy with a minimum One Million Dollars and No/100 Dollars (\$1,000,000) claim limit, including (a) Professional Liability Insurance covering negligent acts, errors and omissions arising from the Contractor's work to pay damages for which the Contractor may become legally obligated (such coverage to be maintained for at least two (2) years after termination of this contract, which obligation shall expressly survive termination of this contract; and (b) Privacy, Security and Media Liability Insurance providing liability for unauthorized access or disclosure, security breaches or system attacks, as well as infringement of copyright and trademark that might result from this contract.
 - h) **Builders Risk/Equipment Installation insurance** covering the full value of the construction values at risk. Insurance should provide coverage for all perils and provide Replacement Cost for the equipment and construction materials in the event of a loss. One Million and No/Dollars (\$1,000,000).
 - i) The Contractor, and all of its insurers shall, in regard to the above stated insurance, agree to waive all rights of recovery or subrogation against GRTC, its directors, officers, employees, agents, successors and assigns, and GRTC's insurance companies arising out of any claims for injury(ies) or damages resulting from the work performed by or on behalf of the Contractor under this Contract and/or use of any GRTC premises or equipment under this Contract.

- j) Each insurance policy shall contain the following endorsements: PRIMARY AND NON-CONTIBUTORY INSURANCE and WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS, which shall be evidenced on the Certificate of Insurance. The General Liability insurance shall include contractual endorsement(s) which acknowledge all indemnification requirements under the Agreement. All required endorsements shall be evidenced on the Certificate of Insurance. Proof that insurance coverage exists shall be furnished to GRTC by way of a Certificate of Insurance before any part of the Contract work is started.
- k) If any insurance coverage required to be provided by the Contractor is canceled, terminated, or modified so that the required insurance coverages are no longer in full force and effect, GRTC may terminate this Contract or obtain insurance coverages equal to the required coverage, the full cost of which will be the responsibility of the Contractor and shall be deducted from any payment due the Contractor.
- l) If any part of the Contract is sublet, Contractor shall be liable for its Subcontractor's insurance coverages of the types and in the amounts stated above and shall furnish GRTC with copies of such Certificates of Insurance. No delay in the work caused by the Contractor's enforcement of its Subcontractor's insurance requirements shall be excusable delay in the contract. In the event a Subcontractor is unable to furnish insurance in the limits required under the Contract, the Contractor shall endorse the Subcontractor as an ADDITIONAL INSURED on the Contractor's policies.
- m) All insurance required to be maintained or provided by the Contractor shall be with companies and through policies approved by GRTC. GRTC reserves the right to inspect in person, prior to the commencement of the Contract work, all of the Contractor's insurance policies required under this Contract.
- n) If the Contractor has procured insurance at the time of the Contractor's submission of the Contractor's bid, proof of the required insurance should be submitted with the Contractor's bid or proposal. Alternatively, the Contractor is requested to submit evidence of a commitment from an insurance company or companies, or a duly licensed agent, that the Contractor has made arrangements for the required insurance. If the bid or proposal is considered for award, and the Contractor has not previously furnished either the proof of insurance or evidence of commitment, the Contractor will be required to provide proof of the insurance or evidence of a commitment within five (5) days of request. If the Contractor is awarded the bid and has submitted evidence of commitment rather than proof of the required insurance, the Contractor must furnish proof of the required insurance within five (5) days of the award of the contract. The Certificate of Insurance must indicate the Contract number and description. The insurance certificate should be furnished to the attention of the Contracting Officer.
- o) The Contractor and its lower tier Subcontractors are required to cooperate with GRTC and report all potential claims (workers' compensation, general liability and automobile liability) pertaining to this Contract to GRTC's Director of Procurement.

8. PERFORMANCE OF SERVICES BY THE CONTRACTOR

Except as otherwise provided herein, the Contractor shall perform no less than thirty percent (30%) of the Services with its own organization. If, during the progress of Services hereunder, the Contractor requests a reduction in such performance percentage and GRTC determines that it would be to GRTC's advantage, the percentage of the Services required to be performed by the Contractor may be reduced; provided, written approval of such reduction is obtained by the Contractor from GRTC.

9. REMOVAL OF ASSIGNED PERSONNEL

GRTC may require, in writing, that the Contractor remove from the Services any employee or Subcontractor of the Contractor that GRTC deems inappropriate for the assignment.

10. PROCESS FOR AWARDING TASK ORDERS - TWO STEP METHOD:

GRTC will ensure that each contractor has a fair opportunity for award of Task Orders in accordance with the following procedures:

- (a) Prior to awarding a task order, GRTC will determine evaluation criteria for that task order and will request a technical proposal from all contractors.
- (b) The technical proposals will be evaluated by a small team of evaluators using the pre-determined evaluation criteria.
- (c) The firm which is deemed most qualified will be requested to submit a price proposal and negotiations will be conducted with that firm if needed.
- (d) In the event GRTC is unable to reach an agreement with the most qualified firm, negotiations with that firm will be terminated and a price proposal will be requested from the next most qualified firm.
- (e) The process will continue until GRTC reaches an agreement. The task order will then be awarded.
- (f) The Contractor is not required to submit a price proposal for every request for proposals. However, failure to respond to a reasonable number of proposals during the Contract Term may result in GRTC not exercising its option to extend the Contract.

11. INDEPENDENT CONTRACTOR

- a) Contractor is an independent contractor for all purposes in connection with this Contract and is solely responsible for workers' compensation, unemployment compensation, social security, payroll taxes and all similar obligations affecting its employees. This Contract 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.

- b) The Contractor shall pay a living wage(s), salaries, and other amounts due its employees, no less than \$15.00 per hour, in connection with this Contract and shall be responsible for all reports and obligations respecting them, such as Social Security, income tax withholding, unemployment compensation, workers' compensation and similar matters.

12. COMPOSITION OF CONTRACTOR

If the Contractor hereunder is comprised of more than one legal entity, each such entity shall be jointly and severally liable hereunder.

13. SUBCONTRACTORS AND OUTSIDE CONSULTANTS

- a) No approved subcontractor shall perform any Services hereunder without first (a) providing evidence of insurance as required by Section 7, Insurance of this Exhibit E and (b) agreeing to indemnify GRTC as provided in Section 21, Intellectual Property; Data Privacy Provisions and Section 40, Indemnification, of this Exhibit E. 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.
- b) 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 Exhibit A, Pricing Schedule had Contractor performed the Services itself.

14. **Equitable Adjustments**

- a) 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 Contract will be modified in writing accordingly. Every Change Order may require a cost analysis to determine the reasonableness of the proposed change.
- b) All changes to the Contract 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 the Contractor.
- c) Any claim by Contractor for an equitable adjustment under this Section 14 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.
- d) 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.
- e) Contractor shall continue to perform the Services in accordance with this Contract, 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 46, Dispute Resolution of this Exhibit E.

15. **PERSONNEL ASSIGNMENTS**

- a) The Contractor shall perform the Services in an orderly and workmanlike manner and shall employ persons skilled and qualified for the performance of the Services assigned to such persons under the Contract. GRTC will have the right to review the experience of each candidate and approve assignments of the Contractor's personnel.
- b) The Contractor certifies that the Contractor has established a criminal history background policy that complies with guidance issued by the U.S. Equal Employment Opportunity Commission and that the Contractor conducts criminal history checks on its assigned personnel in accordance with such policy to identify, hire and assign personnel to work on this Contract whose criminal backgrounds are appropriate for the work being performed, considering the risk and liability to the Contractor and GRTC. GRTC reserves the right to require

the Contractor to disclose any criminal or military criminal convictions of assigned personnel and the right to disapprove the use of assigned personnel with criminal or military convictions.

16. BADGES AND ACCESS CONTROL DEVICES

- a) The Contractor and each of the Contractor's employees, as well as each Subcontractor of any tier and any workers working on behalf of Subcontractor, shall be required to wear a GRTC Contractor Photo Identification Badge ("badge") at all times while on GRTC's premises. The badge will be provided by GRTC. If any badge holder loses or misplaces his or her badge, the Contractor shall immediately notify GRTC Human Resources Department upon discovery. The Contractor will be charged a \$10.00 replacement fee for each lost or misplaced badge, which fee shall be deducted any amounts due and owing to the Contractor or if the Contract is terminated upon demand by GRTC. The Contractor shall return all badges provided when any badge holder is no longer working on the Contract, and all badges shall be returned upon completion of the Contract. In the event the Contractor fails to do so, the Contractor will pay a \$10.00 per badge fee deducted from any amounts due and owing to the Contractor or if the Contract is terminated upon demand by GRTC. All badges should be returned to GRTC Human Resources Department. All requests for new and replacement badges must be submitted in writing to the GRTC Human Resources Department. The misuse of a badge may result in termination of the Contract.

- b) Access Control Devices will be issued to employees of the Contractor and to each Subcontractor of any tier and any worker working on behalf of Subcontractor as necessary to perform the Contract. Access Control Devices are not transferable between the Contractor employees or workers working on behalf of the Subcontractor. The Contractor employees and workers on behalf of the Subcontractor are prohibited from loaning Access Control Devices or providing access to an unauthorized person into restricted areas without prior arrangements with GRTC Human Resources Department. All requests for new and replacement Access Control Devices must be submitted in writing to the GRTC Human Resources Department. Lost Access Control Devices must be reported to the GRTC Human Resources Department immediately upon discovery. All Access Control Devices should be returned to GRTC Human Resources Department. The misuse of an Access Control Device(s) may result in termination of the Contract. The Contractor shall return all Access Control Devices once an assigned employee or worker is no longer working on the Contract or upon termination of the Contract. In the event the Contractor fails to do so, then the Contractor shall be responsible for the replacement cost of an Access Control Device which shall be deducted from any amounts due and owing to the Contractor or payable on demand if the Contract has terminated. The replacement cost will be calculated at current market value to include labor and materials.

- c) The provisions of this paragraph survive termination of the Contract.

17. RESERVED

18. TERMINATION FOR DEFAULT:

- a) The GRTC may, subject to the provisions of subparagraph (c) below, by written notice of default to the Contractor, terminate the whole or any part of this Contract in either one of the following circumstances:
 - i. if the Contractor fails to perform the Services within the time specified herein or any extension thereof; or
 - ii. if the Contractor fails to perform any of the other provisions of this Contract and does not cure such failure within a period of ten (10) days (or such longer period as the GRTC may authorize in writing) after receipt of notice from the GRTC specifying such failure.
- b) In the event the GRTC terminates this Contract in whole or in part as provided in subparagraph (a) of this paragraph, the GRTC may procure, upon such terms and in such manner as the GRTC may deem appropriate, supplies or services similar to those so terminated, and the Contractor shall be liable to the GRTC for any excess costs for such similar supplies or services; provided, that the Contractor shall continue the performance of this Contract to the extent, if any, it has not been terminated under the provisions of this subparagraph.
- c) If this Contract is terminated as provided in subparagraph (a), the GRTC, in addition to any other rights provided in this subparagraph, may require the Contractor to transfer title and deliver to the GRTC in the manner and to the extent directed by the GRTC any Manufacturing Materials as the Contractor has specifically produced or specifically acquired for the performance of such part of this Contract as has been terminated; and the Contractor shall, upon direction of the GRTC, protect and preserve property in possession of the Contractor in which the GRTC has an interest. Payment for completed Manufacturing Materials delivered to and accepted by the GRTC shall be at the Contract price. The GRTC may withhold from amounts otherwise due the Contractor for such completed Manufacturing Materials such sum as the GRTC determines to be necessary to protect the GRTC against loss because of outstanding liens or claims of former lien holders.
- d) If, after notice of termination of this Contract under the provisions of this paragraph, it is determined by the GRTC that the Contractor was not in default or that the default was excusable under the provisions of this paragraph, the rights and obligations of the parties shall be those provided in the paragraph entitled "Termination for Convenience" contained in this Exhibit E.
- e) The rights and remedies of the GRTC provided in this paragraph shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

19. Termination for Convenience:

- a) The GRTC may, whenever the interests of the GRTC so require, terminate this Contract, in whole or in part, for the convenience of the GRTC. The GRTC shall give written notice of the termination to the Contractor specifying the part of the Contract terminated and when termination becomes effective.

- b) The Contractor shall incur no further obligations in connection with the terminated orders, and, on the date set forth in the notice of termination, the Contractor will stop providing Services to the extent specified. The Contractor also shall terminate outstanding orders and subcontracts as they relate to the terminated order. The Contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated orders. The GRTC may direct the Contractor to assign the Contractor's right, title, and interest under terminated orders or Subcontracts to the GRTC. The Contractor must still complete any orders not terminated by the notice of termination and may incur such obligations as are necessary to do so.
- c) The GRTC may require the Contractor to transfer title and deliver to the GRTC in the manner and to the extent directed by the GRTC: (1) any completed supplies; and (2) such partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information and contract rights (hereinafter called "Manufacturing Materials") as the Contractor has specifically produced or specially acquired for the performance of the terminated part of this Contract. The Contractor shall, upon direction of the GRTC, protect and preserve property in the possession of the Contractor in which the GRTC has an interest. If the GRTC does not exercise this right, the Contractor shall use its best efforts to sell such supplies and Manufacturing Materials.
- d) Contractor shall be entitled to (a) the compensation payable hereunder (but not yet paid) for conforming Services provided through the effective date of termination and (b) the reasonable costs incurred by Contractor to terminate any executory subcontracts (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 the Services shall be deemed to have been discharged upon termination.
- e) 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.
- f) 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.

20. CONTRACTOR CERTIFICATION

The Contractor certifies that the fees in this Contract have been arrived at independently without consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such fees with any other firm or with any competitor.

21. INTELLECTUAL PROPERTY; DATA PRIVACY PROVISIONS

- a) Unless otherwise specified in Exhibit A to the Contract, the Deliverables and Intellectual Property Rights therein shall be owned by the Contractor. The Contractor may use its own previously developed data, documentation, software, concepts, materials, or information, in whatever form, or develop the Deliverables in performing its services for GRTC.
- b) Unless otherwise specified in Exhibit A to the Contract, the Contractor hereby grants to GRTC the irrevocable, perpetual, non-exclusive, worldwide, royalty-free right and license to use, execute, reproduce, display, perform, distribute copies of, and prepare derivative works of the Deliverables in connection with the sale, offering for sale, marketing, advertising, and promotion of GRTC's goods and services, and in all forms of media, media channels and/or publicity that may now exist or hereafter be created or developed, including but not limited to television, radio, print, Internet, and social media (e.g., Facebook, Twitter, YouTube, etc.) and to authorize its employees, contractors, personnel and service providers to do any or all of the foregoing on behalf of or for GRTC. The Contractor hereby irrevocably and forever waives, and agrees never to assert, any moral rights or other rights of restraint or attribution in or to the Deliverables that the Contractor may now have, or which may accrue to the Contractor's benefit under U.S. or foreign copyright laws and any and all other residual rights and benefits which arise under any other applicable law now in force or hereafter enacted.
- c) To the extent that any Intellectual Property Rights owned by a third-party are embodied, contained, reserved, or reflected in the Deliverables, the Contractor shall either:
 - i. grant to GRTC the irrevocable, perpetual, non-exclusive, worldwide, royalty-free right and license to use, execute, reproduce, display, perform, distribute copies of, and prepare derivative works based upon such pre-existing rights and any derivative works thereof in connection with the sale, offering for sale, marketing, advertising, and promotion of GRTC's goods and services, and in all forms of media, media channels and/or publicity that may now exist or hereafter be created or developed, including but not limited to television, radio, print, Internet, and social media (e.g., Facebook, Twitter, YouTube, etc.) and authorize others to do any or all of the foregoing, on behalf of or for GRTC; or
 - ii. where the obtaining of such rights is not reasonably practical or feasible, provide written notice to GRTC of such pre-existing or third-party rights or limitations, request GRTC's approval of such pre-existing or third-party rights, obtain a limited right and license to use such pre-existing or third-party rights on such terms as may be reasonably negotiated, and obtain GRTC's written approval of such pre-existing or third-

party rights and the limited use of same. The Contractor shall provide GRTC with documentation indicating a third party's written approval for the Contractor to use any third-party rights that may be embodied, contained, reserved, or reflected in the Works. **THE CONTRACTOR SHALL INDEMNIFY, DEFEND AND HOLD GRTC HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, REGULATORY PROCEEDINGS AND/OR CAUSES OF ACTION, AND ALL LOSSES, DAMAGES, AND COSTS (INCLUDING ATTORNEYS' FEES AND SETTLEMENT COSTS) ARISING FROM OR RELATING TO, DIRECTLY OR INDIRECTLY, ANY CLAIM OR ASSERTION BY ANY THIRD PARTY THAT THE DELIVERABLES INFRINGE ANY THIRD-PARTY RIGHTS.**

The foregoing indemnity obligation shall not apply to instances in which GRTC either:

- I. exceeded the scope of the limited license that was previously obtained by the Contractor and agreed to by GRTC, or
 - II. obtained information or materials, independent of the Contractor's involvement or creation, and provided such information or materials to the Contractor for inclusion in the Works, and such information or materials were included by the Contractor, in an unaltered and unmodified fashion, in the Deliverables.
- d) The Contractor hereby warrants and represents to GRTC that individuals or characters appearing or depicted in any advertisement, marketing, promotion, publicity or media, of any type or form that may now exist or hereafter be created or developed by or on behalf of the Contractor for the use by or benefit of GRTC, have provided their written consent for the use, reproduction, display, performance, and distribution of, and/or preparation of derivative works to, their persona or personality rights, including name, biographical information, picture, portrait, likeness, performance, voice and/or identity ("Personality Rights"), and have been compensated for such Personality Rights, if appropriate. If such permission has been obtained for a limited time, the Contractor shall be responsible for any costs associated with claims resulting from such use, etc., of the Personality Rights after the expiration of those time limits. **THE CONTRACTOR AGREES TO DEFEND, INDEMNIFY AND HOLD GRTC HARMLESS FROM ANY CLAIMS, INCLUDING BUT NOT LIMITED TO CLAIMS FOR INVASION OF PRIVACY, INFRINGEMENT OF THE RIGHT OF PUBLICITY, LIBEL, UNFAIR COMPETITION, FALSE ADVERTISING, INTENTIONAL OR NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS, COPYRIGHT OR TRADEMARK INFRINGEMENT, AND/OR CLAIMS FOR ATTORNEY'S FEES, RESULTING FROM SUCH USE, ETC., OF THE PERSONALITY RIGHTS.**
- e) The Contractor and its subcontractors and their respective employees and personnel may have access to GRTC Data (including without limitation, personally identifiable information ("PII")) in connection with the performance of the Contract. PII shall be any information that identifies or describes a person or can be directly linked to a specific individual, including ridership and usage data. Examples of PII include, but are not limited to, name, address, phone or fax number, signature, date of birth, e-mail address, method of payment, ridership and travel pattern data. Customer Personally Identifiable Information, or Customer PII, means any PII relating to GRTC's customers. To the extent any GRTC

Data (including PII) is made available to the Contractor under the Contract, the Contractor shall take reasonable steps maintain the confidentiality, security, safety, and integrity of all PII and other GRTC Data in accordance with GRTC's Proprietary Rights and Data Security Addendum, which will be attached as an addendum to the Contract, as applicable.

- f) The Contractor and its subcontractors, employees and consultants may have require access to GRTC Electronic Property and related GRTC Data in connection with the performance of services under the Contract. In such event, the Contractor agrees that it will, and it will cause its subcontractors and any of their respective employees and personnel to execute GRTC's Access and Use Agreement, which will be attached as an addendum to the Contract, as applicable.

This Section 21 will survive termination or expiration of this Agreement for any reason.

22. STANDARDS OF PERFORMANCE

The Contractor shall perform the Services hereunder in compliance with all applicable federal, state, and local laws and regulations. The Contractor shall use only licensed personnel to perform Services required by law to be performed by such personnel.

23. INSPECTIONS AND APPROVALS

- a) All Services performed by the Contractor, or its Subcontractors or consultants shall be subject to the inspection and approval of GRTC at all times, but such approval shall not relieve the Contractor of responsibility for the proper performance of the Services. The Contractor shall provide sufficient, safe, and proper facilities at all times for such inspection of the Services and shall furnish all information concerning the Services and give GRTC or its representatives free access at all reasonable times to the facilities where the Services are performed.
- b) The Contractor shall provide and maintain an inspection system acceptable to GRTC covering the Services under this Contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to GRTC during Contract performance and for as long afterwards and the Contract requires.
- c) GRTC has the right to inspect and test all Services called for by this Contract, to the extent practicable, at all times and places during the term of the Contract. GRTC shall perform inspections and tests in a manner that will not unduly delay the Services.
- d) If any of the Services do not conform with Contract requirements, GRTC may require the Contractor to perform the Services again in conformity with the Contract requirements, at no increase in the Contract Sum. When the defects in services cannot be corrected by performance, GRTC may (1) require the Contractor to take necessary action to ensure that future performance conforms to Contract requirements and (2) reduce the Contract Sum to reflect the reduced value of the Services performed.

- e) If the Contractor fails promptly to perform the Services again or to take the necessary action to ensure future performance in conformity with Contract requirements, GRTC may (1) by contract or otherwise, perform the Services and charge to the Contractor any cost incurred by GRTC that is directly related to the performance of such service or (2) terminate the Contract for default.

24. **SUSPENSION OF SERVICES**

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 24 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 14 of this Exhibit E.

25. **Payment to Subcontractors**

- a) Payments by contractors to subcontractors associated with GRTC contracts are subject to the time periods established in Section 6, Invoices and Payment of this Exhibit E.
- b) A false certification to GRTC under the provisions of the paragraph entitled "Invoicing and Payment" hereof may be a criminal offense.

26. **FEDERAL, STATE AND LOCAL TAXES**

The Contract Sum includes all applicable federal, state, and local taxes and duties. GRTC is exempt from payment of Federal, Excise and Transportation Tax, and Virginia Sales, Excise and Use Tax. Proposers will not include these taxes in their price(s). All other government taxes, duties, fees, licenses, permits, royalties, assessments, and charges shall be included in the proposed price.

27. **EQUAL OPPORTUNITY**

During the performance of this Contract, the Contractor agrees that it will, in good faith, afford equal opportunity required by applicable federal, state, or local law to all employees and applicants for employment without regard to race, color, religion, sex, national origin, disability or any other characteristic protected by federal, state or local law.

28. **CONFLICT OF INTEREST**

- a) Conflict of Interest – Contractor, by submitting a proposal to GRTC to perform or provide work, services, or materials, has thereby covenanted that it has no direct or indirect pecuniary or proprietary interest, and that it shall not acquire any interest, which conflicts in any manner or degree with the work, services, or materials required to be performed

and/or provided under this Contract and that it shall not employ any person or agent having any such interest. In the event that Contractor or its agents, employees or representatives hereafter acquires such a conflict of interest, it shall immediately disclose such interest to GRTC and take action immediately to eliminate the conflict or to withdraw from this Contract, as GRTC may require.

- b) Contingent Fees and Gratuities – Contractor, by submitting a proposal to GRTC to perform or provide work, services, or materials, has thereby covenanted:
- c) No person or selling agency except bona fide employees or designated agents or representatives of Contractor has been or will be employed or retained to solicit or secure this Contract with an agreement or understanding that a commission, percentage, brokerage, or contingent fee would be paid; and
- d) No gratuities, in the form of entertainment, gifts, or otherwise, were offered or given by Contractor or any of its agents, employees, or representatives, to any official, member or employee of GRTC or other governmental agency with a view toward securing this Contract or securing favorable treatment with respect to the awarding or amending, or the making of any determination with respect to the performance of this Contract.

29. GRATUITIES

GRTC may cancel this Contract, without liability to the Contractor, if it is found that gratuities in the form of entertainment, gifts, or otherwise were offered or given by the Contractor or any agent or representative to any GRTC official or employee with a view toward securing favorable treatment with respect to the performance of this Contract. In the event this Contract is canceled by GRTC pursuant to this provision, GRTC shall be entitled, in addition to any other rights and remedies, to recover from the Contractor a sum equal in amount to the cost incurred by the Contractor in providing such gratuities.

30. PUBLICATIONS

All published material and written reports submitted under this Contract must be originally developed material unless otherwise specifically provided in the Contract document. When material, not originally developed, is included in a report, it shall have the source identified. This provision is applicable when the material is in a verbatim or extensive paraphrased format.

31. REQUEST FOR INFORMATION

- a) The Contractor shall not provide information generated or otherwise obtained in the performance of its responsibilities under this Contract to any party other than GRTC and its authorized agents except as otherwise provided by this Contract or after obtaining the prior written permission of GRTC.
- b) This Contract, all data and other information developed pursuant to this Contract shall be subject to the Virginia Freedom of Information Act. GRTC shall comply with all aspects of the Virginia Freedom of Information Act.
- c) The Contractor is instructed that any requests for information regarding this Contract and any deliverables shall be referred to GRTC.

32. RIGHTS TO PROPOSAL AND CONTRACTUAL MATERIAL

- a) All documentation related to or prepared in connection with any proposal, including the contents of any proposal contracts, responses, inquiries, correspondence, and all other material submitted in connection with the proposal shall become the property of GRTC upon receipt.
- b) All documents, reports, data, graphics and other materials produced under this Contract shall become the sole possession of GRTC upon receipt and payment, subject only to the Contractor's professional obligation to maintain copies of its work product.

33. LIMITATION OF LIABILITY

In no event shall GRTC or its officers, directors, agents, or employees be liable in contract or tort, to the Contractor or its Subcontractors for special, indirect, incidental or consequential damages, resulting from GRTC's performance, nonperformance, or delay in performance of its obligations under this Contract, or GRTC's termination of the Contract with or without cause, or GRTC's suspension of the Services. This limitation of liability shall not apply to intentional tort or fraud. The Contractor shall include similar liability provisions in all its Subcontracts.

34. LAWS, STATUTES AND OTHER GOVERNMENTAL REQUIREMENTS

The Contractor agrees that it shall be in compliance with all laws, statutes, and other governmental requirements, regulations or standards prevailing during the term of this Contract.

35. CLAIMS

In the event that any claim, demand, suit, or other action is made or brought by any person, firm, corporation, or other entity against the Contractor arising out of this Contract, the Contractor shall give written notice thereof, to GRTC within three (3) working days after being notified of such claim, demand, suit, or action. Such notice shall state the date and hour of notification of any such claim, demand, suit, or other action; the name and address of the person, firm, corpo-

ration, or other entity making such claim or instituting or threatening to institute any type of action or proceeding; the basis of such claim, action, or proceeding; and the name of any person against whom such claim is being made or threatened. Such written notice shall be delivered either personally or by mail and shall be directly sent to the attention of the President/CEO, Greater Richmond Transit Company, 301 E. Belt Boulevard, Richmond, Virginia.

36. LICENSES AND PERMITS

The Contractor shall, without additional expense to GRTC, be responsible for obtaining any necessary licenses, permits, and approvals for complying with any federal, state, county, municipal, and other laws, codes, and regulations applicable to the Services to be provided under this Contract including, but not limited to, any laws or regulations requiring the use of licensed Subcontractors to perform parts of the work.

37. NOTICE OF LABOR DISPUTES

- a) If the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this Contract, the Contractor immediately shall give notice, including all relevant information, to GRTC.
- b) The Contractor agrees to insert the substance of this paragraph, including this subparagraph (b), in any Subcontract under which a labor dispute may delay the timely performance of this Contract; except that each Subcontract shall provide that in the event its timely performance is delayed or threatened by delay by any actual or potential labor dispute, the Subcontractor shall immediately notify the next higher tier Subcontractor or the Contractor, as the case may be, of all relevant information concerning the dispute.

38. PUBLICITY RELEASES

All publicity releases or releases of reports, papers, articles, maps, or other documents in any way concerning this Contract or the Services hereunder which the Contractor or any of its Subcontractors desires to make for the purposes of publication in whole or in part, shall be subject to approval by GRTC prior to release.

39. INTEREST OF PUBLIC OFFICIALS

The Contractor represents and warrants that no employee, official, or member of the Board of GRTC is or will be pecuniarily interested or benefited directly or indirectly in this Contract. The Contractor further represents and warrants that it has not offered or given gratuities (in the form of entertainment, gifts or otherwise) to any employee, official, or member of the Board of GRTC with a view toward securing favorable treatment in the awarding, amending, or evaluating the performance of this Contract. For breach of any representation or warranty in this paragraph, GRTC shall have the right to terminate this Contract without liability and/or have recourse to any other remedy it may have at law or in equity.

40. INDEMNIFICATION

- a) 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 Contractor's provision of Services and Goods under this Contract. 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.
- b) 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 40(a) 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.
- c) Right to Defense. Notwithstanding anything provided in this Section 40, 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.

41. Record Retention, Access to Records and Reports

- a) The Contractor will retain and will require its Subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the Contract, including, but not limited to, data, documents, reports, statistics, sub-agreements, leases, subcontracts, arrangements, other third-party agreements of any type, and supporting materials related to those records.
- b) If this is a cost-reimbursement, incentive, time and materials, labor hour, or price determinable Contract, or any combination thereof, the Contractor shall maintain, and GRTC and its representatives shall have the right to examine, all books, records, documents, and other evidence and accounting procedures and practices sufficient to reflect properly all direct and indirect costs of whatever nature claimed to have been incurred and anticipated to be incurred for the performance of this Contract.

- c) If the Contractor submitted certified cost or pricing data in connection with the pricing of this Contract or if the Contractor's cost of performance is relevant to any change or modification to this Contract, GRTC and its representatives shall have the right to examine all books, records, documents, and other data of the Contractor related to the negotiation, pricing, or performance of such Contract, change, or modification for the purpose of evaluating the costs incurred and the accuracy, completeness, and currency of the cost or pricing data submitted. The right of examination shall extend to all documents necessary to permit adequate evaluation of the costs incurred and the cost or pricing data submitted, along with the computations and projections used therein.
- d) The Contractor shall maintain all books, records, accounts and reports required under this paragraph for a period of at not less than three (3) 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 records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.
- e) The Contractor agrees to provide sufficient access to GRTC and its contractors to inspect and audit records and information related to performance of this Contract as reasonably may be required.
- f) The Contractor agrees to permit GRTC and its contractor's access to the sites of performance under this Contract as reasonably may be required.
- g) If an audit pursuant to this paragraph reveals that GRTC has paid any invoices or charges not authorized under this Contract, GRTC may offset or recoup such amounts against any indebtedness owed by it to the Contractor, whether arising under this Contract or otherwise, over a period of time equivalent to the time period over which such invoices or charges accrued.
- h) This paragraph will survive any termination or expiration of this Contract.

42. RESERVED

43. **LOSS OR DAMAGE TO PROPERTY**

The Contractor shall be responsible for any loss or damage to property including money securities, merchandise, fixtures and equipment belonging to GRTC or to any other individual or organization, if any such loss or damage was caused by the Contractor or any Subcontractor at any tier, or any employee thereof, while such person is on the premises of GRTC as an employee of the Contractor or Subcontractor.

44. **CONTRACTOR CONTACT/GRTC DESIGNEE**

The Contractor shall provide GRTC with a telephone number to ensure immediate communication with a person (not a recording) anytime during Contract performance. Similarly, GRTC shall designate an GRTC representative who shall be similarly available to the Contractor.

45. QUALITY ASSURANCE

A periodic review of the Contractor's scheduled work may be performed by GRTC. If work is deemed incomplete or unacceptable in any way, GRTC will determine the cause and require the Contractor to take corrective measures in accordance with the terms of the Contract.

46. DISPUTE RESOLUTION

- a) **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 Contract or any breach hereof (a "Dispute") according to the procedures set forth in this Section 46; provided, however, that the procedures set forth herein shall not preclude either party from exercising any right of termination or cancellation of the Contract as provided herein or as available at law or in equity.
- b) **Procedure.** Contractor shall address any question or claim arising from this Contract 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.
- c) **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 47 precludes any party from seeking further relief once the required alternative dispute resolution efforts have failed.
- d) **Performance During Dispute.** Subject to the rights of the parties to cancel this Contract or suspend their performance as set forth in this Contract, Contractor shall continue to perform its obligations under this Contract 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 21 e) hereof or the terms and conditions of the Parties' Confidentiality Agreement set forth in Section 7 Insurance of this Exhibit E 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.

47. TOBACCO FREE WORKPLACE

- a) Tobacco products include cigarettes, cigars, pipes, snuff, snus, chewing tobacco, smokeless tobacco, dipping tobacco and any other non-FDA approved nicotine delivery device.
- b) The tobacco free workplace policy refers to all GRTC owned or leased property. Note that this includes all buildings, facilities, work areas, maintenance facilities, parking areas and all GRTC owned vehicles.
- c) Tobacco use is not permitted at any time on GRTC owned or leased property, including personal vehicles parked in GRTC parking lots.
- d) Littering of tobacco-related products on the grounds or parking lots is also prohibited.

48. ORDER OF PRECEDENCE

In the event of any inconsistency between the provisions of this Contract, the inconsistency shall be resolved by giving precedence in the following order:

- 1. Exhibit A/A-1 – Pricing Schedule
- 2. Exhibit E – Contractual Terms and Conditions
- 3. Exhibit E-1 – Addendum to Contractual Terms and Conditions, Federally Assisted
- 4. Exhibit F – Scope of Services
- 5. Exhibit B – Representations and Certifications
- 6. Exhibit D – Disadvantaged Business Enterprise Program/SBE
- 7. Other provisions or attachments to the Contract

49. ANTI-CORRUPTION AND BRIBERY LAWS

The Contractor shall comply with all Applicable Anti-Corruption and Bribery Laws. The Contractor represents and warrants that it has not and shall not violate or cause GRTC to violate any such Anti-Corruption and Bribery Laws. The Contractor further represents and warrants that, in connection with supplies or Services provided to GRTC or with any other business transaction involving GRTC, it shall not pay, offer, promise, or authorize the payment or transfer of anything of value, directly or indirectly to: (a) any government official or employee (including employees of government owned or controlled companies or public international organizations) or to any political party, party official, or candidate for public office or (b) any other person or entity if such payments or transfers would violate applicable laws, including Applicable Anti-Corruption and Bribery Laws. Notwithstanding anything to the contrary herein contained, GRTC may withhold payments under this Contract, and terminate this Contract immediately by way of written notice to the Contractor, if it believes, in good faith, that the Contractor has violated or caused GRTC to violate the Applicable Anti-Corruption and Bribery Laws. GRTC shall not be liable to the Contractor for any claim, losses, or damages related to its decision to exercise its rights under this provision.

50. Variation in Estimated Quantity

If the quantity of a unit-priced item in this Contract is an estimated quantity and the actual quantity of the unit-priced item varies more than ten percent (10%) above or below the estimated quantity, an equitable adjustment in the Contract price shall be made upon demand of either party. The equitable adjustment shall be based upon any increase or decrease in costs due solely to the variation above one hundred ten percent (110%) or below ninety percent (90%) of the estimated quantity. If the quantity variation is such as to cause an increase in the time necessary for completion, the Contractor may request (in writing) an extension of time to be received by the Contracting Officer within ten (10) days from the beginning of the delay, or within such further period as may be granted by the Contracting Officer before the date of final settlement of the Contract. Upon the receipt of a written request for an extension, the Contracting Officer shall ascertain the facts and make an adjustment for extending the completion date as, in the judgment of the Contracting Officer, is justified.

51. ORGANIZATIONAL CONFLICT OF INTEREST (OCI)

- a) This Contract may task the Contractor to prepare or assist in preparing work statements that directly, predictably and without delay are used in future competitive acquisitions. The parties recognize that by the Contractor providing this support a potential conflict of interest arises as defined by FAR 9.5.
- b) For the purposes of this paragraph, the term "Contractor" means the Contractor, its subsidiaries and affiliates, joint ventures involving the Contractor, any entity with which the Contractor may hereafter merge or affiliate and any other successor or assignee of the Contractor.
- c) The Contractor acknowledges the full force and effect of this paragraph. It agrees to be bound by its terms and conditions and understands that violation of this paragraph may, in the judgment of the Contracting Officer, be cause for Termination for Default. The Contractor also acknowledges that this does not represent the sole and exclusive remedy available to GRTC in the event the Contractor breaches this or any other Organizational Conflict of Interest paragraph.

52. MISCELLANEOUS

- a) This Contract does not intend to, and nothing contained in this Contract shall create any partnership, joint venture, or other equity type agreement between GRTC and the Contractor.
- b) All notices, statements, demands, requests, consents or approvals required under this Contract or by law by either party to the other shall be in writing and may be given or served by depositing same in the United States mail, postage paid, registered or certified and addressed to the party to be notified, with return receipt requested; by personally delivering same to such party; an agent of such party; or by overnight courier service, postage paid and addressed to the party to be notified; or by e-mail with delivery confirmation. Notice deposited in the U.S. mail in the manner hereinabove described shall be effective

upon such deposit. Notice given in any other manner shall be effective only if and when received by the party to be notified.

If to the Contractor: As set forth in Exhibit B to this Contract

If to GRTC: Greater Richmond Transit Company
Attn: Tonya Thompson, Director of Procurement
301 E. Belt Boulevard
Richmond, Virginia 23224

Address for notice can be changed by written notice to the other party.

- c) In the event GRTC finds it necessary to employ legal counsel to enforce its rights under this Contract, or to bring an action at law, or other proceeding against the Contractor to enforce any of the terms, covenants, or conditions herein, the Contractor shall pay to GRTC its reasonable attorneys' fees and expenses, regardless of whether suit is filed.
- d) If any term or provision of this Contract or any portion of a term or provision hereof or the application thereof to any person or circumstance shall, to any extent, be void, invalid or unenforceable, the remainder of this Contract will remain in full force and effect unless removal of such invalid terms or provisions destroys the legitimate purpose of the Contract in which event the Contract will be terminated.
- e) This Contract represents the entire agreement between the parties concerning the subject matter of this Contract and supersedes any and all prior or contemporaneous oral or written statements, agreements, correspondence, quotations and negotiations. In executing this Contract, the parties do not rely upon any statement, promise, or representation not expressed herein. This Contract may not be changed except by the mutual written agreement of the parties.
- f) A facsimile signature shall be deemed an original signature for all purposes. For purposes of this paragraph, the phrase "facsimile signature" includes without limitation, an image of an original signature.
- g) Whenever used herein, the term "including" shall be deemed to be followed by the words "without limitation". Words used in the singular number shall include the plural, and vice-versa, and any gender shall be deemed to include each other gender. All Exhibits attached to this Contract are incorporated herein by reference.
- h) All rights and remedies provided in this Contract are cumulative and not exclusive of any other rights or remedies that may be available to GRTC, whether provided by law, equity, statute, or otherwise. The election of any one or more remedies GRTC will not constitute a waiver of the right to pursue other available remedies.
- i) The Contractor shall not assign the whole or any part of this Contract or any monies due hereunder without the prior written consent of the Contracting Officer. No assignment

shall relieve the Contractor from any of its obligations hereunder. Any attempted assignment, transfer, or other conveyance in violation of the foregoing shall be null and void.

- j) The failure of GRTC to insist upon strict adherence to any term of this Contract on any occasion shall not be considered a waiver or deprive GRTC thereafter to insist upon strict adherence to that term or other terms of this Contract. Furthermore, GRTC is a governmental entity, and nothing contained in this Contract shall be deemed a waiver of any rights, remedies or privileges available by law.
- k) This Contract shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia. Any dispute arising with respect to this Contract shall be resolved in the state or federal courts of the Commonwealth of Virginia, sitting in the City of Richmond, Virginia and the Contractor expressly consents to the personal jurisdiction of these courts.
- l) This Contract is subject to the Virginia Freedom of Information Act.
- m) The Contractor represents, warrants and covenants that: (a) it has the requisite power and GRTC to execute, deliver and perform its obligations under this Contract; and (b) it is in compliance with all applicable laws related to such performance.
- n) The person signing on behalf of the Contractor represents for himself or herself and the Contractor that he or she is duly authorized to execute this Contract.
- o) No term or provision of this Contract is intended to be, or shall be, for the benefit of any person, firm, organization, or corporation for a party hereto, and no such other person, firm, organization, or corporation shall have any right or cause of action hereunder.
- p) GRTC is a governmental entity and nothing in this Contract shall be deemed a waiver of any rights or privileges under the law.
- q) 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.
- r) Time is of the essence for all delivery, performance, submittal, and completion dates in this Contract.

53. DRUG AND ALCOHOL TESTING PROGRAM

- a) GRTC and its Contractors and Subcontractors are required to comply with the requirements of 49 C.F.R Part 219 with no exceptions. The Contractor has established and im-

plemented, or agrees to establish and implement, and cause its applicable Subcontractors to establish and implement, a drug and alcohol testing program for regulated employees (including volunteers, employees and probationary employees) whose duties include inspection, construction, maintenance or repair of roadway track; bridges, roadway, signal and communications systems, electric traction systems, roadway facilities or roadway maintenance machinery on or near track or with the potential of fouling a tack and flagmen and watchmen/lookouts (“Part 219 employees”) that complies with 49 C.F.R. Part 219, produce any documentation necessary to establish its compliance with Part 219, and permit any authorized representative of the United States Department of Transportation or the Federal Railroad Administration (“FRA”) and GRTC to inspect the facilities and records associated with the implementation and operation of the drug and alcohol testing program as required under 49 C.F.R. Part 219, including the review of the testing process.

54. 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.

55. ADDITIONAL SERVICES

- a) 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.
- b) 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.

56. FORCE MAJEURE

- a) 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.

- b) **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.
- c) **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.

57. WARRANTIES

- a) **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.
- b) **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.