
EXHIBIT E
CONTRACTUAL TERMS AND CONDITIONS
(SUPPLY CONTRACT)

1. DEFINITIONS

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

- (a) "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 to GRTC, including without limitation "FCPA" or any applicable laws and regulations, including in the jurisdiction in which the Contractor operates and/or manufactures goods for GRTC, relating to anti-corruption and bribery.
- (b) "Bid" means the offer of the bidder, submitted on the prescribed form, stating prices for performing the supplies.
- (c) "Change Order" means a written order to the Contractor signed by the Contracting Officer, issued after execution of the Contract, authorizing a change in the term or scope of the Contract.
- (d) "Contract" or "Contract Documents" means this written agreement between the parties comprised of all the documents listed in the Table of Contents, Change Orders and/or Contract Modifications that may be entered into by the parties.
- (e) "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.
- (f) "Contract Modification" means any changes in the terms or provisions of the Contract which are reduced to writing and fully executed by both parties.
- (g) "Contract Sum" means the total compensation payable to the Contractor under this Contract as originally contracted for or as subsequently adjusted by Contract Modification.
- (h) "Contract Term" means period of performance set forth in the paragraph entitled "Term" contained in Exhibit E.
- (i) "Contracting Officer" means a person with GRTC to enter into, administer, and/or terminate contracts and make related determinations and finding on behalf of GRTC. The term includes certain authorized representatives of the Contracting Officer acting within the limits of their authority as delegated by the Contracting Officer.
- (j) "Contractor" means the entity that has assumed the legal obligation to deliver the supplies as identified in the Contract.
- (k) "Days" means calendar days. In computing any period of time established under this Contract, the day of the event from which the designated period of time begins to run shall not be included, but the last day shall be included unless it is a Saturday, Sunday, or Federal or State of Texas holiday, in which event the period shall run to the end of the next business day.
- (l) "FAR" means the Federal Acquisition Regulations codified in 48 C.F.R. Title 48.
- (m) "FCPA" means the United States Foreign Corrupt Practices Act, 15 U.S.C. §§ 78dd-1, et seq., as amended.
- (n) "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.

- (o) "FTA" means the Federal Transit Administration.
- (p) "Intellectual Property Rights" means the worldwide legal rights or interests evidenced by or embodied in: (i) any idea, software, design, concept, personality right, method, process, technique, apparatus, invention, discovery, or improvement, including any patents, trade secrets, and know-how; (ii) any work of authorship, including any copyrights, moral rights or neighboring rights, 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.
- (q) "Manufacturing Materials" mean any completed or partially completed supplies and materials, parts, dies, jigs, fixtures, plans, drawings, information, and contract rights specifically produced or specially acquired by the Contractor for the performance of the Contract.
- (r) "Notice of Award" means formal notice of award of the Contract to the Contractor issued by the Contracting Officer.
- (s) "Notice to Proceed" means written authorization for the Contractor to start the performance of the Contract.
- (t) "Project Manager" means the designated individual to act on behalf of Capital Metro, to monitor and certify the technical progress of the Contractor's performance under the terms of this Contract.
- (u) "Subcontract" means the contract between the Contractor and its Subcontractors.
- (v) "Subcontractor" means Subcontractors of any tier.
- (w) "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, Authority 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.

2. TYPE OF CONTRACT

This is a (3) three-year Fixed Price Contract with one year renewals

USE FOR INDEFINITE QUANTITY, INDEFINITE DELIVERY CONTRACT:

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

- (e) The quantities provided by GRTC on the Schedule are estimates used as a basis for the Contract Award and are, therefore, not hereby purchased under the Contract.

3. DELIVERY

- a) Delivery shall be made to Greater Richmond Transit Company (GRTC) 301 East Belt Boulevard, Richmond, VA 23224
- b) Delivery shall be made on or before the date provided in the solicitation.
- c) Delivery hours are limited to 7:00 a.m. – 4:00 p.m., prevailing local time.
- d) All deliveries shall be made F.O.B. destination. This term means free of expense to GRTC delivered and laid down in the area indicated by GRTC. The Contractor shall:
 - i. pack and mark the shipment to comply with specifications; or if the specifications do not contain specific packing or marking instructions, pack and mark the shipment in accordance with prevailing commercial practices and in such a manner to assure delivery in good condition and as required by this Contract
 - ii. prepare and distribute commercial bills of lading
 - iii. deliver the shipment in good order and condition to the point of delivery specified in the Contract
 - iv. be responsible for any loss of and/or damage to the goods occurring before receipt of the shipment by GRTC at the delivery point specified in the Contract
 - v. furnish a delivery schedule and designate the mode of delivering carrier; and
 - vi. pay and bear all charges to the specified point of delivery.

4. RESERVED

5. INVOICING AND PAYMENT

- a) **Invoices:** Contractor shall submit an invoice to GRTC, Accounts Payable, each month for the Services performed and Goods provided during the immediately preceding month. No advance payment shall be made or accepted for Services performed or Goods provided by Contractor pursuant to this Agreement. Contractor's invoices shall include the applicable purchase order number and must be accompanied by all required documentation to support all charges, including, but not limited to, originals of GRTC-approved time sheets, and, as applicable, a copy of the Service Order or Contractor's Offer, invoices for subcontractor services and Goods. All applicable rebates and discounts shall be identified separately on Contractor's invoice. Any invoice submitted to GRTC in an improper format or without the required information or documentation will be returned unpaid to Contractor for correction and resubmission. Invoices shall be submitted to:

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

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

- i. the Contract and order number (if any)
- ii. a complete itemization of all costs including quantities ordered and delivery order numbers (if any)
- iii. any discounts offered to GRTC under the terms of the Contract

- iv. evidence of the acceptance of the supplies or Services by GRTC; and
 - v. any other information necessary to demonstrate entitlement to payment under the terms of the Contract.
- b) **Payment:** GRTC shall pay all undisputed portions of properly documented invoices within 30 days after receipt of Contractor's invoice. If GRTC disputes any portion of an invoice, GRTC shall provide written notice to Contractor indicating the reason GRTC is withholding any amount, and GRTC shall pay the undisputed portion of the invoiced amount. Neither the payments made to Contractor, nor the method of such payments, shall be deemed GRTC's acceptance of the Services or Goods, nor shall they relieve Contractor of its obligations to perform the Services and deliver the Goods in strict compliance with the requirements herein.
- c) **Set-Off:** If Contractor breaches any provision of this Agreement or any Service Order for Additional Services, or if any person or entity asserts a claim or lien against GRTC or any of GRTC's property that arises out of this Agreement, GRTC shall have the right to retain out of any payments due or to become due to Contractor hereunder an amount sufficient to protect GRTC completely from all such claims (including costs and attorneys' fees). GRTC shall provide notice to Contractor explaining GRTC's reasons for such retainage. When the claim has been released or resolved to GRTC's satisfaction, GRTC shall release the retained amounts to Contractor, net of any costs GRTC incurred as a result of such claim. GRTC shall also have the right to set-off any costs, damages, expenses or other monies, the payment for which Contractor is responsible, against any amounts that GRTC owes Contractor hereunder. GRTC's right to withhold monies pursuant to this Section 6 shall be in addition to all other rights and remedies available to it under this Agreement, at law or in equity.

6. RESERVED

7. INDEPENDENT CONTRACTOR

The Contractor's relationship to GRTC in the performance of this Contract is that of an independent contractor. The personnel performing services 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.

8. CHANGES

- a) GRTC may at any time, by a written order, make changes within the general scope of this Contract in any one or more of the following:
- i. method of shipment or packing; and
 - ii. place of delivery.
- b) If any such change 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 changed or not changed by the order, an equitable adjustment shall be made in the Contract price or delivery schedule, or both, and the Contract shall be modified in writing accordingly.
- c) Any notice of intent to assert a claim for adjustment under this paragraph must be asserted by the Contractor within thirty (30) days from the date of receipt of GRTC's written order; provided, however, that later notice shall not bar the Contractor's claim if the Contractor can demonstrate that GRTC was not prejudiced by the delay in notification. In no event shall any claim be asserted after final payment.

- d) Failure to agree to any adjustment under this paragraph shall be a dispute concerning a question of fact within the meaning of the disputes paragraph of this Contract. However, nothing in this paragraph shall excuse the Contractor from proceeding with the Contract as changed pending resolution of the dispute.

9. EXTRAS

Except as otherwise provided in this Contract, no payment for extras shall be made unless such extras and the prices therefor have been authorized in writing by GRTC.

10. VARIATION IN QUANTITY

No variation in the quantity of any item called for by this Contract will be accepted unless such variation has been caused by conditions of loading, shipping, or packing, or allowances in manufacturing processes, and then only to the extent, if any, specified elsewhere in this Contract.

11. 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 Contractor.
- c) Any claim by Contractor for an equitable adjustment under this Section 14 must be asserted within 14 calendar days from the date of receipt by Contractor of the notification of change. The request for equitable adjustment must be in writing and state the general nature and monetary extent of the claim. The Contract Administrator may require additional supporting documents and cost or price analysis to determine the validity of the claim.
- d) No claim by Contractor for an equitable adjustment hereunder will be allowed if asserted after final payment under this Agreement. No claim will be allowed for any costs incurred more than 20 calendar days before Contractor gives written notice, as required in this section.
- e) Contractor shall continue to perform the Services in accordance with this Contract, without delay or interruption, during any period that GRTC is considering a request for an equitable adjustment and during the pendency of any dispute over an equitable adjustment. GRTC shall notify Contractor of its decision regarding the equitable adjustment in writing. Failure by GRTC and Contractor to agree upon an equitable adjustment shall not constitute a basis for Contractor to suspend performance of the Services but shall be resolved pursuant to Section 46, Dispute Resolution of this Exhibit E.

12. INSPECTION

- a) All supplies (which term throughout this paragraph includes without limitation raw materials, components, intermediate assemblies, and end products) shall be subject to inspection and test by GRTC or its authorized representative, to the extent practicable, at all times (including the period of manufacture) and places and, in any event, prior to acceptance.
- b) In the event any supplies or lots of supplies are defective in material or workmanship or otherwise not in conformity with the requirements of this Contract, GRTC shall have the right either to reject those supplies (with or without instructions as to their disposition) or to require their correction. Supplies or lots of supplies which have been rejected or required to be corrected shall be removed or, if permitted or required by GRTC, corrected in place by and at the expense of the Contractor promptly after notice and shall not thereafter be tendered for acceptance unless the former rejection or requirement of correction is disclosed. If the Contractor fails promptly to remove such supplies or lots of supplies which are required to be removed, or promptly to replace or correct

such supplies or lots of supplies, GRTC either (i) may by contract or otherwise replace or correct such supplies and charge to the Contractor the cost occasioned GRTC thereby, or (ii) may terminate this Contract for default as provided in the termination paragraph of this Contract. Unless the Contractor corrects or replaces such supplies within the delivery schedule, GRTC may require the delivery of such supplies at a reduction in price that is equitable under the circumstances. Failure to agree to such reduction of price shall be a dispute concerning a question of fact within the meaning of the Disputes paragraph of this Contract.

- c) If any inspection or test is made by GRTC or its authorized representative on the premises of GRTC or a Subcontractor, the Contractor without additional charge shall provide all reasonable facilities and assistance for the safety and convenience of GRTC's inspectors in the performance of their duties. If GRTC's inspection or test is made at a point other than the premises of the Contractor or a Subcontractor, it shall be at the expense of GRTC, except as otherwise provided in this Contract; provided, that in case of rejection, GRTC shall not be liable for any reduction in value of samples used in connection with such inspection or test. All inspections and tests by GRTC shall be performed in such a manner as not to unduly delay the work. GRTC reserves the right to charge to the Contractor any additional cost of GRTC's inspection and test when supplies are not ready at the time such inspection and test is required by the Contract or when re-inspection or retest is necessitated by prior rejection. Acceptance or rejection of the supplies shall be made as promptly as practicable after delivery, except as otherwise provided in this Contract; but failure to inspect and accept or reject supplies shall neither relieve the Contractor from responsibility for such supplies as are not in accordance with the Contract requirements nor impose liability on GRTC therefor.
- d) The inspection and test by GRTC of any supplies or lots thereof does not relieve the Contractor from any responsibility regarding defects or other failures to meet the Contract requirements that may be discovered prior to acceptance. Except as otherwise provided in this Contract, acceptance shall be conclusive except for latent defects, fraud, or such gross mistakes as amount to fraud.

13. MATERIALS

All equipment, material, and articles incorporated into the supplies covered by this Contract shall be new and of the most suitable grade for the purpose intended unless otherwise specifically provided in this Contract. If applicable, 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.

14. SUSPENSION OF WORK

Upon oral or written notice from GRTC, contractor shall suspend all or any part of its performance hereunder for such time as GRTC may direct. Any oral notice of suspension shall be confirmed in writing. GRTC shall not be liable for the cost of any unauthorized work performed by contractor during any period of suspension, and upon receipt of GRTC's suspension notice, contractor shall neither place further orders. A suspension by GRTC pursuant to this Section 15 shall be considered a change by GRTC for which contractor may be entitled to an equitable adjustment in the charges in accordance with the procedures in Section 15 of this Exhibit E.

15. RISK OF LOSS OR DAMAGE

Except as otherwise provided in this Contract, the Contractor shall be responsible for the supplies covered by this Contract until they are delivered at the designated delivery point, regardless of the point of inspection. After delivery to GRTC at the designated point and prior to acceptance by GRTC or rejection and giving notice thereof by GRTC, GRTC shall be responsible for the loss, destruction of, or damage to the supplies only if such loss, destruction, or damage results from the negligence of officers, agents, or employees of GRTC acting within the scope of their employment. The Contractor shall bear all risks as to rejected supplies after notice of rejection, except that GRTC shall be responsible for the loss, destruction of, or damage to the supplies only if such loss, destruction, or damage results from the gross negligence of officers, agents, or employees of GRTC acting within the scope of their employment.

16. 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, 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.

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.

17. 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) 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.
- d) After termination or cancellation, GRTC shall have no further liability other than to pay for Services performed and conforming Goods delivered prior to the effective date of termination or cancellation.
- e) Neither termination nor cancellation shall affect any rights either party may have with respect to any Goods delivered or Services performed prior to termination or cancellation, any pending dispute, or any rights either party may have with respect to any breach occurring prior to termination or cancellation.

18. PAYMENT TO SUBCONTRACTORS

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

19. 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.

20. 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.

21. 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.

22. CONFLICT OF INTEREST

- a) Conflict of Interest – Contractor, by submitting a proposal to GRTC to perform or provide work, services, or materials, has thereby covenanted that it has no direct or indirect pecuniary or proprietary interest, and that it shall not acquire any interest, which conflicts in any manner or degree with the work, services, or materials required to be performed and/or provided under this Contract and that it shall not employ any person or agent having any such interest. In the event that Contractor or its agents, employees or representatives hereafter acquires such a conflict of interest, it shall immediately disclose such interest to GRTC and take action immediately to eliminate the conflict or to withdraw from this Contract, as GRTC may require.
- b) Contingent Fees and Gratuities – Contractor, by submitting a proposal to GRTC to perform or provide work, services, or materials, has thereby covenanted:
- c) No person or selling agency except bona fide employees or designated agents or representatives of Contractor has been or will be employed or retained to solicit or secure this Contract with an agreement or understanding that a commission, percentage, brokerage, or contingent fee would be paid; and
- d) No gratuities, in the form of entertainment, gifts, or otherwise, were offered or given by Contractor or any of its agents, employees, or representatives, to any official, member or employee of GRTC or other governmental agency with a view toward securing this Contract or securing favorable treatment with respect to the awarding or amending, or the making of any determination with respect to the performance of this Contract.

23. 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.

24. 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.

25. 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.

26. LAWS, STATUTES AND OTHER GOVERNMENTAL REQUIREMENTS

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

27. CLAIMS

In the event that any claim, demand, suit, or other action is made or brought by any person, firm, corporation, or other entity against the Contractor arising out of this Contract, the Contractor shall give written notice thereof, to GRTC within three (3) working days after being notified of such claim, demand, suit, or action. Such notice shall state the date and hour of notification of any such claim, demand, suit, or other action; the name and address of the person, firm, corporation, or other entity making such claim or instituting or threatening to institute any type of action or proceeding; the basis of such claim, action, or proceeding; and the name of any person against whom such claim is being made or threatened. Such written notice shall be delivered either personally or by mail and shall be directly sent to the attention of the President/CEO, Greater Richmond Transit Company, 301 E. Belt Boulevard, Richmond, Virginia.

28. CONTRACTOR CONTACT/AUTHORITY 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.

29. LICENSES AND PERMITS

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

30. 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 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.

31. 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.

32. 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.

33. MANUFACTURER'S WARRANTY

Any and all standard manufacturer's warranties shall accrue to the benefit of GRTC. The manufacturer's warranties referenced herein shall be in addition to the contractual remedies set forth in this Contract and in addition to any and all other statutory remedies or warranties imposed on the Contractor for the benefit of GRTC.

34. RECORD RETENTION; ACCESS TO RECORDS AND REPORTS

(a) The Contractor will retain and will require its Subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the Contract, including, but not limited to, data, documents, reports, statistics, sub-agreements, leases, Subcontracts, arrangements, other third-party agreements of any type, and supporting materials related to those records.

(b) If this is a cost-reimbursement, incentive, time and materials, labor hour, or price determinable Contract, or any combination thereof, the Contractor shall maintain, and GRTC and its representatives shall have the right to examine, all books, records, documents, and other evidence and accounting procedures and practices sufficient to reflect properly all direct and indirect costs of whatever nature claimed to have been incurred and anticipated to be incurred for the performance of this Contract.

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

35. EXCUSABLE DELAYS

- a) Except for defaults of Subcontractors at any tier, the Contractor shall not be in default because of any failure to perform this Contract under its terms if the failure arises from Force Majeure Events. In each instance, the failure to perform must be beyond the control and without the fault or negligence of the Contractor. "Default" includes failure to make progress in the work.
- b) If the failure to perform is caused by the failure of a Subcontractor at any tier to perform or make progress, and if the cause of the failure was beyond the control of both the Contractor and Subcontractor and without the fault or negligence of either, the Contractor shall not be deemed to be in default, unless:
- i. the subcontracted supplies were obtainable from other sources;
 - ii. GRTC ordered the Contractor in writing to purchase these supplies from the other source; and
 - iii. the Contractor failed to comply reasonably with this order.
- (a) Upon the request of the Contractor, GRTC shall ascertain the facts and extent of the failure. If GRTC determines that any failure to perform results from one or more of the causes above, the delivery schedule or period of performance shall be revised, subject to the rights of GRTC under this Contract.

36. INTERPRETATION OF CONTRACT – DISPUTES

- a) **Intent.** It is the intention of the parties to make a good faith effort to resolve, without resort to litigation, any dispute, controversy or claim arising out of or relating to this Contract or any breach hereof (a "Dispute") according to the procedures set forth in this Section 46; provided, however, that the procedures set forth herein shall not preclude either party from exercising any right of termination or cancellation of the Contract as provided herein or as available at law or in equity.
- b) **Procedure.** Contractor shall address any question or claim arising from this Contract in writing to the Contract Administrator within ten calendar days of the date in which Contractor discovers or has reason to discover the question or claim. Unless Contractor receives a written notification with the determination of the

Contract Administrator prior to the tenth day following the Contract Administrator's receipt of the question or claim, such question or claim is denied. In the event Contractor disagrees with any determination or decision of the Contract Administrator, Contractor may, within five calendar days of the date of such determination or decision, appeal the determination or decision in writing to the Chief Executive Officer of GRTC (the "CEO"). Such written notice of appeal shall include all documents and other information necessary to substantiate the appeal. The CEO shall review the appeal and transmit a decision or determination in writing. The decision will be considered final. Appeal to the CEO shall be a condition precedent to litigation hereunder.

- c) **Mediation and Arbitration.** If a Dispute cannot be settled through direct discussions, the parties shall first endeavor to settle the dispute in an amicable manner by mediation. Thereafter, any unresolved controversy or claim arising out of or relating to this Agreement, or breach thereof, may be settled by arbitration, and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The parties may seek to resolve disputes pursuant to arbitration but are not required to do so. Nothing in this Section b) precludes any party from seeking further relief once the required alternative dispute resolution efforts have failed.
- d) **Performance During Dispute.** Subject to the rights of the parties to cancel this Contract or suspend their performance as set forth in this Contract, Contractor shall continue to perform its obligations under this Contract during the pendency of any Dispute; provided, however, that GRTC may seek preliminary and permanent injunctive relief, including specific performance or other interim or permanent relief, if the Dispute involves. GRTC and Contractor intend to resolve all disputes under this Contract to the best of their abilities in an informal manner. In the event that a resolution of the dispute is not mutually agreed upon, the parties can agree to mediate the dispute or proceed with litigation. Contractor shall not be bound by any decision of the GRTC, nor shall Contractor be required to exhaust all administrative remedies before commencing litigation in a court of competent jurisdiction within the state in which GRTC is located. Notwithstanding any provision of this section, or any other provision of this Contract, it is expressly agreed and understood that any court proceeding arising out of a dispute under this Contract shall be heard by a court de novo and the court shall not be limited in such proceeding to the issue of whether GRTC acted in an arbitrary, capricious or grossly erroneous manner."
- e)
- a) Tobacco products include cigarettes, cigars, pipes, snuff, snus, chewing tobacco, smokeless tobacco, dipping tobacco and any other non-FDA approved nicotine delivery device.
- b) The tobacco free workplace policy refers to all owned or leased property. Note that this includes all buildings, facilities, work areas, maintenance facilities, parking areas and all Authority owned vehicles.
- c) Tobacco use is not permitted at any time on GRTC owned or leased property, including personal vehicles parked in GRTC parking lots.
- d) Littering of tobacco-related products on the grounds or parking lots is also prohibited.

37. 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 – Schedule
2. Exhibit B – Representations and Certifications Federal Funds
3. Exhibit B-1 – Buy America Certification
4. Exhibit D1-DBE Schedule C
5. Exhibit D2-Firm Data Sheet
6. Exhibit E – Contractual Terms and Conditions
7. Exhibit E-1 – Addendum to Contractual Terms and Conditions, Federally Assisted Supply Contract
8. Exhibit F – Scope of Services

38. 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 Authority, 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.

39. MISCELLANEOUS

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

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

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

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

- c) In the event GRTC finds it necessary to employ legal counsel to enforce its rights under this Contract, or to bring an action at law, or other proceeding against the Contractor to enforce any of the terms, covenants, or conditions herein, the Contractor shall pay to GRTC its reasonable attorneys' fees and expenses, regardless of whether suit is filed.
- d) If any term or provision of this Contract or any portion of a term or provision hereof or the application thereof to any person or circumstance shall, to any extent, be void, invalid or unenforceable, the remainder of this Contract will remain in full force and effect unless removal of such invalid terms or provisions destroys the legitimate purpose of the Contract in which event the Contract will be terminated.
- e) This Contract represents the entire agreement between the parties concerning the subject matter of this Contract and supersedes any and all prior or contemporaneous oral or written statements, agreements, correspondence, quotations and negotiations. In executing this Contract, the parties do not rely upon any statement, promise, or representation not expressed herein. This Contract may not be changed except by the mutual written agreement of the parties.
- f) A facsimile signature shall be deemed an original signature for all purposes. For purposes of this paragraph, the phrase "facsimile signature" includes without limitation, an image of an original signature.
- g) Whenever used herein, the term "including" shall be deemed to be followed by the words "without limitation". Words used in the singular number shall include the plural, and vice-versa, and any gender shall be deemed to include each other gender. All Exhibits attached to this Contract are incorporated herein by reference.

- h) All rights and remedies provided in this Contract are cumulative and not exclusive of any other rights or remedies that may be available to GRTC, whether provided by law, equity, statute, or otherwise. The election of any one or more remedies GRTC will not constitute a waiver of the right to pursue other available remedies.
- i) The Contractor shall not assign the whole or any part of this Contract or any monies due hereunder without the prior written consent of the Contracting Officer. No assignment shall relieve the Contractor from any of its obligations hereunder. Any attempted assignment, transfer, or other conveyance in violation of the foregoing shall be null and void.
- j) The failure of GRTC to insist upon strict adherence to any term of this Contract on any occasion shall not be considered a waiver or deprive GRTC thereafter to insist upon strict adherence to that term or other terms of this Contract. Furthermore, GRTC is a governmental entity, and nothing contained in this Contract shall be deemed a waiver of any rights, remedies or privileges available by law.
- k) This Contract shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia. Any dispute arising with respect to this Contract shall be resolved in the state or federal courts of the Commonwealth of Virginia, sitting in the City of Richmond, Virginia and the Contractor expressly consents to the personal jurisdiction of these courts.
- l) This Contract is subject to the Virginia Freedom of Information Act.
- m) The Contractor represents, warrants and covenants that: (a) it has the requisite power and GRTC to execute, deliver and perform its obligations under this Contract; and (b) it is in compliance with all applicable laws related to such performance.
- n) The person signing on behalf of the Contractor represents for himself or herself and the Contractor that he or she is duly authorized to execute this Contract.
- o) No term or provision of this Contract is intended to be, or shall be, for the benefit of any person, firm, organization, or corporation for a party hereto, and no such other person, firm, organization, or corporation shall have any right or cause of action hereunder.
- p) GRTC is a governmental entity and nothing in this Contract shall be deemed a waiver of any rights or privileges under the law.
- q) The parties understand and agree that GRTC's ability to make payments under this Agreement is subject to and dependent upon financial assistance provided by the U.S. Department of Transportation, the Virginia Department of Rail and Public Transportation, and the City of Richmond, Virginia. The parties further understand and agree that if any of these governmental entities withdraws, reduces, or limits expected or actual funding to any extent, GRTC may, upon written notice to Contractor, immediately terminate this Agreement in whole or in part.
- r) Time is of the essence for all delivery, performance, submittal, and completion dates in this Contract.

40. NOTICE TO FTA AND U.S. DOT INSPECTOR GENERAL OF INFORMATION RELATED TO FRAUD, WASTE, ABUSE, OR OTHER LEGAL MATTERS

If a current or prospective legal matter that may affect the Federal Government emerges, the Recipient must promptly notify the FTA Chief Counsel and FTA Regional Counsel for the Region in which the Recipient is located. The Recipient must include a similar notification requirement in its Third Party Agreements and must require each Third Party Participant to include an equivalent provision in its subagreements at every tier, for any agreement that is a "covered transaction" according to 2 C.F.R. §§ 180.220 and 1200.220.

(1) The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason.

(2) Matters that may affect the Federal Government include, but are not limited to, the Federal Government's interests in the Award, the accompanying Underlying Agreement, and any Amendments thereto, or the Federal Government's administration or enforcement of federal laws, regulations, and requirements.

(3) The Recipient must promptly notify the U.S. DOT Inspector General in addition to the FTA Chief Counsel or Regional Counsel for the Region in which the Recipient is located, if the Recipient has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729 et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bribery, gratuity, or similar misconduct. This responsibility occurs whether the Project is subject to this Agreement or another agreement between the Recipient and FTA, or an agreement involving a principal, officer, employee, agent, or Third Party Participant of the Recipient. It also applies to subcontractors at any tier. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the Recipient.

41. FUNDING AVAILABILITY

Funding after the current fiscal year of any contract resulting from this solicitation is subject to revenue availability and appropriation of funds in the annual budget approved by GRTC's Board of Directors.