



EXHIBIT E
IFB # 230-24-03
CONTRACTUAL TERMS AND CONDITIONS
(CONSTRUCTION, ALTERATION OR REPAIR CONTRACT)

DEFINITIONS OF WORDS AND TERMS:

Words and terms shall be given their ordinary and usual meanings. Where used in the Contract documents, the following words and terms shall have the meanings indicated. The meanings shall be applicable to the singular, plural, masculine, feminine and neuter of the words and terms.

- 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 Contractor operates and/or manufactures goods for GRTC, relating to anti-corruption and bribery.
- e) "Architect/Engineer" (A/E) means a person registered in the Commonwealth of Virginia as an Architect, a Landscape Architect and/or Professional Engineer and/or a person licensed as a Professional or firm employed to provide professional architectural or engineering services and having overall responsibility for the design of a Project or a significant portion thereof, if applicable.
- f) "As-Built Drawings" means drawings that show Construction of a particular structure or Work as actually completed under the Contract.
- g) "Bid" means the offer of the bidder, submitted on the prescribed form, stating prices for performing the Work described in the Plans and Specifications.
- h) "Bid Guarantee" or "Bid Bond" means a form of security assuring that the bidder will not withdraw a Bid within the bid acceptance period and will execute a contract and furnish required bonds and insurance within the time specified in the bid.
- i) 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.
- j) 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.
- k) 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.

- l) Change Order: Written order issued by GRTC, with or without notice to sureties, making changes in the Work within the scope of this Contract.
- m) "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.
- n) "Contract Modification" means any changes in the terms or provisions of the Contract which are reduced to writing and fully executed by both parties.
- o) "Contract Sum" means the total compensation payable to the Contractor for performing the Work as originally contracted for or as subsequently adjusted by Contract Modification.
- p) "Contract Term" means period of performance set forth in the paragraph entitled "Period of Performance" contained in Exhibit E.
- q) "Contracting Officer" means a person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings on behalf of GRTC. The term includes certain authorized representatives of the Contracting Officer acting within the limits of their authority as delegated by the Contracting Officer
- r) "Contractor" or "Prime Contractor" means the entity that has assumed the legal obligation to perform the Work as identified in the Contract.
- s) "Construction" means the building, alteration, or repair (including dredging, excavating, and painting) of structures, or other real property improvement.
- t) Construction Manager: The individual designated by GRTC to administer the Contract and be the Contractor's primary point of contact. The Construction Manager will approve orders, receipts, invoices and document the Contractor's performance, but has no contracting authority. This Person may be the Project Manager.
- u) Contract Amendment: A written change to the Contract modifying, deleting, or adding to the terms or scope of work, signed by both parties, with or without notice to the sureties.
- v) Contract or Contract Documents: The writings and drawings embodying the legally binding obligations between GRTC and the Contractor for completion of the Work.
- w) Contract Period: The period of time during which the Contractor shall perform the Services or Work under the Contract.
- x) Contract Price: Amount payable to the Contractor under the terms and conditions of the Contract for the satisfactory performance of the Services or Work under the Contract.
- y) Contractor/Prime Contractor: The individual, association, partnership, firm, company, corporation, or combination thereof, including joint ventures, contracting with GRTC for the performance of Services or Work under the Contract.
- z) Cost Analysis: The review, evaluation and verification of cost data and the evaluation of the specific elements of costs and profit. Cost analysis is the application of judgment utilizing criteria to project from the data to the estimated costs in order to form an opinion on the degree to which proposed costs represent what the Contract should cost, assuming reasonable economy and efficiency.
- aa) Day: Calendar Day. 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 State of Virginia holiday, in which event the period shall run to the end of the next business day.

- bb) DBE: Disadvantaged Business Enterprise
- cc) “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 or (ii) the meaning set forth Exhibit IT to the extent such exhibit is incorporated by reference in the Contract, as applicable.
- dd) 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.
- ee) Engineer of Record: The licensed professional engineer, or his/her designee, that has signed and sealed the construction plans; also referred to as the “Engineer.”
- ff) “FAR” means the Federal Acquisition Regulations codified in 48 C.F.R. Title 48.
- gg) “FCPA” means the United States Foreign Corrupt Practices Act, 15 U.S.C. §§ 78dd-1, et seq., as amended
- hh) Final Acceptance or Final Completion: The point when GRTC acknowledges that the Contractor has performed the entire Work in accordance with the Contract.
- ii) FTA: Federal Transit Administration.
- jj) “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.
- kk) “Fully Burdened Hourly Labor Rate” means an hourly rate that includes all salary, overhead costs, general and administrative expenses, and profit.
- ll) “Good Industry Practice” means the exercise of the degree of skill, diligence, prudence, and foresight which would reasonably and ordinarily be expected from time to time from a skilled and experienced designer, engineer, constructor, operator or maintenance provider seeking in good faith to comply with its contractual obligations, complying with all applicable laws and engaged in the same type of undertaking in the United States under similar circumstances and conditions.
- mm) “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.
- nn) “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.
- oo) Owner: Greater Richmond Transit Company
- pp) Person: Includes individuals, associations, firms, companies, corporations, partnerships, and joint ventures.
- qq) Price Analysis: The process of examining and evaluating a price without evaluating its separate cost elements and proposed profit.

- rr) Project Manager: The individual designated by GRTC to manage the project on a daily basis and who may represent GRTC for Contract administration.
- ss) Provide: Furnish without additional charge.
- tt) Reference Documents: Reports, specifications, and/or drawings that are available to Bidders for information and reference in preparing bids but not as part of this Contract.
- uu) IFB or Solicitation: Invitation for Bids. Also known as the solicitation document.
- vv) “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.
- ww) “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 Work.
- xx) “Minor Informality” or “Minor Irregularity” means immaterial defects or variations from the exact requirements of a solicitation that can be corrected or waived without prejudice to other bidders.
- yy) “Notice of Award” means formal notice of award of the Contract to Contractor issued by the Contracting Officer.
- zz) “Notice to Proceed” means written authorization for the Contractor to start the Work.
- aaa) “Plans” and “Specifications” mean drawings, specifications, and other formal data that describes the Work to be performed if Plans and Specifications are required for the Work.
- bbb) “Project” means the Work as defined by the Contract Documents.
- ccc) “Project Manager” means the designated individual to act on behalf of GRTC, to monitor and certify the technical progress of the Contractor’s Work under the terms of this Contract.
- ddd) Scope of Work or Statement of Work (SOW): A section of the Request for Bids 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.
- eee) Services: The furnishing of labor, time or effort by a Contractor, but not involving the delivery of any specific manufactured goods.
- fff) 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.
- ggg) “Shop Drawings” means drawings describing in detail (1) the proposed fabrication and assembly of structural elements, (2) the installation (i.e., form, fit, and attachment details) of materials or equipment, (3) both, including drawings, diagrams, layouts, schematics, descriptive literature, illustrations, schedules, performance and test data, and similar materials furnished by the Contractor to explain in detail specific portions of the Work required by the Contract.
- hhh) Specifications or Technical Specifications: A Section of the Invitation for Bids 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.

- iii) "Statement of Work" means the detailed scope of work set forth in "Exhibit F" of this Contract, and which may or not reference Plans and Specifications.
- jjj) "Subcontract" means the contract between the Contractor and its Subcontractors.
- kkk) Subcontractor: The individual, association, partnership, firm, company, corporation, or joint venture entering into an agreement with the Contractor to perform any portion of the Work covered by this Contract.
- lll) Submittals: Information that is submitted to the Construction Manager in accordance with the Scope of Work/Specifications.
- mmm) Substantial Completion: means that the Work is sufficiently complete, in accordance with the terms of this Contract, so that GRTC may use or occupy the Work, or Contractor's designated portion of the overall Project, for the intended purpose, as determined by GRTC in its sole discretion.
- nnn) VDMBE: Virginia Department of Minority Business Enterprise.
- ooo) VDOT: Virginia Department of Transportation
- ppp) Work: means all labor, plant, materials, manufacture and fabrication of components, facilities, and all other things, which are required by the Statement of Work and/or the Plans and Specifications to be performed by the Contractor under this Contract.
- qqq) "Work Site" means the location of the premises where the Work is being performed.
- rrr) "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. TYPE OF CONTRACT

This is a fixed price lump sum Contract.

2. PERIOD OF PERFORMANCE

The Contractor shall complete all work for Phase one (1) no later than 90 Calendar Days from the date of the Notice to Proceed. Phase two (2) be completed no later than 120 days and will be scheduled. The Contractor is not authorized to proceed with any Work under this Contract without a written Notice to Proceed issued by GRTC. All Work performed or expenses incurred by the Contractor prior to the Contractor's receipt of the Notice to Proceed shall be at the Contractor's sole risk.

3. PERFORMANCE AND PAYMENT BONDS

- a) **Performance Bond.** If the Contract Sum exceeds \$100,000.00, the Contractor shall provide a Performance Bond to ensure the faithful performance of all Contractor's obligations under the Contract Documents in an amount equal to the Contract Sum.
- b) **Payment Bond.** If the Contract Sum exceeds \$25,000.00, the Contractor shall provide a Payment Bond to guarantee the Subcontractors and material suppliers on the Project will be paid in an amount of the Contract Sum.
- c) The Contractor shall be required to submit all required bonds to the Contracting Officer within ten (10) days from the date of Contract Award Date. Upon receipt of the payment and/or performance bond, the Bid Guarantee, if applicable, shall be returned to the Contractor.
- d) Performance and Payment Bonds shall be issued in an amount of one hundred percent (100%) of the Contract Sum by a surety company listed in the latest United States Treasury Department Circular 570, be authorized to do business in Virginia and have an underwriting limitation equal to or greater than the penal sum of the bond. If any surety upon any bond furnished in connection with the Contract becomes insolvent, or otherwise not authorized to do business in the State, the Contractor shall promptly furnish equivalent security to protect the interest of GRTC and of persons supplying labor, materials and/or equipment in the prosecution of the Work.
- e) Each bond shall be accompanied by a valid Power-of-Attorney, issued by the surety company and attached, signed and sealed, with the corporate embossed seal, to the bond, authorizing the agent who signs the bond to commit the surety company to the terms of the bond, and stating on the face of the Power-of-Attorney the limit, if any, in the total amount for which he/she is empowered to issue a single bond.
- f) A surety bond rider increasing the dollar amount of any payment and performance bond will be required for any Change Order that increases the Contract Sum.
- g) In addition, GRTC may request a surety bond increasing the dollar amount if:
 - i) any surety upon any bond furnished with this Contract becomes unacceptable to GRTC; or
 - ii) any surety fails to furnish reports on its financial condition as required by GRTC.

4. INSURANCE

The Contractor shall furnish proof of GRTC-stipulated insurance requirements specified below. All insurance policies shall be primary and non-contributing with any other valid and collectible insurance or self-insurance available to GRTC and shall contain a contract waiver of subrogation in favor of GRTC. The Contractor shall furnish to GRTC certificate(s) of insurance evidencing the required coverage and endorsement(s) and, upon request, a certified duplicate original of any of those policies. Prior to the expiration of a certificate of insurance, a new certificate of insurance shall be furnished to GRTC showing continued coverage. Each policy shall be endorsed to provide thirty (30) days written notice of cancellation or non-renewal to GRTC and GRTC shall be named as an Additional Insured under each policy, except Professional Liability insurance if required by this Contract. All

insurance policies shall be written by reputable insurance company or companies acceptable to GRTC with a current Best's Insurance Guide Rating of A+ and Class XIII or better. All insurance companies shall be authorized to transact business in the State of Virginia. The Contractor shall notify GRTC in writing of any material alteration of such policies, including any change in the retroactive date in any "claims-made" policy or substantial reduction of aggregate limits, if such limits apply or cancellation thereof at least thirty (30) days prior thereto. The below requirements only represent the minimum coverage acceptable to GRTC and these requirements are not intended to represent the maximum risk or the maximum liability of the Contractor. The Contractor shall be responsible for setting its own insurance requirements, if any, for the kind and amounts of insurance to be carried by its Subcontractors in excess of the insurance required by GRTC.

The Contractor shall carry and pay the premiums for insurance of the types and in the amounts stated below.

GRTC MINIMUM COVERAGE REQUIREMENTS

- a) **Comprehensive General Liability Insurance Coverage** with limits of not less than 500K and No/100 Dollars (\$500,000) with an aggregate of 500K and No/100 Dollars (\$500,000) 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. Employer Liability Insurance with minimum limits of 500K and No/100 Dollars (\$500,000)
- c) **Business Automobile Liability Insurance** with minimum coverage limits of not less than 250K and No/100 Dollars (\$250,000) with combined single limit of 250K (\$250,000), covering all owned, hired and non-owned automobiles used in connection with work for Bodily Injury and Property Damage.
- d) **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 300K and No/100 Dollars (\$300,000) on an annual aggregate basis
- e) **Umbrella liability** Umbrella liability coverage with limits not less than 1M and No/100 Dollars (\$1,000,000).
- f) **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.
- g) 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.
- h) Each insurance policy shall contain the following endorsements: PRIMARY AND NON-CONTRIBUTORY 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.
- i) 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.

- j) 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.
- k) 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.
- l) 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.
- m) 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.

5. RESERVED

6. RESERVED

7. RESERVED

8. INSPECTOR

The Inspector is authorized by GRTC to inspect and approve all Work and materials. In case of any dispute arising between the Contractor and the Inspector over materials furnished or the manner of performing the Work, the Inspector has the authority to reject material or suspend Work until the dispute is resolved by the Construction Manager. The Inspector is not authorized to revoke, alter, enlarge, relax, or waive any requirements of the Contract Documents or to approve or accept any portion of the Work or issue instructions contrary to the Contract Documents.

The Construction Manager, Engineer, and Inspector shall always have access to all of the Work.

9. SUPERINTENDENT

The Contractor shall supervise the Work and shall be represented by a Superintendent who shall have full authority to act on behalf of the contractor as the Contractor's agent and representative. The Superintendent or Contractor shall be on duty at all times while the Work is being done.

10. NO DEVIATION FROM CONTRACT DOCUMENTS BY THE CONTRACTOR

In performing the Work, the Contractor shall not deviate from the Contract Documents without the written consent of the Engineer and the Owner. If the Contractor does deviate from the Contract, it shall correct the deviation at its expense in a manner satisfactory to the Engineer and the Owner.

11. INTERPRETATION OF CONTRACT DOCUMENTS

In case of discrepancy between or among the Contract Documents, the Engineer shall make all interpretations that are necessary to fulfill the intent of the Contract Documents. The Engineer's interpretation shall be binding on the Contractor.

The Contractor shall verify all figures on the Plans and shall be responsible for the proper coordination of all dimensions as well as all different parts of the Work.

12. DISCREPANCIES

The Contractor shall immediately report to the Engineer, in writing, all discrepancies, that it finds between the Contract Documents and site conditions and any inconsistencies or ambiguities in the Contract Documents. The Engineer shall promptly correct such discrepancies, inconsistencies, or ambiguities in writing. Work done by the Contractor after it discovers such discrepancies, inconsistencies, or ambiguities, but before the Engineer has provided a written correction, shall be performed at the Contractor's risk.

13. CONTRACTOR'S RESPONSIBILITY FOR THE WORK

The Contractor shall be responsible for the Work and shall take all precautions to prevent injuries to persons and property on or about the Work. The Contractor shall bear all losses resulting from any difference in the amount or character of the Work from what the Contractor estimated or expected, or from any difference in the nature of the land in which or on which the Work is done from what the Contractor expected. The Contractor shall defend, indemnify, and hold harmless, the Owner, its officers, and agents from all claims relating to labor and materials furnished for the Work; from all claims for violation of patents, trademarks and copyrights used in performing the Work; from injuries to any person performing the Work; from improper materials, implements or labor used; and from any act, omission or neglect of the Contractor, any subcontractor or their employees.

Until Final Acceptance of the Work, the Work shall be under the charge of the Contractor, and the Contractor shall take all necessary precautions against injury or damage to the Work or to any part of the Work from any cause whatsoever, whether arising from the execution or the non-execution of the Work.

Unless otherwise agreed to by the owner in writing, the Contractor shall rebuild, repair, restore and make good, at his expense, all injuries or damage to the Work occasioned by any of the above causes before Final Acceptance of the Work.

14. INCREASED OR DECREASED WORK

The Owner may increase or decrease the value of the Work at any time, with or without the agreement of the Contractor. The Owner may increase or decrease the Work by adding, omitting, or relocating sections, whether shown on the Plans or not.

If the increase, decrease, or relocation of the Work is substantially the same in nature as the remainder of the Work, then the Contract Price shall be adjusted based on the unit prices contained in the Contract Documents. Whenever additional work involves a substantial change in the nature of the design of the Work or in the type of construction, the additional Work shall be performed in accordance with the specifications and as directed by the Engineer, provided, however, that before the Contractor begins to perform the additional Work, a Change Order shall be executed by the parties.

15. CORRECTION OF WORK

The Contractor shall promptly remove from the premises all work rejected by the Engineer or Inspector for failure to comply with the Contract Documents, whether the rejected work is incorporated into the Work or not. After removing

the rejected work, the Contractor shall promptly replace and re-execute the work in accordance with the Contract Documents, without expense to the Owner. The Contractor shall repair, at its own expense, all work of other contractors that is destroyed or damaged by the Contractor or any subcontractor.

All removal and replacement work shall be performed at the Contractor's expense. If the Contractor does not remove rejected work within ten (10) calendar days after it receives written notice from the Owner or Engineer to remove it, the Owner may remove the rejected work, and store the materials, at the expense of the Contractor.

16. RESERVED

17. RESERVED

18. RESERVED

19. EXTRA WORK

Any work that is necessary for Completion of the Work that is not described in the Plans or Contract Documents is Extra Work and shall be paid for in one of the following manners:

- a) At a price agreed upon in writing between the Contractor and Owner.
- b) In the event of work covered by unit prices included in the Bid Schedule, at a price derived from application of unit prices to the quantities necessary to complete the extra work.

Change Orders shall be agreed upon prior to beginning Extra Work. Once agreed upon, the Change Order resolves and settles all claims, demands, or damages of any kind resulting to or arising out of the work set for in the Change Order, including, but not limited to delay, impact, home and field office overhead and acceleration. No Change Order shall in any manner or to any extent relieve the Contractor or his Surety of any obligation under the contract. All Change Orders given in accordance with the Agreement are a part of the Agreement and are subject to each and every term or requirement of the Agreement.

The Contractor is responsible for all damages caused by the carelessness or lack of skill of the Contractor, the subcontractors, or employees of the Contractor or subcontractor in doing Extra Work.

20. PROGRESS OF THE WORK

The Contractor shall provide an adequate force of labor and equipment to prosecute the Work to ensure the Completion of the Work within the time limit for Completion as proposed by the contractor in the Bid and set forth in the Agreement.

The Contractor shall provide all manpower and equipment necessary to meet the progress schedule. In the event periodic estimates indicate that the schedule progress is not being met, the Owner or Engineer may require the Contractor to furnish in writing to the Engineer the method the Contractor proposes to employ to bring the project into compliance with the progress schedule. The Owner may withhold payments if the Work is behind the progress schedule or otherwise not being performed in accordance with the terms of the Contract Documents.

21. TIME OF COMPLETION

Time is of the essence in performing this Contract. The Contractor shall perform and complete the Work in accordance with the Contract Documents before the expiration of the time limit proposed by the contractor in the Bid and set forth in the Agreement and any extensions of time that are agreed upon pursuant to the procedure for granting extensions of time set forth in the Contract Documents. The amount of time permitted for Completion of the Work contemplates ordinary delays to construction work of a similar character. The Contractor shall not be entitled to an extension of time or additional compensation for ordinary delays in the Completion of the Work or for delays occasioned by inclement

weather or accidents. Such delays will not relieve the Contractor from maintaining the rate of progress specified herein or from completing the Work within the stipulated time limit.

If delays are caused by acts of God, acts of government, unavoidable strikes, Extra Work, or other causes or contingencies not enumerated in the preceding paragraph and if they are beyond the control or responsibility of the Contractor, the Contractor may request the Owner to allow additional time to perform and complete the Work. If the Owner determines that the delay is properly excusable, the Owner will, in writing, extend the time for completion of the Work by the amount of time that the Owner believes to be appropriate. The Contractor agrees that such an extension of time shall constitute his sole remedy against the Owner for such delays. The contractor shall not have or assert any claim for, nor shall he be entitled to any additional compensation or damages on account of such delays. If the delay is due solely to the negligence of the Owner, or any of its officers or employees, the Contractor may also request from the Owner an adjustment in the Contract Price for actual costs incurred by the Contractor to perform and complete the Work. The Contractor shall be entitled to an adjustment in Contract Price only for actual costs, as that term is defined elsewhere in this Exhibit E. If the owner determines that the delay is of the nature described in this subparagraph and that an adjustment in price is warranted, the owner may, in writing, grant an adjustment in the price for the Work in an amount deemed appropriate by the Owner.

Within ten (10) calendar days from the beginning of any delay for which Contractor is entitled to an extension of time or additional compensation, the Contractor shall submit in writing to the Owner, with a copy to the Engineer, its request for adjustment in price or extension of time for the completion of the Work. Any such request shall set forth the cause and particulars of the delay, the details of the delay, and documentation supporting the extension or adjustment requested. The Owner shall review the information and documentation submitted by the Contractor and shall respond to the Contractor in writing. If the Contractor fails to comply with any requirement of this subparagraph the Contractor shall be precluded from making any claim for an adjustment in the Contract Price or extension of time for Completion of Work due to the delay. In no event shall the Owner's officers, agents or employees have any liability to the Contractor, any subcontractors, or any agents, servants or employees of the Contractor or sub-contractors with respect to or arising out of any actual or alleged delay in the Contractor's performance.

22. RESERVED

23. FINAL ACCEPTANCE

Before Final Inspection of the Work, the Contractor shall clean up the site of the Work including all rights-of-way, and shall leave the site in a clean, neat and sanitary condition. Contractor shall remove all machinery, tools, surplus material, temporary buildings, and other structures from the site of the Work.

When the Work is complete and the area cleaned up, the Contractor shall request a Final Inspection of the Work by the Construction Manager, Engineer and Owner. After the Final Inspection, the Construction Manager shall prepare a Punch List. After the Contractor has completed all Work on the Punch List, and the project is ready for Final Acceptance by the Owner, the Contractor shall request in writing an inspection for Final Acceptance of the Work by the Construction Manager, Engineer, and Owner.

Final Acceptance occurs when the Construction Manager issues to the Contractor a written statement that the Contractor has completely performed all Punch List items, has made all necessary submittals to the Owner and Engineer and has satisfied all of the Contractor's obligations under the Contract Documents.

24. MONTHLY ESTIMATES

On the regular time agreed upon by the Owner and Contractor, the Contractor and the Inspector shall prepare and submit to the Construction Manager a monthly estimate for Partial Payment. The monthly estimate shall be in the American Institute of Architects (AIA) format and cover items of work for which the Contractor is entitled to be paid since the previous monthly estimate was submitted. Monthly estimates shall be supported by a document that indicates the percentage of work performed for items identified in the approved Schedule of Values for the project.

The Owner shall pay to the Contractor all sums due under the monthly estimate within 30 days after receipt of the approved monthly estimate by the owner unless the Owner asserts a right to withhold some or all of the payment under the provisions of the Contract Documents.

25. PAYMENTS WITHHELD

The Owner may decline to approve or because of subsequent discovered evidence nullify in whole or part of any Certificate of Payment to such extent as may be necessary to protect the Owner from loss on account of:

- a) Failure to submit a project Schedule;
- b) Defective work not remedied;
- c) Failure of the Contractor to make payments properly to Subcontractors, or for materials, labor or equipment;
- d) A reasonable doubt that the Contract can be completed for the balance then unpaid;
- e) Damage to another contractor;
- f) Unsatisfactory prosecution of the work by the Contractor;
- g) Reasonable indication that the work will not be completed within the Contract time; or

When the above conditions are corrected or removed to the satisfaction of the Owner payment shall be made for amounts withheld because of them.

26. RETAINAGE

Under the provisions of § 2.2-4333, Code of Virginia, the Contractor will be paid ninety-five percent of the earned sum when payment is due, with five percent being retained to ensure faithful performance of the contract. All amounts withheld may be included in the final payment. The Contractor may request release of retainage for any portion of the Work completed and accepted provided, however, that adequate progress is being made and the Owner approves such release.

27. RESERVED

28. PROCEDURES FOR CLAIMS AND DISPUTES

A claim is a demand or assertion by the Contractor seeking, as a matter of right, adjustment or interpretation of Contract terms, payment of money, extension of time or other relief with respect to the terms of the Contract. The responsibility to substantiate claims shall rest with the Contractor. Claims must be initiated by the Contractor with a written Notice of Intent to File a Claim within twenty (20) days after occurrence of the event giving rise to such claim or within twenty (20) days after the claimant first recognizes the condition giving rise to the claim, whichever is later. Among other things, the Intent to File a Claim shall include: (a) the assumptions the Contractor made during the preparation of its bid that form the basis for its allegation, (b) an explanation of the defect, error, or inconsistency in the plans or other contract documents that the Contractor could not have reasonably identified prior to the date the Agreement for the project is signed, and (c) an estimated impact that the alleged defect, error, or inconsistency has had on the Contractor's price or time to perform the work. Impacts to the Contractor's price shall be supported by breaking down any alleged Extra Work into the items and unit prices included in the Bid Schedule to the greatest extent possible. Impacts to the Contractor's time shall be supported with a critical path method (CPM) schedule that specifically identifies delays to the Contractor's critical path to complete the work. An Intent to File a Claim must be initiated by written letter to the Owner. Submittal of an Intent to File a Claim by the Contractor must be submitted within the time limits and include the supporting documentation prescribed by this paragraph as a condition precedent to the institution of litigation by the Contractor with respect to the subject matter of that claim. The Contractor is required to submit any additional supporting documentation requested by the Owner in regard to an Intent to File a Claim within twenty (20) days of the Owner's request.

Within sixty (60) days upon issuance of Final Payment, the Contractor may submit to the county a written Claim for which it properly submitted an Intent to File a Claim while performing the work required for the project. Such claim shall be submitted to the Director of Transportation. Only one such claim shall be submitted, and it shall include all matters for which the Contractor seeks additional compensation and/or time. The Contractor shall not be entitled to any additional compensation or time for any matter that is not submitted as part of such a claim, within the sixty (60) days allowed pursuant to this Section.

29. RESERVED

30. KICK-OFF MEETING

Prior to the start of any construction activities the Contractor shall attend a pre-construction meeting with the Construction Manager and representatives of GRTC and other appropriate parties for the purposes of scheduling the work and coordination. A summary of the conference shall be prepared by the Construction manager and distributed to the Contractor. The Contractor shall acknowledge receipt of the Construction Manager's summary in writing.

31. RESERVED

32. PROGRESS SCHEDULE

The Contractor shall submit a baseline schedule within 5 calendar days after notice of award showing the planned progress and sequence of work activities. The baseline schedule shall show the order and interdependence of activities and timeline for completing all work, including mobilization, surface preparation, painting, clean up, demobilization, and inspections.

The Contractor shall submit schedule updates bi-weekly by close of business on Monday. Updates shall show activities completed in the prior 2 weeks, any changes in sequence or scope, actual start and finish dates for completed activities, and projected start and finish dates for remaining work.

Any proposed changes to the schedule that alter milestones or the project completion date must be submitted to the GRTC Project Manager for approval. The GRTC Project Manager reserves the right to require revisions to the proposed revised schedule if it extends performance periods or negatively impacts GRTC operations.

Approved progress schedule revisions shall be incorporated into the next schedule update. The Contractor shall remain responsible for maintaining progress to achieve timely completion as scheduled. Acceptance of schedule updates or revisions shall not relieve the Contractor of completing all work within the required performance period

33. SCHEDULE OF VALUES

The Contractor shall furnish the Engineer a Schedule of Values for the project that identifies the cost of each item included in the Progress Schedule for which the contractor expects to receive payment. The Schedule of Values shall be submitted no later than 10 days after the notice to proceed and must be approved prior to the first estimate. The value associated with each item shall be considered lump sum and inclusive of all direct and indirect costs, overhead, profit, and any other expenses of any kind. Allowance items shall be clearly indicated and noted separately of other work items. The total summation of all items identified in the Schedule of Values shall equal the bid price for the project. The Schedule of Values will be used to validate Monthly Estimates in accordance with Section 24 of this Exhibit E.

34. RESERVED

35. RESERVED

36. BORROW MATERIAL AND DISPOSAL OF EXCESS MATERIAL

The Contractor shall be responsible for the disposal of all excess materials (including but not limited to paint, brushes, rollers, drop cloths, masking materials, debris from repairs/preparation activities, empty paint cans/buckets, etc.), obtaining all painting materials, and suitability of all painting surfaces. No extra payment will be made for disposal or importing painting materials to the project site regardless of the suitability or unsuitability of the surfaces to be painted.

37. NORMAL WORKING HOURS

Normal working hours for the project are **8:00am – 4:00pm Monday through Friday**. If there is a scheduling conflict with a department or office, then nights and weekend work will be required to avoid schedule conflicts with GRTC staff and/or interruption of work with GRTC staff as approved by GRTC's PM. The facility is in use 24 hours a day and will require a high degree of coordination with GRTC's PM to ensure an efficient painting schedule.

38. RESERVED

39. RESERVED

40. RESERVED

41. ACCESS TO THE PROJECT

The Construction Manager, Inspector, Engineer and the Owner shall have access at all times to the work for inspection wherever it is in preparation or progress, and the Contractor shall provide proper facilities for such access and inspection. Other Contractors of the Owner shall be permitted access to the site of the project when it is required for performance of their respective contracts.

42. SAFETY AND MAINTENANCE OF TRAFFIC

All work area protection and signage shall conform to OSHA and GRTC safety and health requirements. The Contractor shall employ such methods in the performance of the Contract and provide barriers, guards, notices, lights, and other safeguards as necessary to prevent injury to persons and property.

The Contractor shall maintain an approved sign at the work site entrance giving the name of his company and emergency telephone number, and the name and telephone number of a designated person who may be called when the Contractor cannot be reached. In addition, the contractor shall erect such barricades and warning signs as required for the protection of employees and the public. The signs and barricades shall be properly maintained at the Contractor's expense.

Precaution shall be exercised at all times for the protection of persons, including employees, and property. The safety provisions of OSHA, NFPA, and applicable building codes shall be observed, and all work done under this Contract shall be in accordance with the provisions of all Federal, State, and local regulations

43. PROTECTION OF VEGETATION AND EXISTING PROPERTY

The Contractor shall continuously maintain adequate protection of all his work from damage from any cause and shall protect the Owner's and City's property from injury or loss arising in connection with the Contract. The Contractor shall protect from damage all existing improvements and utilities. It shall make good any such damage, injury, or loss, except such as may be directly caused by agents or employees of the Owner. The Contractor shall notify the Owner promptly in writing when any damage, injury or loss is experienced on the project. The contractor shall adequately protect adjacent property as provided by law and the contract documents.

The Contractor shall preserve and protect all structures, equipment, and vegetation (such as trees, shrubs, and grass) on or adjacent to the work site, which are not to be removed and which do not unreasonably interfere with the work required under this contract. The Contractor shall only remove trees when specifically authorized to do so, and shall avoid damaging vegetation that will remain in place. If any limbs or branches of trees are broken during contract performance, or by the careless operation of equipment, or by workmen, the Contractor shall trim those limbs or branches with a clean cut and paint the cut with a tree-pruning compound as directed by the Owner.

In an emergency affecting the safety of life or of the work of adjoining property the Contractor, without special instruction or authorization from the Construction manager, Engineer, or Owner, is hereby permitted to act, at its discretion, to prevent such threatened loss or injury. Any compensation claimed by the Contractor on account of such emergency work shall be verified and approved by the Owner.

44. RESERVED

45. RESERVED

46. USE OF PREMISES AND REMOVAL OF DEBRIS

The Contractor shall maintain the work areas in an orderly and clean condition and shall at suitable intervals remove accumulations of rubbish, debris from repairs, empty paint cans/buckets, drop cloths, masking materials and other refuse materials. Washing from paint trays, rollers, or brushes shall not be deposited directly in or indirectly into any drains or sewers on site.

The Contractor shall confine all operations (including storage of materials) to areas approved by GRTC. Any damage to floors, walls, doors, fixtures, etc. during the transport of materials shall be repaired or replaced to original condition by the Contractor.

The Contractor shall keep the work areas and access routes free of drips, spills, dirt and dust by properly preparing surfaces, using drop cloths, applying paint carefully, and performing regular clean up. At the end of each work period, the Contractor shall clean all impacted areas and properly dispose of unused materials, debris, empty containers, etc.

47. RESERVED

48. PERFORMANCE OF WORK BY THE CONTRACTOR

- a) Except as otherwise provided herein, the Contractor shall perform no less than thirty percent (30%) of the Work with its own organization. The on-site production of materials produced by other than the Contractor's forces shall be considered as being subcontracted. If, during the progress of Work 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 Work required to be performed by the Contractor may be reduced; provided, written approval of such reduction is obtained by the Contractor from GRTC.
- b) The organization of the Specifications into divisions, paragraphs, and articles, and the arrangement and titles of Project drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of work to be performed by any trade.

49. INDEPENDENT CONTRACTOR

The Contractor's relationship to GRTC in the performance of this Contract is that of an independent contractor. The personnel performing Work under this Contract shall at all times be under the Contractor's exclusive direction and control and shall be employees of the Contractor and not employees of GRTC. The Contractor shall be fully liable for all acts and omissions of its employees, Subcontractors, and their suppliers and shall be specifically responsible for sufficient supervision and inspection to assure compliance in every respect with Contract requirements. There shall be no contractual relationship between any Subcontractor or supplier of the Contractor and GRTC by virtue of this Contract. The Contractor shall pay wages, salaries, and other amounts due its employees 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.

50. 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.

51. SUBCONTRACTORS AND OUTSIDE CONSULTANTS

- a) No approved subcontractor shall perform any Services hereunder without first (a) providing evidence of insurance as required by Section 3, Insurance of this Exhibit E and (b) agreeing to indemnify GRTC as provided in Section 51, Intellectual Property; Data Privacy Provisions and Section 91, 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 the 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 the 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.

52. 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:

- iii) exceeded the scope of the limited license that was previously obtained by the Contractor and agreed to by GRTC, or
 - iv) 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 required 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 52 will survive termination or expiration of this Agreement for any reason.

53. STANDARD OF PERFORMANCE

The Contractor shall supervise and direct the Work using its best skills and attention in accordance with Good Industry Practice.

The Contractor shall be solely responsible for all Construction means, methods, techniques, safety, sequences, and procedures, and for coordinating all portions of the Work under the Contract.

54. PERSONNEL ASSIGNMENTS

- a) Contractor shall perform the Work in an orderly and workmanlike manner and shall employ persons skilled and qualified for the performance of the Work assigned to such persons under the contract. GRTC will have the right to review the experience of each candidate and approve assignments of Contractor's personnel.

- b) **CONTRACTOR CERTIFIES THAT CONTRACTOR HAS ESTABLISHED A CRIMINAL HISTORY BACKGROUND POLICY THAT COMPLIES WITH GUIDANCE ISSUED BY THE U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION AND THAT 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.REMOVAL OF ASSIGNED PERSONNEL**

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

54. RESERVED

55. ADMINISTRATIVE CONTROL OF DOCUMENTS

All correspondence related to this Contract shall refer to the Contract number identified on the cover sheet of this Contract. Correspondence shall be addressed to the appropriate GRTC representative, and if it is addressed to any other individual other than the Contracting Officer, the Contractor shall also provide a copy of the correspondence to the Contracting Officer.

56. WORK SITE INVESTIGATION AND CONDITIONS AFFECTING THE WORK

- a) By submission of a bid, the Contractor acknowledges that it has taken steps reasonably necessary to ascertain the nature and location of the Work Site and that it has investigated and satisfied itself as to the general and local conditions which can affect the Work or its cost, including, but not limited to,
- i) conditions bearing upon transportation, disposal, handling, and storage of materials.
 - ii) the availability of labor, water, electric power, and roads
 - iii) uncertainties of weather, flooding patterns and water drainage, or similar physical conditions at the site
 - iv) the conformation and conditions of the ground; and
 - v) The character of equipment and facilities needed preliminary to and during work performance.
- b) The Contractor acknowledges that its undertaking to complete the Contract within the Contract Term includes an allowance for the number of days in which Contract work may be partially or totally delayed because of weather and at the location the Contract will be performed, and that the Contractor shall not be entitled to excusable delays or compensation for such delays. The Contractor also acknowledges that it has satisfied itself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the Work Site, access to the Work Site, and territory surrounding the Work Site, including any exploratory work done by GRTC as well as from the drawings and Specifications made a part of this Contract. Any failure of the Contractor to take the actions described and acknowledged in this paragraph will not relieve the Contractor from responsibility for estimating properly the difficulty and cost of successfully performing the Work or for proceeding to perform the Work successfully without additional expense to GRTC.
- c) GRTC assumes no responsibility for any conclusions or interpretations made by the Contractor based on the information made available by GRTC, nor does GRTC assume responsibility for any understanding reached or representation made concerning conditions, which can affect the Work by any of its officers or agents before the execution of this Contract, unless that understanding, or representation is expressly stated in this Contract.

- d) Weather conditions shall be considered and included in the planning and scheduling of all work influenced by high and low ambient temperatures, precipitation and/or saturates soil ensure completion of all Work within the Contract Time based on the average climatic conditions for the preceding ten (10) years as published by the National Oceanographic and Atmospheric Administration (“NOAA”) and entitled, “Local Climatological Data – Richmond, Virginia.”

57. LAYOUT OF WORK

The Contractor shall lay out its work from GRTC-established base lines and benchmarks indicated on the Plans and Specifications and shall be responsible for all measurements in connection with the layout. The Contractor shall furnish, at its own expense, all stakes, templates, platforms, equipment, tools, materials, and labor required to lay out any part of the Work. The Contractor shall be responsible for executing the Work to the lines and grades that may be established or indicated by the Project Manager. The Contractor shall also be responsible for maintaining and preserving all stakes and other marks established by the Project Manager until authorized to remove them. If such marks are destroyed by the Contractor or through its negligence before their removal is authorized, GRTC may replace them and deduct the expense of the replacement from any amounts due or to become due to the Contractor.

58. PROTECTION OF GRTC AND CITY OF RICHMOND PROPERTY

- a) The Contractor shall use reasonable care to avoid damaging existing buildings, equipment, and vegetation on or about premises owned by, or under the control of, GRTC or the City of Richmond. If the Contractor causes damage to any of this property, the Contractor shall replace or repair the damage at no expense to GRTC or the City of Richmond as the Contracting Officer directs. If GRTC directs that the Contractor make the repair and Contractor fails or refuses to promptly make such repair or replacement, the Contractor shall be liable to GRTC for the cost, plus an administrative fee of ten percent (10%), which may be deducted from any invoice due and owing Contractor. If GRTC elects to make such repair or replacement, then the Contractor shall be liable for the cost, plus an administrative fee of ten percent (10%), which may be deducted from any invoice due and owing to the Contractor or on demand if the Contract is terminated. This provision shall survive termination of the Contract.
- b) The Contractor also shall be responsible for all materials delivered and work performed until completion and acceptance of the entire Work, except by any completed unit of Work that may have been accepted by GRTC under the Contract.

59. PROTECTION OF EXISTING SITE CONDITIONS

- a) The Contractor shall preserve and protect all structures, equipment, and vegetation (such as trees, shrubs, and grass) on or adjacent to the Work Site which are not to be removed and which do not unreasonably interfere with the Work required under this Contract. The Contractor shall promptly remove trees only when specifically authorized to do so and shall avoid damaging vegetation that will remain in place. If any limbs or branches of trees are broken during Contract performance, or by the careless operation of equipment, or by workmen, the Contractor shall trim those limbs or branches with a clean cut and paint the cut with a tree-pruning compound as directed by the Contracting Officer.
- b) The Contractor shall protect from damage all existing improvements and utilities (1) at or near the Work Site and (2) on adjacent property of a third party.
- c) If Contractor damages any such existing improvements or utilities, the Contractor shall promptly repair the damage at no expense to GRTC as the Contracting Officer directs. If GRTC directs that the Contractor make the repair and the Contractor fails or refuses to promptly make such repair, GRTC may make the repair and the Contractor shall be liable to GRTC for the cost, plus an administrative fee of ten (10%) percent, which may be deducted from any amounts due and owing Contractor or on demand if the Contract is terminated. If GRTC elects to make such repair or replacement, then the Contractor shall be liable to GRTC for the cost of such repair(s), plus an administrative fee of ten (10%) percent, which may be deducted from any invoice due and owing Contractor or on demand if the Contract is terminated.

- d) This provision shall survive the termination of the Contract.

60. WORK BY GRTC; OTHER CONTRACTS

- a) GRTC may undertake, or award other contracts for, additional work at or near the Work Site. The Contractor shall fully cooperate with the other contractors and with employees of GRTC and shall carefully adapt scheduling and performing the Work under this Contract to accommodate the additional work, heeding any direction that may be provided by GRTC.
- b) The Contractor shall afford GRTC and separate contractors' reasonable opportunity for the introduction and storage of their materials and equipment and performance of their activities and shall connect and coordinate the Contractor's construction and operations with their as required by the Contract Documents.
- c) If part of the Contractor's Work depends for proper execution or results upon the design, construction, or operations by GRTC or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work promptly report to GRTC apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor to so report shall constitute an acknowledgement that GRTC's or separate Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not reasonably discoverable.
- d) GRTC shall be reimbursed by the Contractor for costs incurred by GRTC which are payable to a separate contractor because of delays, improperly timed activities, or defective construction of the Contractor. GRTC shall be responsible to the Contractor for costs incurred by the Contractor because of delays, improperly timed activities, damage to the work or defective construction of a separate contractor.
- e) The Contractor shall promptly remedy damage caused by the Contractor to complete or partially completed construction or to property of GRTC or separate contractors.

62. OPERATIONS AND STORAGE AREAS

- a) The Contractor shall confine all operations (including storage of materials) on the Worksite to areas authorized or approved by the Contracting Officer.
- b) Temporary buildings (e.g., storage sheds, shops, offices) and utilities may be erected by the Contractor only with the approval of the Contracting Officer and shall be built with labor and materials furnished by the Contractor without expense to GRTC. The temporary buildings and utilities shall remain the property of the Contractor and shall be promptly removed by the Contractor at its expense upon completion of the Work. With the written consent of the Contracting Officer, the buildings and utilities may be abandoned and need not be removed.
- c) The Contractor shall, under regulations prescribed by the Contracting Officer, use only established roadways or use temporary roadways constructed by the Contractor when and as authorized by the Contracting Officer. When materials are transported in performing the Work, vehicles shall not be loaded beyond the loading capacity recommended by the manufacturer of the vehicle or prescribed by any federal, state, or local law or regulation.
- d) When it is necessary to cross curbs or sidewalks, the Contractor shall protect the materials from damage. The Contractor shall promptly repair any damaged curbs, sidewalks, or roads at its sole cost, as the Contractor Officer directs or GRTC may elect to make the repairs, at Contractor's expense. If the Contractor fails to promptly make such repair or replacement or if GRTC elects to make such repair or replacement, then the Contractor shall be liable to GRTC for the cost of such repair(s), plus an administrative fee of ten percent (10%), which may be deducted from any invoice due and owing Contractor or on demand if the Contract is terminated. This provision shall survive termination of the Contract.

63. DIFFERING WORK SITE CONDITIONS

- a) Pursuant to Paragraph entitled "Work Site Investigation and Conditions Affecting the Work", the Contractor acknowledges that it had inspected the Work Site and satisfied itself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered while performing the Work insofar as this information is reasonably ascertainable from an inspection of the Work Site. If the Contractor encounters differing Work Site conditions from those identified under Paragraph entitled "Work Site Investigation and Conditions Affecting the Work", the Contractor shall within five (5) days, and before the conditions are disturbed, give written notice to the Contracting Officer of one (1) subsurface or latent physical conditions at the Work Site, which differ materially from those ascertainable from an inspection of the Work Site under Paragraph entitled "Work Site Investigations and Conditions Affecting the Work", or (2) unknown physical conditions at the Work Site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in the Contract.
- b) The Project Manager shall investigate the Work Site conditions promptly after receiving the notice. If the conditions do materially so differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performing any part of the Work under this Contract, whether or not changed as a result of the conditions, an equitable adjustment shall be made, and the Contract modified in writing provided the Contractor complies with Paragraph entitled "Equitable Adjustments".
- c) No request by the Contractor for an equitable adjustment to the Contract under this subparagraph shall be allowed unless the Contractor has given the written notice required; provided, that the time prescribed in (a), above, for giving written notice may be extended by the Contracting Officer in his or her discretion.
- d) No request by the Contractor for an equitable adjustment to the Contract for differing site conditions shall be allowed if made after final payment under this Contract.

64. 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 a GRTC representative who shall be similarly available to the Contractor.

65. MATERIAL AND WORKMANSHIP

- a) All equipment, material, and articles incorporated into the Work covered by this Contract shall be new and of the most suitable grade for the purpose intended unless otherwise specifically provided in this Contract. References in the Specifications to equipment, material, articles, or patented processes by trade name, make, or catalog number shall be regarded as establishing a standard of quality and shall not be construed as limiting competition. The Contractor may, at its option, use any equipment, material, article, or process that, in the judgment of the Contracting Officer is equal to that named in the Specifications, unless otherwise specifically provided in this Contract.
- b) The Contractor shall obtain the Contracting Officer's approval of the machinery and mechanical and other equipment to be incorporated into the Work. When requesting approval, the Contractor shall furnish to the Contracting Officer the name of the manufacturer, the model number, and other information concerning the performance, capacity, nature, and rating of the machinery and mechanical and other equipment. When required by this Contract or by the Contracting Officer, the Contractor also shall obtain the Contracting Officer's approval of the material or articles, which the Contractor contemplates incorporating into the Work. When requesting approval, the Contractor shall provide full information concerning the material or articles. When directed to do so, the Contractor shall submit samples for approval at the Contractor's expense, with all shipping charges prepaid. Machinery, equipment, material, and articles that do not have the required approval shall be installed or used at the risk of subsequent rejection.

- c) All work under this Contract shall be performed in a skillful and workmanlike manner. The Contracting Officer may require, in writing, that the Contractor remove from the Work any employee the Contracting Officer deems incompetent, careless, or otherwise objectionable.

66. USE AND POSSESSION PRIOR TO COMPLETION

- a) GRTC shall have the right to take possession of or use any completed or partially completed part of the Work. Before taking possession of or using any completed or partially completed Work, the Contracting Officer shall furnish the Contractor a list of items of Work remaining to be performed or corrected on those portions of the Work that GRTC intends to take possession of or use. However, the failure of the Contracting Officer to list any item of Work shall not relieve the Contractor of responsibility for complying with the terms of the Contract. GRTC's possession or use shall not be deemed an acceptance of any Work under the Contract.
- b) While GRTC has such possession or use, the Contractor shall be relieved of the responsibility for the loss of or damage to the Work resulting from GRTC's possession or use, notwithstanding the terms of Exhibit E, Paragraph entitled "Permits". If prior possession or use by GRTC delays the progress of the Work or causes additional expense to the Contractor, an equitable adjustment shall be made in the Contract Sum or the time of completion, and the Contract shall be modified in writing accordingly.

67. CONDITION OF THE WORK SITE

The Contractor shall at all times keep the Work Site, including storage areas, free from accumulations of waste materials. Before completing the Work, the Contractor shall remove from the Work any rubbish, tools, scaffolding, equipment, and materials that are not the property of GRTC. Upon completing the Work, the Contractor shall leave the Work Site in a clean, neat, and orderly condition satisfactory to the Contracting Officer. If Contractor fails to do so, GRTC may withhold payment of the final invoice until such Work is completed.

68. TITLE TO SUBMITTALS

All information, drawings, or other submittals required to be furnished by the Contractor to GRTC under this Contract shall become the property of GRTC.

69. ACCIDENT PREVENTION

- a) In performing this Contract, the Contractor shall provide for protecting the lives and health of employees and other persons; preventing damage to property, materials, supplies, and equipment; and avoiding work interruptions. For these purposes, the Contractor shall: (1) provide appropriate safety barricades, signs, and signal lights; (2) comply with all safety standards required by federal, state, or local law and any additional standards customarily employed in connection with the type of work being performed or the conditions at the Work Site.
- b) The Contracting Officer shall notify the Contractor of any noncompliance with these requirements and of the corrective action required. This notice, when delivered to the Contractor or the Contractor's representative at the Work Site, shall be deemed sufficient notice of the noncompliance and corrective action required. After receiving the notice, the Contractor shall immediately take corrective action. If the Contractor fails or refuses to take corrective action promptly, the Contracting Officer may issue an order stopping all or part of the Work until satisfactory corrective action has been taken. The Contractor shall not base any claim or request for equitable adjustment for additional time or money on any stop order issued under these circumstances.
- c) The Contractor shall maintain an accurate record of exposure data on all accidents incident to Work performed under this Contract resulting in death, traumatic/acute injury, occupational disease, or damage to property, materials, supplies or equipment. Such data shall be submitted to GRTC; provided, however, in the event of accidents resulting a death or multiple severe injuries, any such accident shall be reported to the Contractor Officer within twenty-four (24) hours of such accident.

- d) The Contractor shall be responsible for its Subcontractors' compliance with this paragraph.

70. SUSPENSION OF WORK

- a) The Contracting Officer may order the Contractor in writing to suspend all or any part of the Work for such period of time as it may determine to be appropriate for the convenience of GRTC.
- b) If the performance of all or any part of the Work is, for an unreasonable period of time, suspended or delayed by an act of the Contracting Officer in the administration of this Contract, or by its failure to act within the time specified in this Contract (or, if no time is specified, within a reasonable time), an adjustment shall be made for any increase in cost of performance of this Contract (excluding profit) necessarily caused by such unreasonable suspension or delay, and the Contract modified in writing accordingly. Any adjustment shall be made in accordance with paragraph entitled "Equitable Adjustments". However, no adjustment shall be made under this paragraph for any suspension or delay to the extent (1) that performance would have been suspended or delayed by any other cause, including the fault or negligence of the Contractor, or (2) for which an equitable adjustment is provided for or excluded under any other provision of this Contract.
- c) No claim under this paragraph shall be allowed (1) for any costs incurred more than twenty (20) days before the Contractor shall have notified the Contracting Officer in writing of the act or failure to act involved (but this requirement shall not apply to a claim resulting from a suspension order), and (2) unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of such suspension or delay, but not later than the date of final payment. No part of any claim based on the provisions of this paragraph shall be allowed if not supported by adequate evidence showing that the cost would not have been incurred but for a delay within the provisions of this paragraph.

71. GRTC'S RIGHT TO CARRY OUT WORK

- a) If Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a seven-day period after receipt of written notice from GRTC to commence and continue correction of such default or neglect with diligence and promptness, GRTC may, without prejudice to other remedies GRTC may have, correct such deficiencies. In such case, an appropriate adjustment shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including GRTC's expenses and compensation for the A/E additional services made necessary by such default. If payments due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to GRTC.
- b) After the Work is completed, GRTC may make emergency repairs to the Work if necessary to prevent further damage if the Contractor does not promptly respond to a notice of a condition requiring repairs. The Contractor shall be responsible to GRTC for this cost if the reason for the repairs is defects in the Contractor's Work. If payments then or thereafter due the Contractor are not sufficient to cover such costs, the Contractor shall pay the difference to GRTC.

72. CHANGE ORDER ACCOUNTING

In the event that an equitable adjustment under the Paragraph entitled "Changes" cannot be agreed to in a timely manner, the Contracting Officer may issue a Change Order and require Change Order accounting. The Contractor, for each change or series of related changes, shall maintain separate accounts, by job order or other suitable accounting procedure, of all incurred, segregable, direct costs (less allocable credits) of Work, both changed and not changed, allocable to the change. The Contractor shall maintain such accounts until the parties agree to an adjustment for the changes ordered by the Contracting Officer or the matter is conclusively disposed of in accordance with Section 27 of this Exhibit E entitled "PROCEDURES FOR CLAIMS AND DISPUTES."

73. WARRANTY

- a) Contractor warrants that the Work shall be free of patent and latent defects in design, materials, equipment, and workmanship, as measured from the requirements, criteria, standards, and Specifications set forth in

the Contract. A defect shall be considered latent only if it is not known or disclosed to GRTC prior to Substantial Completion, of the overall Work, and such defect would not normally be discovered upon reasonable inspection and investigation in accordance with Good Industry Practice during the course of design and Construction and prior to the completion of the Work. This limited warranty also does not apply to and the Contractor shall not be responsible for, repair or replacement Work needed as a result of: (a) normal wear and tear; (b) defect caused by damage; or (c) failure by GRTC to maintain, repair, or operate the Work Site in accordance with Good Industry Practice, to the extent the defect is caused by same.

- b) Contractor shall correct all Construction and material defects and deficiencies (other than latent defects and deficiencies which are discussed below) which may develop within the applicable of (i) a period of one (1) year from the date when all of the Work is completed and accepted by GRTC, or (ii) such longer period for any component of the Work which may be specified in the Contract Documents, or (iii) any warranty period which may be longer than the periods specified in (i) and (ii) above as provided in any specific warranty for such item. Nothing set forth above or otherwise in this Contract shall restrict in any way or operate as any limitation on the right of GRTC to seek damages or other remedies against Contractor for any other period under any legal or equitable theory with respect to any defects and deficiencies which are latent in nature and not readily ascertainable in the ordinary course of observation, subject, however, to any limitations imposed under governing law.
- c) Contractor shall, within fifteen (15) days after receipt of written notice hereof, commence to correct, repair, and make good any defects in the Work for which said materials, equipment and workmanship are warranted, and also make good any damage to other work caused by the repairing of such defects. Contractor warrants to GRTC that such Work will be performed in a safe and careful manner and will conform to the requirements of the Contract Documents. None of the work performed in correcting such defects shall be the basis of a claim for additional compensation or damages.
- d) The Contractor shall issue in writing to GRTC as a condition precedent to final payment a "General Warranty" reflecting terms and conditions of this paragraph for all work under the Contract. This warranty shall specifically provide that all defects in materials and workmanship appearing during the warranty period shall be remedied to the satisfaction of GRTC at no additional cost to GRTC.
- e) The provisions of this paragraph shall survive termination of the Contract.

74. INSPECTION AND TESTING OF WORK

- a) The Contractor shall maintain an adequate inspection system and perform such inspections as will ensure that the Work conforms to Contract requirements. The Contractor shall maintain complete inspection records and make them available to GRTC Immediately upon request. All Work is subject to inspection and testing by GRTC at all places and at all reasonable times before acceptance to ensure strict compliance with the terms of the Contract.
- b) Inspections and tests by GRTC are for the sole benefit of GRTC and do not:
 - i) relieve the Contractor of responsibility for providing adequate quality control measures.
 - ii) relieve the Contractor of responsibility for damage to or loss of the material before acceptance.
 - iii) constitute or imply acceptance; or
 - iv) affect the continuing rights of GRTC after acceptance of the completed Work.
- c) The presence or absence of an inspector from GRTC does not relieve the Contractor from any Contract requirement, nor is the inspector authorized to change any term or condition of the Specifications without the Contracting Officer's written authorization.
- d) The Contractor shall promptly furnish, without additional charge, all facilities, labor, and material reasonably needed for performing such safe and convenient inspections and tests as may be required by the

Contracting Officer. GRTC may charge to the Contractor any additional cost of inspection or testing when Work is not ready at the time specified by the Contractor for inspection or test, or when prior rejection makes re-inspection or retest necessary. GRTC may perform any inspections or tests in a manner that will not unnecessarily delay the Work.

- e) The Contractor shall, without charge, replace or correct Work found by GRTC not to conform to Contract requirements, unless in the public interest GRTC consents to accept the Work with an appropriate downward adjustment in Contract Sum. The Contractor shall promptly segregate and remove rejected material from the Work Site.
- f) If the Contractor does not promptly replace or correct rejected Work, GRTC may:
 - i) by Contract or otherwise, replace or correct the Work and charge the cost to the Contractor, plus an administrative fee of ten percent (10%), or
 - ii) terminate for default the Contractor's right to proceed.
- g) If, before acceptance of the entire Work, GRTC decides to examine already completed Work by removing it or tearing it out, the Contractor, on request, shall promptly furnish all necessary facilities, labor, and material. If the Work is found to be defective or nonconforming in any material respect due to the fault of the Contractor or its Subcontractors, the Contractor shall defray the expenses of the examination and of satisfactory reconstruction. However, if the Work is found to meet Contract requirements, the Contracting Officer shall make an equitable adjustment for the additional services involved in the examination and reconstruction in accordance with Paragraph entitled "Equitable Adjustments" contained in this Exhibit E, including, if completion of the Work was thereby delayed, an extension of time.
- h) Unless otherwise specified in the Contract, GRTC shall accept, as promptly as practicable after completion and inspection, all Work required by the Contract or that portion of the Work the Contracting Officer determines can be accepted separately. Subject to the provisions of Paragraph entitled "Warranty of Construction", acceptance by GRTC shall be final and conclusive except for latent defects, fraud, gross mistakes amounting to fraud, or GRTC's rights under any warranty or guarantee.

75. PRICING OF ADJUSTMENTS

When costs are a factor in any determination of an adjustment to the Contract Sum pursuant to Paragraph entitled "Changes" or any other provision of this Contract, such costs shall be in accordance with Cost Principles of FAR.

76. CHANGES

- a) The Contracting Officer may, at any time, without notice to the sureties, if any, by written order designated or indicated to be a Change Order, make changes in the Work within the general scope of the Contract, including changes:
 - i) in the Specifications (including drawings and designs);
 - ii) in the method or manner of performance of the Work;
 - iii) in the facilities, equipment, materials, services, or site to be furnished by GRTC; or
 - iv) directing acceleration in the performance of the Work.
- b) Any other written or oral order (which, as used in this paragraph (b), includes direction, instruction, interpretation, or determination) from the Contracting Officer that causes a change in the Contractor's obligations shall be treated as a Change Order under this paragraph; provided that the Contractor gives the Contracting Officer written notice stating (1) the date, circumstances, and source of the order and (2) that the Contractor regards the order as a Change Order.

- c) Except as provided in this clause, no order, statement, or conduct of the Contracting Officer shall be treated as a change under this paragraph or entitle the Contractor to an equitable adjustment.
- d) If any change under this paragraph causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the Work under this Contract, whether or not changed by any such order, the Contracting Officer shall make an equitable adjustment and modify the Contract in writing in accordance with the provisions in paragraph entitled, "Equitable Adjustments" contained in Exhibit E. However, except for a "proposal for adjustment" (hereafter referred to as "proposal") based on defective Specifications, no proposal for any change under paragraph (b), above, shall be allowed for any costs incurred more than twenty (20) days before the Contractor gives written notice as required. In the case of defective Specifications for which GRTC is responsible, the equitable adjustment shall include the increased cost reasonably incurred by the Contractor in attempting to comply with the defective Specifications.
- e) The Contractor must submit any proposal under this paragraph within thirty (30) days after: (1) receipt of a written Change Order under paragraph (a), above, or (2) the furnishing of a written notice under paragraph (b), above, by submitting to the Contracting Officer a written statement describing the general nature and amount of the proposal, unless this period is extended by GRTC. The proposal may be included in the notice under paragraph (b), above.
- f) No proposal by the Contractor for an equitable adjustment shall be allowed if asserted after final payment under this Contract.

77. 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 Section 77 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, with-out 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.

78. CALCULATION OF OVERHEAD, PROFIT AND COMMISSION

- a) The allowable overhead shall be determined in accordance with the contract cost principles and procedures in the FAR, § 31.201 et seq., but in no case shall exceed the following. The percentages for profit and

commission shall be negotiated and may vary according to the nature, extent and complexity of the Work involved.

- b) The Contractor or any Subcontractor shall not be allowed any commission on the allowable profit or commission of any lower-tiered Subcontractor. Equitable adjustments for deleted Work shall include credits for overhead, profit and commission. On proposals covering both increases and decreases in the amount of the Contract, the application of overhead and profit shall be on the net change in direct costs for the Contractor or Subcontractor performing the Work.

79. TIME EXTENSIONS

- a) The time extensions for changes in the Work will depend upon the extent, if any, by which the changes cause a delay in the completion of the various elements of construction. Any Contract Modification granting the time extension may provide that the Contract completion date will be extended only for those specific elements so delayed and that the remaining Contract completion dates for all other portions of the Work will not be altered and may further provide for an equitable readjustment of liquidated damages under the new completion schedule.
- b) The Contractor may be granted an extension of time because of changes ordered in the Contract or because of any Force Majeure Event.
- c) Claims for extensions of time must be made in writing within twenty (20) calendar days after the occurrence of the delay. All-time extension claims shall be supported by sufficient written evidence to justify the claim. In the case of a continuing cause of delay, only one (1) claim is necessary. Claims for extensions of time shall be stated in numbers of whole or half calendar days.
- d) In cases of claims for extension of time because of weather, such claims will only be granted if the actual lost time exceeds the average historical climatic conditions for the preceding ten (10) years are published by the National Oceanographic and Atmospheric Administration ("NOAA") and entitled, "Local Climatological Data – Richmond, Virginia" and only because such weather prevented the execution of major critical times of Work. Time extensions granted under this subparagraph for weather are not compensable.
- e) Although GRTC may extend Contract Time for justifiable reasons, the Contractor shall bear all responsibility for financial risks, which may accrue, from various causes of delay in Construction progress. However, for delays caused by the failure of the Architect/Engineer or GRTC to make timely decisions or to take timely action, a claim for additional costs will be considered.
- f) The Contract Term for the completion of Work is an essential element of the Contract. The contractor's failure to complete the Work within such time will cause damage to GRTC.
- g) Should the Contractor fail to complete the Work within the Contract Term, including all officially approved extensions thereto, GRTC may collect from the Contractor or deduct from any funds owed Contractor an amount not to exceed the actual damages caused by such delay.
- h) NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, THE CONTRACTOR'S SOLE REMEDY FOR DELAY IS AN EXTENSION OF TIME TO ACHIEVE SUBSTANTIAL COMPLETION. The Contractor will not receive any compensation or damages for delay, unless such delay is caused by acts constituting intentional interference by GRTC with the Contractor's performance of the Work and to the extent that such acts of GRTC continue after the Contractor's notice to GRTC of such interference. GRTC's exercise of any of its rights under the Contract, regardless of the extent or number of such changes or GRTC's exercise of any of its remedies of suspension of the Work or requirement of correction of any defective Work, shall not under any circumstances be construed as intentional interference with Contractor's performance of the Work.

80. RESERVED

81. Examination of Bid Documents

GRTC shall have the right to examine and review the Contractor's original Bid and estimating documents used in preparing its Bid as a reference to aid in GRTC's evaluation of the Contractor's scheduling and Construction progress. A certified copy of such documents shall be submitted to GRTC if requested by the Contracting Officer. GRTC shall maintain in confidence all information contained in such Bid and estimating documents. It is GRTC's position that the Contractor's estimating documents in support of its original Bid are exempt from mandatory release prior to award of Contract under the Virginia Freedom of Information Act (FOIA). After award, the documents will require individual review to determine whether or not an exemption from release under the Act is available.

82. 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.

83. 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 the 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 confirming 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.

84. NO DAMAGES FOR DELAY

Unless otherwise specifically provided for by the Contract, the Contractor shall not be entitled to damages of any type resulting from hindrances, delays, or any other cause under this Contract except when the Work is stopped or suspended by a written order signed by the Contracting Officer or by intentional interference by GRTC.

85. 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 the Contracting Officer.
- b) The Contractor agrees to insert the substance of this subparagraph, 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.

86. 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.

87. 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 the Services performed or Goods provided by the 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 the 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 the 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 87(b).

88. PAYMENT TO SUBCONTRACTORS

Payments by Contractors to subcontracts associated with GRTC contracts are subject to the time periods established in Section 87 of this Exhibit E.

89. WAGE RATES

All persons employed in the performance of the Work under this Contract, or any subcontracts hereunder, shall be paid not less than the general rates of per diem, holiday, and overtime wages prevailing in the locality for Work of a similar character (which wages are specified in an attachment to this Contract).

90. FEDERAL, STATE AND LOCAL LAWS GOVERNING CONSTRUCTION

- a) The Contractor must comply with all applicable State and Federal laws, including but not limited to laws concerned with labor, equal employment opportunity, safety and minimum wages. The Contractor shall make itself familiar with and always shall observe and comply with all current Federal, State, and local laws, ordinances and regulations which in any manner affect the conduct of the Work, and shall indemnify and save harmless GRTC, its officers, directors, employees, agents, representatives, successors and assigns, against any claim arising from violation of any such law, ordinance or regulation by Contractor or Subcontractor.
- b) The Contractor shall cooperate with applicable city or other governmental officials at all times where their jurisdiction prevails. The Contractor shall make an application for any permits and permanent utilities which are required for the execution of the Contract. GRTC **is not** exempt from building permits, inspections, and related City requirements. It is the Contractor's sole responsibility to obtain all building and related permits that may be required for the execution of this Contract, at Contractor's sole expense.
- c) The Contractor is required to pay not less than the wage scale of the various classes of labor as shown on the Exhibit G – Wage Rates of the Contract provided by GRTC. The specified wage rates are minimum rates only, and GRTC will not consider any claims for additional compensation made by any Contractor because of payment by the Contractor of any wage rates more than the applicable minimum rate contained in the Contract.
- d) Certain Public Works require under the Prevailing Wage Rate Schedule to list not only "Building Construction" wage rates but also "Incidental Paving and Utilities" wage rates. The Contractor's attention is called to the fact that all classes of Work within the area of the building shall be paid "Building Construction" wage rates.
- e) The Prevailing Wage Rate Schedule shall be made available, upon request, to any employee of the Contractor and to any employee of its Subcontractors.
- f) The Contractor shall forfeit as a penalty to GRTC, sixty dollars (\$60.00) for each laborer, workman or mechanic employed, for each calendar day, or portion thereof, such laborer, workman or mechanic is paid less than the said stipulated minimum rates for any Work done under said Contract, by him or her, or by any Subcontractor under him or her. The Contractor and each Subcontractor shall keep, or cause to be kept, an accurate record showing the names and occupations of all laborers, workmen and mechanics employed in connection with the Work, and showing also the actual per diem wages paid to such workers, which record shall be open at all reasonable hours for the inspection by GRTC.
- g) The Contractor shall assign to GRTC all claims for overcharges associated with this Contract which arise under the antitrust laws of the United States, 15 U.S.C. § 1 et seq.

91. 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.

92. 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.

93. 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.

94. Publicity Releases

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

95. 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.

96. 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.

97. 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.

99. DRUG-FREE WORKPLACE PROGRAM

a) Definitions as used in this paragraph:

- i) "Controlled Substance Act" means the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 C.F.R. Paragraph 801 et seq.) or its successor statute.
- ii) "Controlled Substance" means a controlled substance listed in Schedules I through V of Section 202 of the Controlled Substances Act (21 U.S.C. § 812) and as further defined in regulation at 21 C.F.R. §§ 1308.11 - 1308.15, or listed in Schedules I through V of Subchapter AB of the Texas Controlled Substances Act, Tex Health & Safety Code, Ch. 481, which include, but are not limited to, marijuana, heroin, LSD, concentrated cannabis or cannabinoids, hashish or hash oil, morphine or its derivatives, mescaline, peyote, phencyclidine (PCP, Angel Dust), opium, opiates, methadone, cocaine, Quaaludes, amphetamines, methamphetamines, depressants, "exotic/designer" drugs, benzodiazepines, Seconal, codeine, barbiturates, Phenobarbital, or Valium.
- iii) "Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes.
- iv) "Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, possession, or use of any controlled substance.
- v) "Drug-free workplace" means the site(s) for the performance of work done by Contractor in connection with this Contract where employees of the Contractor are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.
- vi) "Employee" means an employee of Contractor directly engaged in the performance of Work under this Contract and shall include all direct cost employees and any other Contractor employee who has other than a minimal impact or involvement in Contract performance.
- vii) "Individual" means a Contractor that has no more than one employee including the Contractor.

b) The Contractor, if other than an individual, shall, within thirty (30) days after award of the Contract (unless a longer period is agreed to in writing for contracts of thirty (30) days or more performance duration), or as soon as possible for contracts of less than thirty (30) days performance duration:

- i) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition.
- ii) Establish an ongoing drug-free awareness program to inform such employees about:
 - ✓ The dangers of drug abuse in the workplace

- ✓ The Contractor's policy of maintaining a drug-free workplace.
 - ✓ Any available drug counseling, rehabilitation, and employee assistance programs; and
 - ✓ The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace.
- iii) Provide all employees engaged in performance of this Contract with a copy of the statement required by paragraph (b)(1) of this paragraph.
- iv) Notify such employees in writing in the statement required by paragraph (b)(1) of this clause that, as a condition of continued employment on this Contract, the employee will:
- ✓ Abide by the terms of the statement; and
 - ✓ Notify the employer in writing of the employee's conviction under a criminal drug statute for a violation occurring in the workplace no later than five (5) days after such conviction.
- v) Notify the Contracting Officer in writing within ten (10) days after receiving notice under subdivision (b)(4)(ii) of this paragraph, from an employee or otherwise receiving actual notice of such conviction. The notice shall include the position title of the employee.
- vi) Within thirty (30) days after receiving notice under subdivision (b)(4)(ii) of this paragraph of a conviction, take one (1) of the following actions with respect to any employee who is convicted of a drug abuse violation occurring in the workplace:
- ✓ Taking appropriate personnel action against such employee, up to and including termination; or
 - ✓ Require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency; and
- vii) Make a good faith effort to maintain a drug-free workplace through implementation of paragraphs (b)(1) through (b)(6) of this paragraph.
- viii) The Contractor, if an individual, agrees not to engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance while performing this Contract.
- ix) In addition to other remedies available to GRTC, the Contractor's failure to comply with the requirements of paragraph (b) or (c) of this paragraph shall constitute a default under this Contract, and if federal funds are involved, may render the Contractor subject to suspension or debarment in accordance with FAR, part 9.4.

100. TOBACCO FREE WORKPLACE

Tobacco products: Tobacco products include cigarettes, cigars, pipes, snuff, snus, chewing tobacco, smokeless tobacco, dipping tobacco and any other non-FDA approved nicotine delivery device.

GRTC Property: 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.

- a) Tobacco use is not permitted at any time on the Work Site or GRTC owned or leased property, including personal vehicles parked in GRTC parking lots.
- b) Littering of tobacco-related products on the grounds or parking lots is also prohibited.

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 – Pricing Schedule
2. Exhibit E – Contractual Terms and Conditions
3. Exhibit E-1 – Addendum to Contractual Terms and Conditions, Federally Assisted Construction
4. Plans and Specifications
5. Exhibit E, Statement of Work
6. Exhibit G - Prevailing Wage Rates
7. Exhibit B – Representations and Certifications
8. Exhibit B-1 – Buy America
9. Exhibit D – Disadvantaged Business Enterprise Program/SBE
10. Other provisions or attachments to the Contract

102.HAZARDOUS MATERIALS

- a) “Hazardous Materials” means any element, chemical, compound, material or substance, whether solid, liquid or gaseous, which at any time is defined, listed, classified or otherwise regulated in any way under any Environmental Laws, or any other such substances or conditions (including mold and other mycotoxins or fungi) which may create any unsafe or hazardous condition or pose any threat to human health and safety. “Hazardous Materials” includes the following:
 - i) Hazardous wastes, hazardous material, hazardous substances, hazardous constituents, and toxic substances or related materials, whether solid, liquid or gas, including substances defined as or included in the definition of “hazardous substance”, “hazardous waste”, “hazardous material”, “extremely hazardous waste”, “acutely hazardous waste”, “radioactive waste”, “radioactive materials”, “bio-hazardous waste”, “pollutant”, “toxic pollutant”, “contaminant”, “restricted hazardous waste”, “infectious waste”, “toxic substance”, “toxic waste”, “toxic material”, or any other term or expression intended to define, list or classify substances by reason of properties harmful to health, safety or the indoor or outdoor environment (including harmful properties such as ignitability, corrosivity, reactivity, carcinogenicity, toxicity, reproductive toxicity, “TCLP toxicity” or “EP toxicity” or words of similar import under any applicable Environmental Laws);
 - ii) Any petroleum, including crude oil and any fraction thereof, and including any refined petroleum product or any additive thereto or fraction thereof or other petroleum derived substance; and any waste oil or waste petroleum byproduct or fraction thereof or additive thereto;
 - iii) Any drilling fluids, produced waters and other wastes associated with the exploration, development or production of crude oil, natural gas or geothermal resources;
 - iv) Any flammable substances or explosives;
 - v) Any radioactive materials;
 - vi) Any asbestos or asbestos-containing materials;
 - vii) Any lead and lead-based paint;
 - viii) Any radon or radon gas;
 - ix) Any methane gas or similar gaseous materials;
 - x) Any urea formaldehyde foam insulation;

- xi) Electrical equipment which contains any oil or dielectric fluid containing regulated levels of polychlorinated biphenyls;
 - xii) Pesticides;
 - xiii) Any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any governmental entity or which may or could pose a hazard to the health and safety of the owners, operators, users or any persons in the vicinity of the Premises or to the indoor or outdoor environment;
 - xiv) Those substances listed in the United States Department of Transportation Table (49 C.F.R. 172.101, as amended); and
 - xv) Soil, or surface water or ground water, contaminated with Hazardous Materials as defined above.
- b) "Release of Hazardous Materials" means any spill, leak, emission, release, discharge, injection, escape, leaching, dumping or disposal of Hazardous Materials into the soil, air, water, groundwater, or environment, including any exacerbation of an existing release or condition of Hazardous Materials contamination.
 - c) "Best Management Practices" has the meaning set forth in Storm Water Management for Construction Activities: Developing Pollution Prevention Plans and Best Management Practices (EPA Document 832 R 92-005).
 - d) Neither the Contractor, nor any of the Contractor's agents, Subcontractors, employees, Contractors, or invitees, shall at any time handle, use, manufacture, store or dispose of in or about the Work Site ("Premises") any Hazardous Materials. Contractor shall notify GRTC of any Release of Hazardous Materials within six (6) hours of discovering any such Release of Hazardous Materials. Contractor agrees to abide by Best Management Practices. Contractor shall protect, defend, indemnify and hold GRTC harmless from and against any and all loss, claims, liability or costs (including court costs and attorneys' fees) incurred by reason of any actual or asserted failure of Contractor to fully comply with all applicable Environmental Laws, or the presence, handling, use or disposition in or from the Premises of any Hazardous Materials, or by reason of any actual or asserted failure of Contractor to keep, observe, or perform any provision of this paragraph. The provisions of this paragraph shall survive termination of this Contract.
 - e) No Hazardous Materials shall be kept, stored, used, or discharged on the Premises. Licensee shall comply strictly with all applicable Federal, State, and local laws, ordinances, rules and regulations regarding Hazardous Materials, and shall indemnify, defend and hold Licensor harmless from and against any and all liability arising from Licensee's use, storage, or discharge of Hazardous Materials on the Premises or Release of Hazardous Materials. The provisions of this paragraph shall survive termination of this Contract.
 - f) Neither the Contractor, nor any of the Contractor's agents, Subcontractors, employees, or invitees shall at any time handle, use, manufacture, store or dispose of in or about the Work Site any flammables, explosives, radioactive materials, hazardous wastes or materials, toxic wastes or materials, or other similar substances, petroleum products or derivatives, or any substance (collectively, "Hazardous Material") subject to regulation by or under any federal, state and local laws and ordinances relating to the protection of the environment or the keeping, use or disposition of environmentally hazardous materials, substances, or wastes, presently in effect or hereafter adopted, all amendments to any of them, and all rules and regulations issued pursuant to any of such laws or ordinances (collectively "Environmental Laws"). The Contractor shall indemnify and hold GRTC harmless from and against any and all loss, claims, liability or costs (including court costs and attorneys' fees) incurred by reason of any actual or asserted failure of the Contractor to fully comply with all applicable Environmental Laws, or the presence, handling, use or disposition in or from the Premises of any Hazardous Materials, or by reason of any actual or asserted failure of Contractor to keep, observe, or perform any provision of this paragraph. The provisions of this paragraph shall survive termination of this Contract.

103. ENVIRONMENTAL LAW

“Environmental Law” means any Law applicable to Contractor or the Work regulating or imposing liability or standards of conduct that pertains to the environment. Hazardous Materials, contamination, or any type whatsoever, or environmental health and safety matters, and any lawful requirements and standards that pertain to the environment. Hazardous Materials, contamination, or any type whatsoever, or environmental health and safety matters set forth in any permits, licenses, approvals, plans, rules, regulations, or ordinances adopted, or other criteria and guidelines promulgated, pursuant to laws applicable to Contractor or the Work, as such have been or are amended, modified, or supplemented from time to time (including any present and future amendments thereto and reauthorizations thereof) including those related to:

- a) The manufacture, processing, use, distribution, existence, treatment, storage, disposal, generation, and transportation of Hazardous Materials.
- b) Air, soil, surface and subsurface strata, stream sediments, surface water, and groundwater;
- c) Releases of Hazardous Materials.
- d) Protection of wildlife, Threatened or Endangered Species, sensitive species, wetlands, water courses and water bodies, historical, archeological, and paleontological resources, and natural resources;
- e) The operation and closure of underground storage tanks.
- f) Safety of employees and other persons; and
- g) Notification, documentation, and record keeping requirements relating to the foregoing.
- h) Without limiting the above, the term “Environmental Laws” shall also include the following:
 - i) The National Environmental Policy Act (42 U.S.C. §§4321 et. seq.), as amended.
 - ii) The Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. §§9601 et. seq.), as amended.
 - iii) The Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (42 U.S.C. §§6901 et. seq.);
 - iv) The Emergency Planning and Community Right to Know Act of 1986 (42 U.S.C. §§1101 et. seq.), as amended.
 - v) The Clean Air Act (42 U.S.C. §§7401 et. seq.), as amended.
 - vi) The Federal Water Pollution Control Act, as amended by the Clean Water Act (33 U.S.C. §§1251 et. seq.);
 - vii) The Resource Conservation and Recovery Act (42 U.S.C. §§6901, et. seq.), as amended.
 - viii) The Toxic Substances Control Act (15 U.S.C. §§2601 et. seq.), as amended.
 - ix) The Hazardous Materials Transportation Act (49 U.S.C. §§1801 et. seq.), as amended.
 - x) The Oil Pollution Act (33 U.S.C. §§2701, et. seq.), as amended.
 - xi) The Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. §§136 et. seq.), as amended.
 - xii) The Federal Safe Drinking Water Act (42 U.S.C. et. seq.), as amended.
 - xiii) The Federal Radon and Indoor Air Quality Research Act (42 U.S.C. §§7401 et. sea.), as amended.

- xiv) The Occupational Safety and Health Act (29 U.S.C. §§651 et seq.);
- xv) The Endangered Species Act (16 U.S.C. §§1531 et. seq.), as amended;
- xvi) The Fish and Wildlife Coordination Act (16 U.S.C. §§661 et. seq.), as amended;
- xvii) The National Historic Preservation Act (16 U.S.C. §§470 et. seq.), as amended.
- xviii) The Coastal Zone Management Act (33 U.S.C. §§1451 et. seq.), as amended.

104. ORGANIZATIONAL CONFLICT OF INTEREST (“OCI”)

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.

For the purposes of this clause, 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.

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 clause 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.

105. RECORDS 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.

This paragraph will survive any termination or expiration of this Contract.

106. 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 the 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.

107. 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, post-age 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 writ-ten 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 re-solved 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 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.

108. 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.

109. 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.

110. FUNDING AVAILABILITY

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.