



## GENERAL CONDITIONS

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**1. DEFINITIONS AND ACRONYMS**

“**Agency**” or “**Commission**” or “**HRT**” or “**TDCHR**” or “**Board of Commissioners**” or “**Administration**” or “**Hampton Roads Transit**” means the Transportation District Commission of Hampton Roads.

“**Change Order**” or “**Modification**” means a written document signed by HRT, and issued to the Contractor, which alters the scope of the Work to be performed by the Contractor, changes the schedule for performance of the Work, increases or decreases the Contractor’s compensation, or makes any other change to the Contract.

“**Completion**” means “final completion.”

“**Contract**” includes the properly executed Solicitation, Offer and Award Form; the Contractor’s offer, including executed bid/proposal forms and attachments; the Special Provisions, General Conditions, Appendices, Exhibits, Plans, and Specifications; properly executed Certificates of Insurance; Payment Bond; Performance Bond; List of Subcontractors; List of Changes in Subcontractors, due to Alternates; Notice(s) to Proceed; and all Amendments (Addenda) issued prior to and all Modifications (Change Orders) issued after execution of the Contract. “**Contract Administrator**” means the person granted authority to act on behalf of the Commission in all matters concerning this Contract, any successor thereto, and the authorized representative of the Contract Administrator acting within the limits of authority delegated by the Contract Administrator. The term “**Contracting Officer**” may also be used to delineate this responsibility.

“**Contractor**” or “**Consultant**” means the individual, firm, partnership, corporation, joint venture, or combination thereof who as an independent contractor has entered into this Contract with HRT for the performance of the Work required by the Contract.

“**Days**” except as otherwise provided herein, shall refer to calendar days, including without limitation weekends and holidays.

“**Final Completion**” means fulfillment of all the Contractor’s obligations under the Contract.

“**Materials**” includes materials, equipment, products, articles and other physical items incorporated or to be incorporated into the Work.

“**Owner**” means Hampton Roads Transit.

“**Product Data**” includes written or printed descriptions, illustrations, standard schedules, performance charts, instructions, brochures, diagrams, drawings, or other information furnished by the Contractor to describe Materials to be used for some portion of the Work.

“**Project**” means HRT’s overall objective or endeavor of which this Contract forms a part.

“**Project Manager**” or “**PM**” means either HRT’s or the Contractor’s designated and authorized representative and point of contact for managing the project. The PM is charged with the oversight and administration of the performance of the Work.

“**Project Schedule**” means the schedule prepared by the Contractor and accepted by HRT setting forth the logical sequence of activities required for the Contractor’s orderly performance and completion of the Work in accordance with this Contract, and specifically, to meet the specified milestone dates, including updates.

“**RFP**” means Request for Proposal.

“**Samples**” includes physical examples of Materials to be supplied or workmanship, which shall, when approved by HRT, establish standards by which the Work shall be judged.

“**Shop Drawings**” means drawings, diagrams, schedules, or other data prepared by the Contractor or any Subcontractor, manufacturer, supplier, or distributor to illustrate or detail some portion of the Work.

“**Specifications**” means that part of the Contract containing written directions and requirements for completing the Work. Standards, or portions thereof, cited in the Specifications by reference shall have the same effect as if physically included in the Contract in their entirety.

“**Special Provisions**” means contractual terms which supplement or modify the General Conditions. Any such Special Provision shall take precedence over any General Condition modified by it.

“**Specialty Items**” means Materials which are of a special design or which require special fabrication specifically for this Project.

“**Subcontract**” means any agreement including purchase orders (other than one involving an employer/employee relationship) entered into between the Contractor and a Subcontractor calling for services, labor, equipment, and/or materials required for the Contract performance, including any modification thereto.

“**Subcontractor**” means any individual, firm, partnership, corporation, joint venture, or combination thereof, or other entity, other than employees of the Contractor, who contract with the Contractor or a Subcontractor of any tier to furnish services, labor, equipment and/or materials, or labor and materials, under this Contract. As used herein, the term Subcontractor is considered to include the term Supplier.

“**Supplies,**” “**material**” and “**equipment,**” as used herein shall include without limitation, all items, tangible or intangible, to be incorporated in the Work or otherwise delivered to the Commission hereunder.

“**Work**” means the furnishing of all of the supervision, labor, Materials, equipment, services, and incidentals necessary to complete any individual item and the entire Contract and the carrying out of any duties and obligations imposed on the Contractor by the Contract.

**2. CHANGES**

The Contracting Officer may at any time, by a written order, and without notice to the sureties, make changes, within the general scope of this contract. Such change shall serve to modify this Contract to the extent necessary to execute the change as directed.

If any such change causes an increase or decrease in the 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, the Contracting Officer shall make an equitable adjustment in the contract price, the delivery schedule, or both, and shall modify the contract accordingly.

The Contractor must assert its right to an adjustment under this article within three working days from the date of receipt of the written order. Failure by contractor to give timely notice of the change could constitute waiver of a claim for an equitable adjustment. However, if the Contracting Officer decides that the facts justify it, the Contracting Officer may receive and act upon a proposal submitted at any time before final payment of the contract.

If the Contractor's proposal includes the cost of equipment or materials made obsolete or excess by the change, the Contracting Officer shall have the right to prescribe the manner of the disposition of such equipment or materials.

Failure to agree to any adjustment shall be a dispute under the Disputes article. However, nothing in this article shall excuse the Contractor from proceeding with the contract as changed.

Granting or acceptance of extensions of time to complete the Work or furnish the labor, supplies, materials, or equipment required under the Contract will not release the Contractor or its surety from their obligations hereunder.

**3. ORDER OF PRECEDENCE**

If any portion of the Contract Documents shall be in conflict with any other portion, the various documents comprising the Contract Documents shall govern in the following order of precedence: Contract Modifications (Change Orders), Contract Agreement, Contract Appendices, Special Provisions, General Conditions, Plans, Technical Specifications, Contractor's proposal including executed forms and attachments.

**4. ASSIGNMENT AND DELEGATION**

The Contractor shall neither delegate any duties or obligations under this Contract nor assign, transfer, convey, sublet or otherwise dispose of the Contract or its right, title or interest in or to the same, or any part thereof, without previous consent in writing from the Contracting Officer.

**5. AUTHORITY OF OWNER'S REPRESENTATIVE**

The Work of the Contract will be conducted under the general direction of HRT's Project Manager (PM). The PM has authority to oversee the performance of the work, and may take the following actions:

- A. Act as the principal technical point of contact with the Contractor.

- B. Review and approve invoices and payment estimates. In those cases requiring release of final retained percentage of payment, the Project Manager will make his/her recommendations in writing to the Contracting Officer;
- C. Coordinate correspondence with the Contract Administrator if it significantly affects the contractual terms, or the rights and obligations of the parties thereunder.
- D. Notify the Contract Administrator whenever the Project Manager has reason to believe that any estimated cost not-to-exceed amount for a contract modification will be exceeded.
- E. Approve, in writing, the Contractor's progress schedule when required.
- F. Receive from the Contractor monthly DBE status reports, if applicable.
- G. Upon notice from the Contractor that the Work is Substantially Complete, conduct an inspection of the Work, establish a Punch List, and advise the Contract Administrator as to whether or not Substantial Completion has been attained.
- H. Provide the Contract Administrator with a written notification after all Work has been satisfactorily completed with stating that he/she is not aware of any open issues that would preclude close out of the contract.

The contractor shall adhere to the actions below only if received from or directed by the Contracting Officer or his designee.

- 1. Contract modifications
- 2. Issuance of written orders to stop and/or resume work.
- 3. Negotiations with the Contractor for adjustment of contract price and/or time.

The presence or absence of HRT's Project Manager or inspectors at any time shall not relieve the Contractor from adherence to any requirement of the contract.

## **6. FLOWDOWN**

The Contractor shall ensure appropriate flow-down of applicable contract provisions to appropriate subcontracts of every tier. Contractor agrees that it will incorporate the provisions of this Contract, to the extent applicable, into all subcontracts and orders with subcontractors and suppliers of all tiers. It is understood that these provisions apply to all types of contracts and / or subcontracts specifically including lump sum (or fixed price contracts), unit price contracts, and / or cost type contracts with or without a guaranteed maximum. It is further understood that change order provisions will apply to all methods of change order pricing specifically including lump sum change order proposals and cost type change order proposals.

## **7. SUBCONTRACTING**

HRT reserves the right, without liability, to approve any subcontractor of any tier employed by the Contractor hereunder. Nothing in the Contract shall create any contractual relationship between HRT and any subcontractor. The Contractor is fully responsible to HRT for the acts and omissions of its subcontractors, vendors, materialmen, and persons directly employed by any of them.

Contractor shall not, without the prior written consent of the Contracting Officer, substitute any subcontractor in place of any previously approved subcontractor. When a portion of the Work which has been subcontracted by the Contractor is not being performed in a manner satisfactory to HRT, the subcontractor shall be removed immediately upon the written request of HRT, and shall not be employed for any future Work under the Contract. HRT reserves the right to direct the removal from the Work site of any individual employed, directly or indirectly, by the Contractor or any subcontractor. No substitution or replacement of a subcontractor, however caused, shall relieve the Contractor of its obligation to attain the percentage of DBE activity specified herein.

Contractor shall, within ten (10) days of receiving payment from the Commission, pay all amounts properly due to its subcontractors and materialmen, and shall cause its subcontractors of every tier to pay their subcontractors and materialmen within an equivalent period after their receipt of payment. Contractor shall promptly notify the Commission of any circumstance in which payment is not so made. Failure to comply with the requirements of this paragraph may be deemed a material breach of this Contract. Any retainage held at the completion of a subcontractor's work shall be returned to the subcontractor within 30 days of the completion and acceptance of the subcontractor's work.

For those contracts for which a DBE goal has been established, the failure to perform in accordance with the DBE program detailed in Appendix A may result in partial or full suspension of payment and/or progress payments.

Should Contractor wish to withhold payment otherwise due a subcontractor hereunder, it shall notify the Commission's representative of such intention in writing, providing the reasons for such withholding. Approval of such withholding by HRT is required. Contractor shall furnish HRT with a copy of the notice given to the Subcontractor or Supplier specifying:

- A. The amount to be withheld;
- B. The specific causes for the withholding under the terms of the Subcontract; and
- C. The remedial actions to be taken by the Subcontractor or Supplier in order to receive payment of the amounts withheld.

## **8. DISADVANTAGED BUSINESS ENTERPRISE REQUIREMENTS**

This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs, (<http://www.osdbu.dot.gov/OSDBUSERVICES/DBEPROGRAM/tabid/75/Default.aspx>).

Virginia's Small, Women and Minority Owned Business Certifications (SWaM/ MBE/ WBE) ARE NOT an acceptable substitution for FTA's required DBE certification.

Throughout the term of this Contract, Contractor shall have a continuing obligation to attain the DBE goal it committed to in its offer, as may be adjusted to reflect modifications to the scope of Work from time to time. Failure to do so may result in the imposition of sanctions up to and including termination for default.

The contractor shall submit the required Appendix A, Form E, Schedule of DBE Participation, on a monthly basis directly to HRT's DBE Project Manager. As part of the flow down requirements, Contractor shall require that all DBE subcontractors submit the required Appendix A Form E-2, DBE Subcontractor Monthly Report, directly to HRT's DBE Project Manager on a monthly basis.

## **9. INVOICES**

Unless otherwise directed by HRT's Project Manager, mail original and one copy of all invoices to Transportation District Commission of Hampton Roads ATTN: Contracting Officer, 3400 Victoria Blvd, Hampton, VA 23661. In addition, an electronic copy of the invoice should be forwarded to the PM in PDF format.

The form and content of invoices are subject to review and approval by HRT. Payment will be made only after receipt and approval of a proper invoice. A proper invoice includes the purchase order/contract number, date of invoice, dates of delivery of item/service, a description of the item/service delivered, sizes and quantities if applicable, unit prices, and extended totals, and any additional information required by HRT. Invoices shall be accompanied by any supporting documentation that may be required by the Commission.

"Contractor shall also provide a "Form E – Contractor's Monthly DBE Payment Report," as applicable, with each application for payment. This form is provided in Appendix A."

## **10. PAYMENTS**

HRT shall pay to Contractor, at the times and in the manner hereinafter provided, the amount set forth in the Price Schedule for the Work satisfactorily performed, contingent upon Contractor's satisfactory compliance with the terms and conditions of the Contract. Contractor agrees to accept that amount as full and final payment for all labor, materials, supplies, equipment, overhead, profit, taxes, duties, and charges of whatever nature incurred by Contractor in performing its obligations under the Contract.

Contractor shall not request payment from HRT of any amount that the Contractor has withheld or retained from Subcontractors or Suppliers until such time that Contractor has determined and certified to HRT that the Subcontractor is entitled to the payment of such amount. If Contractor has made application for payment to HRT and subsequently withholds or retains payments from a Subcontractor, Contractor may be obligated to pay interest to HRT on that amount, in addition to any other remedies HRT may have hereunder.

No approval for payment, nor any payment, nor any partial or entire use or occupancy of any portion of the Work by HRT, shall constitute an acceptance of any Work that is not in accordance with the Contract.

In the event Progress Payments are applicable, and unless otherwise specified in the Special Provisions or Specifications, within thirty (30) Days after receipt of HRT's Notice to Proceed, and prior to submission of Contractor's first invoice, Contractor shall submit to HRT a supplementary Schedule of Values allocated to various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as HRT may require. When accepted by HRT, that schedule, shall be the basis for determining the amount of each progress payment.

Contractor shall submit monthly invoices setting forth the percentage of Work, or units of Work where applicable, completed during the month and the amount due for such Work based upon the Bid Price Schedule and any supplementary schedule of values that may be required by the RE.

By submitting a Request for Payment, Contractor warrants that:

- A. Title to all Materials furnished by Contractor or incorporated into the Work by Contractor and covered by the progress payment shall pass to HRT at the time Contractor receives the progress payment;
- B. All Materials are free and clear of all liens, claims, security interests, or encumbrances; and
- C. No Materials have been acquired by Contractor, or by any other person performing Work at the Work Site or furnishing Materials for the Work under this Contract, that are subject to an agreement under which an interest in, or encumbrance on, the Materials or equipment is retained by the seller or otherwise imposed.

HRT may, upon request and at its discretion, furnish to any Subcontractor information regarding the percentages of completion or the amounts applied for by Contractor and the action taken on the application by HRT on account of Work done by the Subcontractor.

## **11. WITHHOLDING OF PAYMENTS**

HRT may withhold all or part of a payment to the extent deemed necessary to protect HRT from loss because of (1) defective work not remedied; (2) third party claims filed, or evidence reasonably indicating that a third party claim will be filed; (3) failure of Contractor to make payments properly to Subcontractors, or for labor, materials, or equipment; (4) reasonable evidence that the Work cannot be completed for the unpaid balance of the contract price; (5) damage to HRT or another contractor; (6) contractor's failure to carry out the Work in accordance with the Contract; (7) Contractor's failure to comply with any material provision or requirement of the Contract; (8) Contractor's failure to pay the deductible portion of any insured claim filed by third parties against the Contractor. (9) Contractor's failure to provide the required progress schedules and record drawings in accordance with the Contract; (10) any sums expended by

HRT in performing any of the Work under the Contract which the Contractor has failed to perform; or (11) liquidated damages.

**12. NOTICE OF INTENT TO FILE A CLAIM**

Whenever the Contractor deems a potential claim has arisen, the Contractor shall within three days notify the Contract Administrator in writing of its intent to file a claim, before proceeding with any Work viewed by the Contractor as outside of the current scope of work. The claim shall be submitted within thirty (30) calendar days of initial notification.

Should the Contractor assert a claim against the Commission, under this or any other provision of this Contract, involving an amount in excess of fifty thousand dollars (\$50,000.00), it shall accompany such claim with a sworn affidavit and certification that, to the best of the Contractor's knowledge and belief, the facts and amounts stated in the claim are true and complete and that the claim is asserted in good faith. Failure to submit such affidavit and certification shall be grounds for denial of such claim.

**13. CONDITIONS AFFECTING THE WORK**

The Contractor shall be responsible for having taken steps reasonably necessary to ascertain the nature and extent of the work, and the general and local conditions which can affect the work or the cost thereof. Any failure by the Contractor to do so shall not relieve the Contractor from responsibility for successfully performing work without additional expense to the Commission. The Commission assumes no responsibility for any understanding or representations concerning conditions made by any of its officers or agents prior to the execution of this contract, unless such understanding or representations are expressly stated in the contract.

**14. GOVERNING LAW**

Unless otherwise provided in the Contract Documents, the Contract shall be governed by the laws of the Commonwealth of Virginia to the extent that the procurement conforms to applicable Federal law, including the requirements and standards incorporated in FTA Circular 4220.1E.

**15. WAIVER OF CONDITIONS**

The waiver of any provision, term or condition in this Contract by HRT on any particular occasion shall not constitute a general waiver of that or any other provision, term or condition, nor a release from the Contractor's obligation to otherwise perform or observe any other provision, term or condition of the Contract, and shall not be considered a precedent for future waivers.

**16. SEVERANCE**

If any part of Contract is declared invalid by a court of law, such decision will not affect the validity of any remaining portion, which shall remain in full force and effect, to the greatest extent consistent with the determination of such court.

**17. GENERAL INSURANCE REQUIREMENTS**



**GENERAL CONDITIONS**

The Contractor shall procure and maintain, at his own cost and expense, during the entire period of the performance under this contract, the following types of insurance.

IMPORTANT NOTE: Cancellation of insurance will automatically place the contractor in default. Contractor shall keep proper insurance in full force and effect at all times during the life of the contract.

**PROFESSIONAL LIABILITY (Errors and Omissions)** applicable to Professional Services Contracts only: \$1,000,000.

**WORKER’S COMPENSATION:**

A policy complying with the requirements of the statutes of the jurisdiction(s) in which the work will be performed, and if there is any exposure to any of the Contractor or subcontractor personnel with the U. S. Longshoremen’s and Harbor Workers’ Act, Jones Act, Admiralty Laws or the Federal Employers’ Liability Act, the Contractor will provide coverage for these requirements.

Worker’s Compensation:	STATUTORY
Employer’s Liability - Each Accident	\$1,000,000
Disease Policy Limits	\$1,000,000
Disease - Each Employee	\$1,000,000

**COMMERCIAL / COMPREHENSIVE GENERAL LIABILITY:**

The Contractor and any Subcontractor shall provide a valid Certificate of Insurance listing the insurance coverage maintained. The liability insurance maintained by the Contractor and any Subcontractor shall include, at a minimum, the following coverage;

- Premises - Operations
- Products - Completed Operations
- Contractual - This contract

The minimum Limit of Liability shall be:

Bodily Injury (per person / occurrence)	\$1,000,000
Property Damage (per occurrence)	\$1,000,000
Or	
Combined Single Limit per Occurrence	\$2,000,000

If the insurance contract has a Limit of Liability Aggregate, the minimum Aggregate level shall be \$3,000,000 per policy year.

The Selected Contractor and any Subcontractor shall name the following as an Additional Insured:

The Commission shall be included as an additional insured under the coverage for Commercial General Liability insurance with respect to all activities under this contract and shall provide a copy to the contracting officer.

**AUTOMOBILE INSURANCE:**

The Contractor and any Subcontractor shall provide a valid Certificate of Insurance listing the insurance coverage maintained. The Automobile Insurance maintained by the Contractor and any Subcontractor shall include, at a minimum, the following coverage:

- Owned and Hired Automobiles
- Non-Owned Automobiles

The minimum Limit of Liability shall be:

Bodily Injury per person / occurrence	\$1,000,000
Property Damage per occurrence	\$1,000,000
or	
Combined Single Limit per occurrence	\$2,000,000

If the insurance contract has a Limit of Liability Aggregate, the minimum Aggregate level shall be \$3,000,000 per policy year.

The Selected Firm and any Subcontractor shall name the following as an Additional Insured:

Hampton Roads Transit shall be included as an additional insured under the coverage for Commercial General Liability insurance with respect to all activities under this contract and shall provide a copy to the contracting officer.

**SPECIAL PROVISIONS OF INSURANCE FURNISHED BY CONTRACTOR OR ANY SUBCONTRACTOR**

(a) The Contractor shall forward to the Contracting Officer for approval a certificate, or certificates, issued by the insurer(s), of the insurance required under the foregoing provisions, including special endorsements. Such certificate(s) shall be in a form satisfactory to the Commission and shall list the various coverage's and limits. Insurance companies providing the coverage must be acceptable to Commission; rated by A.M. Best and carry at least an "A" rating. In addition to any provisions herein before required, a provision of such insurance policies shall be that the policies shall not be changed or canceled, and they will be automatically renewed upon expiration and continued in full force and effect until final acceptance by the Commission of all work covered by the contract, unless the Commission is given thirty (30) days written notice before any change or cancellation is made effective. The Contractor shall promptly furnish the Contracting Officer with a certified copy of each insurance policy upon request.

(b) All insurance shall be procured from insurance or indemnity companies acceptable to the Commission / Jurisdiction and licensed and authorized to do business in Commonwealth of Virginia. Commission/Jurisdiction approval or failure to disapprove insurance furnished by the Contractor shall not release the Contractor of full responsibility for liability for damage and accidents.

(c) If at any time the above required insurance policies should be canceled, terminated or modified so that the insurance is not in full-force and effect as required herein, the Contracting Officer may terminate this contract for Default or obtain insurance coverage equal to that required herein, the full cost of which shall be charged to the Contractor and deducted from any payments due the Contractor.

(d) Any contract of insurance or indemnification naming the Commission, the United States of America or any of its departments, agencies, administrators or authorities, as an insured, shall be endorsed to provide that the insurer will not contend in the event of any occurrence, accident, or claim that the Commission or the United States of America, et al., are not liable in tort by virtue of the fact of being governmental instrumentalities or public or quasi-public bodies.

**18. ENVIRONMENTAL, SAFETY AND HEALTH STANDARDS COMPLIANCE**

The Contractor shall comply with applicable environmental statutes, regulations, and guidelines in performing the Work. The Contractor shall also comply with applicable Occupational Safety and Health Administration (OSHA) standards, regulations, and guidelines in performing the Work. The Contractor shall be responsible for obtaining and posting Material Safety Data Sheets to the full extent required by law.

**19. HAZARDOUS CHEMICALS AND WASTES**

The Contractor shall bear full and exclusive responsibility for any release of hazardous or non-hazardous chemicals or substances by it or its employees, agents, representatives, or by its subcontractors or suppliers of any tier, or the employees, agents or representatives of any of them during the course of its performance of the Work. The Contractor shall immediately report any such release to HRT's Project Manager. The Contractor shall be solely responsible for compliance with all applicable Federal, State and local laws and regulations regarding reporting of such releases of hazardous chemicals or substances to appropriate government agencies. The Contractor shall be solely responsible for all claims and expenses associated with the response to, removal and remediation of such releases, including without limitation the payment of any fines or penalties levied against HRT as a result of such release, and shall hold harmless, indemnify, and defend HRT from any claims arising from such release. For purposes of this section only, 'claims' include (1) all notices, orders, directives, administrative, or judicial proceedings, fines, penalties, fees, or charges imposed by any governmental agency with jurisdiction; and (2) any claim, cause of action, or administrative or judicial proceeding brought against HRT, its Commissioners,

officers, employees or agents, or for any loss, cost (including reasonable attorney's fees) damage, or liability, sustained or suffered by any person or entity including HRT.

In the event that the Contractor discovers hazardous materials in the course of its work, it shall immediately cease work in the affected area, remove its personnel, and notify a field representative of HRT or HRT's Project Manager, and shall not resume work until directed by HRT. Any delay or other costs incurred by the Contractor as a result of such work stoppage shall be compensable hereunder, provided that the Contractor (1) is not responsible for the hazardous materials under this Section; and (2) complies with the requirements of this paragraph regarding the stoppage of work, notification, and removal of personnel.

If in the performance of the Work, the Contractor uses hazardous chemicals or substances or creates any hazardous wastes, as defined in federal and State law, all such resulting hazardous wastes shall be properly handled, stored and disposed of according to federal, State, and local laws, including the use of protective equipment and clothing by workers exposed to such hazardous materials, substances, or wastes, at the expense of the Contractor. The Contractor shall dispose of any and all such hazardous wastes under its own EPA Identification Number via a licensed hazardous waste transporter, at an appropriately permitted disposal facility selected by the Contractor. In no event shall HRT be identified as the generator of any such wastes. The Contractor shall determine whether any wastes generated during the Work is hazardous waste, and shall notify the HRT Project Manager if Contractor generates any hazardous wastes. HRT reserves the right to a copy of the results of any tests conducted on the wastes, and at HRT's cost, to perform additional tests or examine those wastes prior to disposition. The Contractor shall hold harmless, indemnify, and defend HRT from any claims arising from the disposal of such hazardous wastes regardless of the absence of negligence or other malfeasance by Contractor.

**20. ENVIRONMENTAL MANAGEMENT AND SUSTAINABILITY**

HRT recognizes that environmental compliance involves everyone (both internal and external to HRT), and expects its contractors, suppliers, and vendors to provide services in an environmentally-responsible manner. This includes, among other things, maximizing the use of recycled and recyclable materials and supplies, utilizing energy-efficient and non-polluting vehicles and equipment, and encouraging employee awareness of environmentally-sensitive activities in order to mitigate potential adverse impacts on the environment. HRT is a signatory to both the International Association of Public Transport's Charter on Sustainable Development, and to the American Public Transportation Association's Sustainability Commitment. In addition, HRT has instituted an Environmental Management System (EMS) that complies with the ISO 14001:2004 Standard. As such, it is HRT's responsibility to ensure that all of its contractors, suppliers and vendors are informed of its Environmental Policy and EMS Program. Acceptance of this purchase order constitutes acknowledgement of the information presented herein and included in HRT's Environmental Compliance Briefing Package, which can be viewed at the following website: <http://www.gohrt.com/abouthrt/emsprogram.html>.

**21. WARRANTY**

Definitions. "Acceptance" as used in this clause, means the act of an authorized representative of the Commission by which the Commission assumes for itself or an agent of another, ownership of the Work or any identified separable part thereof, or otherwise approves specific materials, supplies, equipment or services, as partial or complete performance of the contract. "Correction" as used in this clause, means the elimination of a defect.

Warranty of the Work is one (1) year from final acceptance. Items corrected during the warranty period will have an additional warranty period, from acceptance of the correction.

Contractor shall obtain for the benefit of the Commission, each of its suppliers' standard commercial warranty for items purchased by the Contractor and incorporated in the Work hereunder. All such warranties, as well as manuals or other documents related to the use or operation of such items, shall be provided to HRT prior to Final Acceptance of the Work. However, notwithstanding any warranty or inspection and acceptance by the Commission or any provision concerning the conclusiveness thereof, the Contractor warrants that all services performed and materials, supplies or equipment furnished under this contract will, at time of acceptance, be free from defects in workmanship and conform to the requirements of this contract. The Contracting Officer shall give written notice to the Contractor of any defect or nonconformance identified by the Commission. This notice shall state either (1) that the Contractor shall correct or reperform any defective or nonconforming services, or (2) that the Commission does not require corrective action or reperformance.

If the Contractor is required to correct or reperform, it shall be at no cost to the Commission, and any services corrected or reperfomed by the Contractor shall be subject to this clause to the same extent as work initially performed. If the Contractor fails or refuses to correct or reperform, the Contracting Officer may, by contract or otherwise, correct or replace with similar service and charge to the Contractor the cost occasioned to the Commission thereby, or make an equitable adjustment in the contract price. The Contractor shall not be entitled to any extension of the Contract schedule as a result of any required correction or reperformance, or failure to do so.

If the Commission does not require correction or reperformance, the Contracting Officer shall make an equitable adjustment in the contact price.

In addition to the Contractor's warranty defined herein, warranties provided by a manufacturer shall be passed on to HRT at no additional cost.

**22. INSPECTION OF SERVICES**

Definition: "Services," as used in this clause, includes services performed, workmanship, and materials, supplies, equipment whether tangible or intangible furnished or utilized in the performance of services.

The Contractor shall provide and maintain an inspection system acceptable to the Commission covering its services under this contract. Complete records of all inspection work performed by the Contractor shall be maintained and made

available to the Commission during contract performance and for as long afterwards as the contract requires.

The Commission has the right to inspect all services called for by the contract, to the extent practicable at all times and places during the term of the contract. The Commission shall perform inspections and tests in a manner that will not unduly delay the work. Contractor shall not cover over any portion of the work until such work is (1) inspected by HRT or its representative and the Contractor is authorized to close the work; or (2) HRT's representative authorizes closure of the work without inspection. Should Contractor fail to afford HRT a reasonable opportunity to inspect the work before closure, it shall be liable for all costs and any delay to the project for it or for other contractors occasioned thereby.

If any of the services do not conform to contract requirements, the Commission may require the Contractor to reperform the services in conformity with contract requirements, at no cost or delay to the Commission, including costs of reinspection.

When defects in services cannot be corrected by reperformance, the Commission may—

- A. Require the Contractor to take necessary action to ensure that future performance conforms to contract requirements; and
- B. Reduce the contract price to reflect the reduced value of the services performed.

If the Contractor fails to promptly perform the services again or to take the necessary action to ensure future performance in conformity with contract requirements, the Commission may—

- C. By contract or otherwise, perform the services and charge to the Contractor any cost incurred by the Commission that is directly related to the performance of such service; or
- D. Terminate the contract or the portion affected by the non-performance for default.

### **23. TITLE AND RISK OF LOSS**

Unless this contract specifically provides for earlier passage of title, title to the Work, and any supplies, material or equipment covered by this contract shall pass to the Commission upon formal acceptance, regardless of when or where the Commission takes physical possession.

Unless this contract specifically provides otherwise, risk of loss of or damage to the Work, or supplies, materials and equipment covered by this contract shall remain with the Contractor until, and shall pass to the Commission upon:

- A. Substantial Completion or Final Completion, as specified, of the Work or any identified separable part thereof.
- B. Acceptance by the Commission or delivery of possession of the supplies to the Commission at the destination specified in this contract, whichever is later.

- C. Notwithstanding (2) above, the risk of loss of or damage to supplies which so fail to conform to the contract as to give a right of rejection shall remain with the Contractor until cure or acceptance, at which time (2) above shall apply.

**24. DELIVERY**

The Contractor shall prepare all equipment and materials for shipment in such a manner as to protect them from damage in transit, and shall be responsible for and repair all damaged parts or replace all losses incurred in the course of delivery of the equipment and materials to the Work Site.

**25. MATERIALS AND WORKMANSHIP**

All materials, parts and equipment furnished by the Contractor shall be new, high grade and free from defects. Workmanship shall be in accordance with generally accepted industry standards. The Contractor shall establish and maintain quality assurance policies and procedures to ensure compliance with these specifications. Such policies and procedures shall be subject to review and approval by the Commission.

Any material or equipment not conforming to the requirements of these Contract Documents or found to be damaged or defective at the time of delivery shall be replaced by the Contractor without additional cost to HRT, including the cost of delay to the Contractor or other contractors.

If the Contractor shall fail to comply promptly with any order of the Contracting Officer to replace or repair damaged or defective material, equipment or work, the Contracting Officer shall, upon written notice to the Contractor, have the authority to deduct the cost of such replacement or repair, including but not limited to its administrative costs for obtaining such replacement or repair and any costs of delay occasioned thereby, from any compensation due or to become due to the Contractor.

HRT shall have the right to correct defective work, which is not remedied by contractor, with other forces at the contractor's expense.

HRT shall have the right to uncover and examine work that has been covered prior to inspection and acceptance. The uncovered work shall be recovered at contractor's expense.

Nothing in this section shall limit or restrict the provisions of any warranty of fitness as set forth in the Special Provisions, these General Conditions, and other portions of the Contract Documents.

**26. SUSPENSION**

HRT may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as HRT may determine. An adjustment may be made for increases in the schedule or cost of performance of the Contract excluding profit on the increased cost of performance, caused by suspension, delay or interruption. No adjustment shall be made to the extent: (1) that performance is, was or would have been suspended, delayed or interrupted by another cause for which the Contractor

is responsible; or (2) that an equitable adjustment is made or denied under another provision of this Contract.

**27. DELAY OF WORK**

If the performance of all or any part of the work is delayed or interrupted by an act of the Contracting Officer in the administration of this contract, which act is not expressly or impliedly authorized by this contract, or by his/her failure to act within the time specified, an adjustment (excluding profit) shall be made for any increase in the schedule or cost of performance of this contract caused by such delay or interruption and the contract modified in writing accordingly.

Adjustment shall be made also in the delivery or performance dates and any other contractual provision affected by such delay or interruption. However, no adjustment shall be made under this article for any delay or interruption to the extent that performance would have been delayed or interrupted by any other cause, including the fault or negligence of the Contractor; or for which an adjustment is provided or excluded under any other provision of this contract.

No claim under this clause shall be allowed for any costs incurred more than 20 working days before the Contractor shall have notified the Contracting Officer in writing of the act or failure to act involved; and unless the claim, in an amount stated, is asserted in writing as soon as practicable after the end of such delay or interruption, but not later than the date of final payment under the contract.

**28. STOP WORK ORDER**

The Contracting Officer may, at any time, by written order to the Contractor, require the Contractor to stop all, or any part of the work called for by this contract for a period not to exceed 90 calendar days after the order is delivered to the Contractor or any other date cited in the order, and for any further period to which the parties may agree. Any such order shall be specifically identified as a Stop Work Order issued pursuant to this article. Upon receipt of such an order, the Contractor shall forthwith comply with its terms and take all reasonable steps to protect and preserve the work, minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of 90 calendar days after a stop work order is delivered to the Contractor, or within any extension of that period, the Contracting Officer shall either cancel the stop work order, or terminate the work covered by such order as provided in Section 38, Termination for Convenience, of these General Conditions.

If a stop work order issued under this article is cancelled or the period of the order or any extension thereof expires, the Contractor shall resume work. An equitable adjustment shall be made in the delivery schedule or contract price, or both, and the contract modified in writing accordingly, if:

- A. The stop work order results in an increase in the time required for, or in the Contractor's cost properly allocable to the performance of any part of this contract, and
- B. The Contractor asserts a claim for such adjustment within 30 calendar days after the end of the period of work stoppage; provided that, if the Contracting Officer decides the facts justify such action, he may receive

and act upon any such claim asserted at any time prior to final payment under this contract.

If a stop work order is not cancelled and the work covered by such order is terminated for the convenience of the Commission, the reasonable costs resulting from the stop work order shall be allowed in arriving at the termination settlement.

**29. DISPUTES**

Except as otherwise provided in this contract, any dispute concerning a question of fact arising under this contract which is not disposed of by agreement shall be decided by the Director of Procurement, who shall reduce his/her decision to writing and deliver a copy thereof to the Contractor. The decision of the Director of Procurement shall be final and conclusive unless, within thirty (30) calendar days from the date of receipt of such copy, the Contractor delivers to the Director of Procurement a written appeal addressed to the Board of Commissioners. The decision of the Board of Commissioners or its duly authorized representative for the determination of such appeals shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, or capricious, or arbitrary, or so grossly erroneous as to necessarily imply bad faith, or not supported by substantial evidence. In connection with any appeal proceeding under this article, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the Contractor shall proceed diligently with the performance of the contract and in accordance with the Director of Procurement's decision.

This Disputes section does not preclude consideration of questions of law in connection with decisions rendered hereunder. Nothing in this contract, however, shall be construed as making final the decisions of the Commissioners or its representative on a question of law.

Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of Hampton Roads Transit. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of such decision, the Contractor mails or otherwise furnishes a written appeal to the Commission's Director of Procurement. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Director of Procurement shall be binding upon the Contractor and the Contractor shall abide by the decision.

A. Performance During Dispute - Unless otherwise directed by the Contract Administrator, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

B. Claims for Damages - Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of its employees, agents or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

C. Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the (Recipient) and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the Commonwealth of Virginia..

D. Rights and Remedies - The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the Commission, its agents, consultants or contractors, or the Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

A dispute between the Contractor and a Subcontractor relating to the amount or entitlement of a Subcontractor to a payment or a late payment interest penalty under a clause included in a Subcontract does not constitute a dispute to which HRT is a party. HRT shall not be included as a party in any such administrative or judicial proceeding involving a dispute.

**30. TERMINATION FOR DEFAULT**

The Commission may, subject to the provisions herein, by written notice of default to the Contractor, terminate the whole or any part of this contract in any one of the following circumstances:

- A. The Contractor is in material breach of any provision of this Contract;
- B. The Contractor makes a general assignment of this Contract for the benefit of creditors;
- C. The Contractor repeatedly fails to make prompt payment to Subcontractors or for Material or labor; or
- D. The Contractor disregards laws, regulations, ordinances, the orders of a legal authority, or the instructions of HRT; and the Contractor has not remedied the breach within ten (10) Days after receiving written notice from HRT.

In addition to its right to terminate the Contract for the reasons set forth above, if the Contractor fails to perform any of the other provisions of this contract, or refuses or fails to perform the Work or any separable part, with the diligence that will ensure its completion in accordance with its terms or within the time specified in this Contract including any extension, and does not cure such failure within a period of ten (10) Days (or such longer period as the Contracting Officer may authorize in writing), HRT may, by written notice to the Contractor and with copy to surety, terminate the right to proceed with the Work (or the separable part of the Work) that has been delayed. In this event, the Contractor and its sureties shall be liable for any damage to HRT resulting from the Contractor's refusal or failure to complete the Work within the specified time, or for liquidated damages for delay, as fixed in the Contract, whether or not the

Contractor's right to proceed with the Work is terminated. This liability includes any increased costs incurred by HRT in completing the Work.

If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for HRT's convenience pursuant to Section 38 of these General Conditions.

The rights and remedies of HRT in this Article are in addition to any other rights and remedies provided by law or under this Contract.

In the event the Commission terminates this contract in whole or in part, the Commission may procure, upon such terms and in such manner as the Contracting Officer may deem appropriate, supplies or services similar to those so terminated, and the Contractor shall be liable to the Commission for any excess costs for such similar supplies or services incurred by the Commission, including but not by way of limitation the costs of reprocurement; provided, that the Contractor shall continue the performance of this contract to the extent not terminated under the provisions of this article.

Except with respect to defaults of subcontractors, the Contractor shall not be liable for any excess costs if the failure to perform the contract arises out of causes beyond the reasonable anticipation and control, and without the fault or negligence of the Contractor. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the Government in its sovereign capacity or the Commission in its contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case the failure to perform must be beyond the reasonable anticipation and control and without the fault or negligence of the Contractor. If the failure to perform is caused by the default of a subcontractor, and if such default arises out of causes beyond the reasonable anticipation and control of both the Contractor and subcontractor, and without the fault or negligence of either of them, the Contractor shall not be liable for any excess costs for failure to perform, unless the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Contractor to fulfill its contractual obligations.

If this contract is so terminated, the Commission, in addition to any other rights provided in this article, may require the Contractor to transfer title and deliver to the Commission, in the manner and to the extent directed by the Contracting Officer, any completed supplies, and 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 specifically acquired for the performance of such part of this contract as has been terminated; and the Contractor shall, upon direction of the Contracting Officer, protect and preserve property in the possession of the Contractor in which the Commission has an interest. Payment for completed supplies delivered to and accepted by the Commission shall be at the contract price. Payment for manufacturing materials delivered to and accepted by the Commission and for the protection and preservation of property shall be in an amount agreed upon by the Contractor and Contracting Officer;

failure to agree to such amount shall be a dispute concerning a question of fact within the meaning of Section 36, Disputes of these General Conditions. The Commission may withhold from amounts otherwise due the Contractor for such completed supplies or manufacturing materials such sum as the Contracting Officer determines to be necessary to protect the Commission against loss because of outstanding liens or claims of former lien holders.

**31. TERMINATION FOR CONVENIENCE**

The performance of work under this contract may be terminated by the Commission in whole, or from time to time in part in accordance with this Section, whenever the Contracting Officer shall determine that such termination is in the best interest of the Commission. Any such termination shall be effected by delivery to the Contractor of a written Notice of Termination specifying the extent to which performance of work under the contract is terminated, and the date upon which such termination becomes effective.

After receipt of a Notice of Termination, except as otherwise directed by the Contracting Officer, the Contractor shall proceed with the following regardless of any delay in determining or adjusting any amounts due under this clause:

- A. Stop work under the contract on the date and to the extent specified in the Notice of Termination;
- B. Place no further orders or subcontracts for materials, services, or facilities, except as may be necessary for completion of such portion of the Work which is not terminated;
- C. Terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination;
- D. Assign to the Commission, in the manner, at the time, and to the extent directed by the Contracting Officer, all of the rights, title, and interests of the Contractor under the orders and subcontracts so terminated, in which case the Commission shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
- E. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Contracting Officer, to the extent he/she may require; the approval or ratification shall be final for purposes of this article;
- F. Transfer title to the Commission and deliver in the manner, at the times, and to the extent, if any, directed by the Contracting Officer:
  - 1. the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced as a part of, or acquired in connection with the performance of the work terminated by the Notice of Termination;
  - 2. the completed or partially completed plans, drawings, information and other property, tangible or intangible, which, if

the contract had been completed, would have been required to be furnished to the Commission;

- G. Use its best efforts to sell, in the manner, at the times, to the extent, and at the price or prices directed or authorized by the Contracting Officer, any property of the type referred to in paragraph F above, provided, however, that the Contractor (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by HRT. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by HRT under this Contract, credited to the price or cost of the Work, or paid in any other manner directed by HRT;
- H. Take such action as may be necessary, or as the Contracting Officer may direct, for the protection and preservation of the property related to this contract which is in the possession of the Contractor and in which the Commission has or may acquire an interest; and
- I. Complete performance of such part of the Work not terminated by the Notice of Termination.

After receipt of a Notice of Termination, the Contractor shall submit to the Contracting Officer its termination claim, in the form and with certification prescribed by the Contracting Officer. Such claims shall be submitted promptly but in no event later than one year from the effective date of termination. Upon failure of the Contractor to submit his termination claim within the time allowed, the Contracting Officer may determine on the basis of information available, the amount, if any, due the Contractor because of the termination and shall pay the amount determined.

In the event of the failure of the Contractor and the Contracting Officer to agree upon the whole amount to be paid the Contractor, the Contracting Officer shall determine, on the basis of available information, the amount if any, due the Contractor by reason of the termination and shall pay to the Contractor the amounts determined on the following basis:

- J. For Work performed before the effective date of termination, the total (without duplications of any items) of:
  - 1. The cost of the Work performed;
  - 2. The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the Contract, if not included in A.1) above; and
  - 3. Profit on A.1) above, as determined by the Contracting Officer to be fair and reasonable; however, if it appears that the Contractor would have sustained a loss on the entire Contract had it been finally completed, HRT shall allow no profit under Article and shall reduce the settlement to reflect the indicated rate of loss.

- K. The reasonable costs of settlement of work terminated, including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the contract and for the termination and settlement of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to this contract.

The total sum to be paid to the Contractor shall not exceed the total contract price as reduced by the amount of payments otherwise made and as further reduced by the contract price of work not terminated. There shall be excluded from the amounts payable to the Contractor the fair value, as determined by the Contracting Officer, of property which is destroyed, lost, stolen, or damaged so as to become undeliverable to the Commission, or sold to a buyer. The payment shall be further reduced by all unliquidated advances or other payments to the Contractor under the terminated portion of this Contract; any claim which HRT has against the Contractor under this Contract; and the agreed price for, or the proceeds of sale of, Materials, supplies, or other things acquired by the Contractor or sold under the provisions of this Condition and not recovered by or credited to HRT.

Costs claimed, agreed to, or determined shall be in accordance with the applicable contract cost principles and procedures in OMB Circular A-87 (2 C.F.R. Part 225) in effect on the date of this contract.

The Contractor shall have the right to appeal, under the General Condition 35, Disputes, from any determination made by the Contracting Officer, except that, if the Contractor has failed to submit its claim within the time provided and has failed to request extension of such time, it shall have no such right of appeal. In any case where the Contracting Officer has made a determination of the amount due, the Commission shall pay to the Contractor the amount as determined by the Contracting Officer.

If the termination hereunder is partial, prior to the settlement of the terminated portion of this contract, the Contractor may file with the Contracting Officer a request in writing for an equitable adjustment of the price or prices specified in the contract relating to the continued portion of the contract (the portion not terminated by the Notice of Termination) for reasons arising from the termination, and such equitable adjustment as may be agreed upon shall be made in such price or prices.

Unless otherwise provided in this Contract or by statute, the Contractor shall maintain all records and documents relating to the terminated portion of this Contract for three (3) years after final settlement. This includes all books and other evidence bearing on the Contractor's costs and expenses under this Contract. The Contractor shall make these records and documents available to HRT, at the Contractor's office, at all reasonable times, without any direct charge. If approved by the Contracting Officer, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.

**32. CONFLICT OF INTEREST**

Neither the Contractor nor any person or company affiliated with it shall have, during the term of this contract and any extensions thereof, any contractual or other financial relationship with the Commission, its members, officers, employees, or agents, with any Commission prime contractor, or with any subcontractor or supplier to any Commission prime contractor other than the contractual relationship established under this contract, as described by law.

Nothing herein shall preclude a contractor from participating in other competitive procurements issued by HRT or its member jurisdictions for work unrelated to this contract, except as prohibited by the Organizational Conflict of Interest stipulations below.

Unless specifically exempted from the conditions of this provision by the Contracting Officer, any HRT contractor, subcontractor, subsidiary, or other entity which is legally related to an entity or party which develops or drafts specifications, requirements, statements of work, invitations for bids, or otherwise is in a position to influence the nature, scope or conditions of a subsequent Commission solicitation or contract which provides an unfair competitive advantage, shall be excluded from competing under such solicitation or receiving such contract. Any violation of this requirement may result in the offending party being denied award of a contract or rescission of a contract if awarded, or other appropriate sanctions by the Commission.

Upon request of the Contractor and upon full disclosure and for good cause the Contracting Officer may in his/her sole discretion grant an exception to the requirement above, when in his/her judgment the exception will not create a conflict between the Contractor's duties and obligations under this contract and the duties and obligations imposed on the Contractor under the contractual or other relationship for which an exception is requested.

If, during the performance of this contract and any extension thereof, the Contractor becomes aware of any relationship, financial interest, or other activity in which it or an affiliated person or company is involved which is not in compliance with the provisions above, it shall promptly notify the Contracting Officer in writing and fully disclose all circumstances thereof. Should the Contracting Officer not grant an exception to the requirements of this Article, the Contractor shall, within ten working days of written notice from the Contracting Officer to do so, take all action necessary to comply with the terms above.

If the Contractor fails to comply with the terms of this Article, the Contracting Officer, may withhold payments due under the contract until such time as the Contractor is in compliance or, should the non-compliance remain uncorrected at the expiration of ten working days from written notice from the Contracting Officer as provided in (c), above, terminate the contract for default pursuant to the provisions of this contract.

The Contractor in performing this contract shall avoid any conduct which might result in or create for the Commission, its Commissioners, officers, employees or agents any conflicts of interest or favoritism and/or the appearance thereof and shall avoid any conduct which might result in a Commissioner, officer, employee or agent failing to adhere to the Standards of Conduct adopted by the Commission.

Any determination by the Contracting Officer under this Article shall be final and shall be considered a question of fact within the meaning of the Disputes Article of this contract.

**33. NOT USED**

**34. COVENANT AGAINST CONTINGENT FEES**

The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the Commission shall have the right to annul this contract without liability or in its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

**35. GRATUITIES**

In connection with performance of work required under this contract, or any changes or modifications relative thereto, the giving of or offering to give gratuities (in the form of entertainment, gifts or otherwise) by the Contractor, or any agent, representative or other person deemed to be acting on behalf of the Contractor, or any supplier or subcontractor furnishing material to or performing work under this Contractor, or any agent, representative or other person deemed to be acting on behalf of such supplier or subcontractor, to any Commissioner, officer, or employee of the Commission; or to any director, officer, employee or agent of any of the Commission's agents, consultants, representatives or other persons deemed to be acting for or on behalf of the Commission with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending, managing, or the making of any determinations with respect to the performing of such contract is expressly prohibited. Violation of this provision shall be deemed an instance of default hereunder.

**36. COLLUSION**

If at any time it shall be found that the person, firm, or corporation to whom a Contract has been awarded has, in preparing or presenting any bid or bids, including but not limited to proposals for contract modifications, colluded with any other party or parties with the intent of preventing full and open competition or the obtaining by the Commission of a fair and reasonable price for the Work hereunder, then the Commission may terminate this Contract for default, or exercise such other remedies as it deems appropriate, and the Contractor and its sureties shall be liable to HRT for all loss or damage which HRT may suffer thereby.

**37. INDEMNIFICATION**

A. The Contractor shall indemnify and hold harmless the Commission and its officers, agents, and employees against liability, including all costs incurred thereby, for any real or claimed infringement of any United States letters patent arising out of the performance of this contract; or arising out of the manufacture

or delivery of supplies under this contract, and for any violation of copyright or other proprietary rights of third parties arising out of any design, report, document or other material, in hard copy or electronic form, provided to the Commission hereunder.. The foregoing indemnity shall not apply unless the Contractor shall have been informed as soon as practicable by the Commission of the claim, suit or action alleging such infringement, and shall have been given such opportunity as is afforded by applicable laws, rules, or regulations to participate in the defense thereof; and further, such indemnity shall not apply to:

1. an infringement resulting from compliance with specific written instructions of the Contracting Officer directing a change in the performance of the contract in a manner not recommended by or normally used by the Contractor;
2. an infringement resulting from addition to, or change in, supplies or components furnished which addition or change was made by others subsequent to delivery or performance by the Contractor; or
3. a claimed infringement which is settled without the consent of the Contractor, unless required by final decree of court of competent jurisdiction.

B. The Contractor shall indemnify the Commission and its officers, agents, and employees against liability, including costs, for infringement of any United States letters patent arising out of the manufacture or delivery of supplies under this contract, and for any violation of copyright or other proprietary rights of third parties arising out of any design, report, document or other material, in hard copy or electronic form, provided to the Commission hereunder. The foregoing indemnity shall not apply unless the Contractor shall have been informed as soon as practicable by the Commission of the actual or potential suit or action alleging such infringement violation, and shall have been given such opportunity as is afforded by applicable laws, rules, or regulations to participate in the defense thereof; and further, such indemnity shall not apply to:

1. an infringement resulting from compliance with specific written instructions of the Contracting Officer directing a change in the supplies to be delivered or in the data, materials or equipment to be used, or directing a manner or performance of the contract not normally used by the Contractor;
2. an infringement resulting from addition to, or change in, such supplies or components furnished or alteration in any report, document or data furnished which addition, change or alteration was made subsequent to delivery or performance by the Contractor; or
3. a claimed infringement which is settled without the consent of the Contractor, unless required by final decree of a court of competent jurisdiction.

C. The Contractor will indemnify and hold harmless the Commission, its officers, employees, agents and/or their successors, assigns and/or heirs against any and all liability claims arising for injury, including personal injury to or death of any person or persons, and for any loss or damage to any person or property

whatsoever, and for any costs incurred by the Commission thereby, to the extent caused by the negligent performance of this contract, including the acts, errors or omissions of the Contractor, any subcontractor, employee, agent or representative of the Contractor or any subcontractor. Notwithstanding any other obligation or provision herein, Contractor shall not be obligated to indemnify HRT to the extent such loss or liability arises out of or is caused by or results from the negligence or willful misconduct of HRT or its representatives.

D. Contractor shall indemnify the Commission, its officers, employees, agents and/or their successors, assigns and/or heirs against any liability, including but not limited to any civil or criminal penalties assessed against any of them resulting from the failure of the contractor or any subcontractor to conform to any law or regulation pertaining to professional services performed under this contract.

**38. COST OR PRICING DATA**

The Contractor shall submit to the Contracting Officer upon request cost or pricing data for any modification or proposed modification of this Contract, under the conditions described in this Paragraph and certify that, to the best of its knowledge and belief, the cost or pricing data submitted is current, accurate, and complete. The contractor shall also certify that costs proposed hereunder are allocable, allowable, and reasonable in accordance with cost principles and practices under Part 31 of the Code of Federal Regulations and OMB Circular A-87 (2 C.F.R. Part 225).

The submittal of certified cost or pricing data shall not be required if the price is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation. The Contractor agrees that the terms "adequate price competition" and "established catalog or market prices of commercial items sold in substantial quantities to the general public" shall be determined by the Contracting Officer.

Cost or pricing data consists of all facts existing up to the time of agreement on price which prudent buyers and sellers would reasonably expect to have a significant effect on the price negotiations for the modification. The term "cost" specifically includes the elements of labor, material, overhead and profit incorporated in the Contractor's price. The definition of cost or pricing data embraces more than historical accounting data; it also includes, where applicable, such factors as subcontractor, supplier and vendor quotations, nonrecurring costs, changes in construction methods, unit cost trends such as those associated with labor efficiency and any management decisions which could reasonably be expected to have a significant bearing on costs. Cost or pricing data consists of all facts which can reasonably be expected to contribute to sound estimates of future costs as well as to the validity of costs already incurred. Cost or pricing data, being factual, is that type of information which can be verified. Because the certificate pertains to cost or pricing data, it does not make representations as to the accuracy of the Contractor's judgment on the estimated portion of future cost or projections. The certificate does, however, apply to the data upon which the Contractor's judgment is based.

If the contractor or subcontractor submits defective cost or pricing data, a reduction in contract price shall be made by that amount deemed defective.

**39. DRUG-FREE WORKPLACE**

The contractor agrees to (i) provide a drug-free workplace for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace; and (iv) include such provisions in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

**40. PRIVACY ACT**

The contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements with the Privacy Act of 1974, 5 U.S.C. 552.

**41. INTELLIGENT TRANSPORTATION SYSTEMS (ITS) REQUIREMENTS**

In accordance with the FTA National Architecture Policy on Transit Projects (Federal Register: January 2, 2001 (Vol. 66, No. 5, pp. 1455-1459)), which can be accessed at [http://frwebgate.access.gpo.gov/cgi-bin/getpage.cgi?position=all&page=1455&dbname=2001\\_register](http://frwebgate.access.gpo.gov/cgi-bin/getpage.cgi?position=all&page=1455&dbname=2001_register), (Policy), ITS projects funded by the Highway Trust Fund and the Mass Transit Fund must conform to a regional ITS architecture. An ITS project is defined as "any project that in whole or in part funds the acquisition of technologies or systems of technologies that provide or significantly contribute to the provision of one or more ITS User Services as defined in the National ITS Architecture". If the project includes ITS components that implement any of the defined User Services it is considered an "ITS Project."

HRT has participated in the development of a regional ITS architecture, which is available at

<http://www.hrpdc.org/transport/reports/HR%20Strategic%20Plan%202004.pdf>.

If the solicitation documents identify this contract as subject to the Policy, or if the contractor has reason to believe that the Policy applies to its services hereunder, the contractor shall be responsible, in consultation with HRT, for determining what, if any work performed, or products supplied, under this contract are subject to the and for conforming to all requirements of that Policy as applicable.

**42. WORK ON AGENCY PROPERTY**

Contractor shall at all times while on HRT property conform to all rules and requirements established by HRT for visitors, including those addressing access to facilities and office areas, smoking, security, and sustainability. Contractor's personnel, including those of its subcontractors, suppliers, or agents shall comply

with all directions and instructions given them by authorized HRT personnel in this respect.

**43. OWNERSHIP OF WORKS AND INVENTIONS**

All documents, reports, recommendations, supporting documentation, works of authorship, inventions, improvements, data, processes, computer software programs and discoveries (hereafter called intellectual property or IP) conceived, created or furnished under this Agreement and paid for by HRT shall be the sole property of the Commission, with no rights of ownership in Contractor or any sub-consultants/sub-contractors. This Agreement shall operate as an irrevocable assignment by Contractor and sub-consultants/sub-contractors to the Commission of the copyright in any IP created, published or furnished to the Commission under this Agreement including all rights thereunder in perpetuity. Contractor and sub-consultants/sub-contractors shall not patent any IP conceived, created or furnished under this Agreement. Contractor and sub-consultants/sub-contractors agree to execute and deliver all necessary documents requested by the Commission to effect the assignment of the IP to the Commission or registration or confirmation of the Commission's rights in or to IP under the terms of this Agreement. Contractor agrees to include the provision in all its sub-contracts under this Agreement.

**44. NOTICES AND COMMUNICATIONS**

All notices and other communications concerning this Contract shall be written in English, sequentially numbered, reference the Contract number assigned by HRT, and be in Microsoft Office format, i.e. Word, Excel, or PDF. Notices and other communications may be delivered personally, by facsimile, or by regular, certified, or registered mail. Formal notices and communications are effective when received. Email notices and communications are not considered formal and shall not be considered official unless confirmed in writing by the designated HRT representative and delivered as noted above.

Prior to issuance of Notice to Proceed, all formal communications shall be between HRT and the individual who signed the contract on behalf of the Contractor at the address shown with that signature, to a corporate officer, if Contractor is a corporation, to a general partner, if Contractor is a partnership, or to another individual designated by Contractor in this Contract or in a written notice to HRT.

Prior to issuance of Notice to Proceed, HRT's point of contact is the Contracting Officer or duly assigned designee, and a notice or other communication will be effective only if it is delivered to Contract Administrator, Hampton Roads Transit, 3400 Victoria Boulevard, Hampton, Virginia 23661. Following issuance of Notice to Proceed, all communications and notices shall be delivered to the HRT Project Manager at the address designated by HRT.

Prior to commencement of Work on the Project, communications from HRT to Contractor will be effective if delivered to the individual who signed this Contract on behalf of Contractor at the address shown with that signature, to a corporate officer if Contractor is a corporation, to a general partner if Contractor

is a partnership, or to another individual designated by Contractor in this Contract or in a written notice to HRT.

After the commencement of Work on the Project, all formal communications shall be between the HRT Project Manager and the Contractor's Project Manager and becomes effective when delivered.

## **CONSTRUCTION CONTRACT TERMS**

The following additional General Conditions apply to construction contracts.

### **45. CONSTRUCTION DEFINITIONS AND ACRONYMS**

**"Change Notice"** means a document issued by the HRT Project Manager to the Contractor requesting a price proposal for specified changed work.

**"Change Request"** means a document issued by the Contractor to HRT's Project Manager requesting that a Change Order be issued.

**"Construction Manager"** means HRT's authorized representative who is charged with the overall administration of the Light Rail Project.

**"Construction Safety Officer"** means HRT's designated safety representative, responsible for overall safety compliance on the Project.

**"Contractor's Safety Supervisor"** ("CSS"), means the Contractor's Work site safety officer. The "Alternate Safety Supervisor" is the person identified by the Contractor as the only individual who can act on behalf of the CSS, if the CSS is going to be absent from the Work site.

**"Final Acceptance"** means written notice by HRT acknowledging that Contractor has fulfilled all of its obligations under the Contract and that HRT has accepted the Work as of the date stated in the written notice. Final Acceptance is a condition precedent to Final Payment and defines commencement of the warranty period.

**"Plans"** includes the drawings, standard drawings, profiles, typical cross-sections, general cross-sections, elevations, diagrams, schedules, and details which show the locations, character, dimensions, and details of the Work, and include any documents referenced therein.

**"Project Closeout"** means the process by which the Contractor documents fulfillment of all obligations under the Contract. This process follows Substantial Completion and precedes Final Acceptance. "Punch List" means a list or lists of items to be furnished and or work to be performed by the Contractor to finally complete the Work

**"Substantial Completion"** means completion of the Work, or a designated portion thereof, to a point where HRT certifies that the Work or the designated portions can be used for the purpose for which it was intended, whether or not minor portions of the work, or corrections to any portions of the Work, remain to be completed. Substantial Completion does not relieve the Contractor of its obligation to finally complete the Work in timely fashion. Items remaining to be completed after Substantial Completion shall be documented in a Punch List.

“**Supplier**” means any person, firm, partnership, corporation or other entity that provides Materials, including those fabricated to a special design, but usually provides no labor at the Work Site other than delivery.

“**Work Site**” means the area enclosed by the Limit of Work indicated on the Plans and the boundaries of local streets and public easements in which the Contractor is to perform under the Contract.

“**Working Drawings**” means the drawings prepared by the Contractor which depict the sequence, methods, Materials, details of construction or procedures for accomplishing a portion of the Work, including, but not necessarily limited to, falsework, shoring, concrete formwork and excavation plans.

**46. DIFFERING SITE CONDITIONS**

The contractor shall immediately notify HRT of any site conditions not reasonably discoverable in site inspections, i.e. hazardous materials; subsurface or latent physical conditions at the site differing materially from those indicated in the contract, or unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the contract.

**47. RETAINAGE**

HRT shall pay the approved invoice, less five percent (5%) for retainage, except as provided under Section 48 of the General Conditions, Reduction of Retainage, within thirty (30) days after its receipt by HRT. All retainage shall be held by HRT until the time for final payment and HRT has received consent of surety.

**48. REDUCTION OF RETAINAGE**

HRT shall withhold five percent (5%) retainage until the Contractor successfully achieves Substantial Completion on the Contract. Following Substantial Completion HRT may, at its sole discretion, elect to withhold retainage in an amount equal to twice the amount of the estimated value of all uncompleted Work including Warranty and pay the Contractor the balance of withheld retainage. The remainder of withheld retainage shall be paid after Final Completion. In the event that HRT and the Contractor agree to have Punch List or other Work performed by parties other than the Contractor, the cost of such work shall be subtracted from the amount of retainage due the Contractor.

**49. COOPERATION WITH OTHER CONTRACTORS**

The Contractor shall confer with and coordinate through the HRT Project Manager, this Contract’s work with that of any other HRT contractors as well as any other entities or contractors working in close proximity to or on the Work Site. At the HRT Project Manager’s request, Contractor shall plan and execute its construction operations in a manner that will afford other contractors access to the work site. The Contractor shall cooperate with others while on adjoining or overlapping work as requested. Such cooperation may include participating in a Beneficial Occupancy/Substantial Completion inspection before allowing the other contractor access within the contract limits.

**50. VARIATION IN ESTIMATED QUANTITY**

If the quantity of a unit-priced item in this Contract is an estimated quantity and the actual quantity of the unit priced item varies by more than twenty-five percent (25%) above or below the estimated quantity, an equitable adjustment in the Contract price shall be made upon request of either party in accordance with Special Provision 15, Changes in the Work. The equitable adjustment shall be based upon any increase or decrease in costs due solely to the variation above one hundred twenty-five percent (125%) or below seventy-five percent (75%) of the estimated quantity.

For an actual quantity exceeding 125% of the estimated quantity, the unit price shall be adjusted only for the quantity in excess of 125% of the estimated quantity. For an actual quantity less than 75% of the estimated quantity, the unit price shall be adjusted for the total actual quantity of work performed. If the quantity variation is such as to cause an increase in the time necessary for completion, the Contractor may request, in writing, an extension of time.

**51. ONSITE SAFETY AND SECURITY**

Contractor shall be responsible for compliance with all safety rules and regulations of the Federal Occupational Safety and Health Act of 1970, and all applicable Commonwealth of Virginia and local laws, ordinances, and regulations during the performance of construction at the Work Site.

**52. QUALITY CONTROL / QUALITY ASSURANCE**

Materials furnished and Work performed by the Contractor shall conform to details shown on the Plans, and requirements given in the Technical Specifications.

The Contractor has primary responsibility for inspection and testing of all materials required in the performance of this Contract. HRT or its designee will independently perform check testing and periodic inspections to verify adequacy of Contractor's quality controls or for any other purpose and will bear the cost of such testing and inspection. HRT reserves the right to reject materials on the basis of HRT instituted inspection and testing.

Materials furnished or work performed which does not comply with Contract requirements will be considered non-conforming. Work considered non-conforming includes, but is not limited to:

- A. Work done or products incorporated beyond lines shown on the Plans or established by HRT;
- B. Work done or products incorporated contrary to HRT's instructions;
- C. Work changed or added without HRT's written authorization;
- D. Work which includes incorporation of unapproved substitutions;
- E. Work performed or Materials furnished without the required testing, inspection or other conformance documentation or without required warranties;
- F. Work or Materials not in conformance with the Contract requirements.

When non-conforming work is discovered, HRT may:

- G. Reject the Materials or workmanship or require its correction. Contractor shall satisfactorily correct rejected workmanship or satisfactorily replace rejected Materials at Contractor's own expense and promptly segregate and remove rejected Materials from the Work Site and properly dispose of them.

If Contractor fails to promptly replace rejected Materials or correct rejected workmanship, HRT may,

1. By contract or otherwise, remove and replace such rejected Materials or workmanship, correct such Materials or workmanship, and dispose of all rejected Materials and workmanship so removed, charging the costs thereof to the Contractor, or
2. Terminate the Contractor's right to proceed in accordance with General Condition 36, Termination for Default and Contractor and its sureties shall be liable for any costs and damages incurred.

- H. Accept the Materials or workmanship as suitable for the intended purpose, document the basis of such acceptance, and deduct an equitable amount from the Contract price for uncorrected work.

### **53. PROSECUTION AND PROGRESS OF WORK**

#### **A. License, Permits, Fees and Construction Notices**

Contractor shall be fully responsible for identifying, securing, and paying for all necessary licenses, fees, inspections, waivers, utility connection fees, building and other permits, and similar authorizations from governmental and utility authorities, required to fulfill the Contract requirements and Contractor's obligations.

#### **B. Standard Work Week**

Contractor shall comply with all applicable statutes, regulations, rules, ordinances, or other such measures which limit, restrict, or regulate the times of day and/or days of the week when any activities required by this Contract can be performed.

Contractor is responsible for applying for and obtaining any waivers or variances necessary for the Work at its own expense except for those specifically identified in this Contract as provided by HRT.

Contractor's compliance with such restrictions shall not be the basis of any claim for extensions of time or additional compensation unless HRT has expressly stated in this Contract that waivers, variances, or other authorizations shall apply to Contractor's activities, or specific portions thereof, and such waivers, variances, or other authorizations are unavailable at the specified date or are subsequently withdrawn and such unavailability or withdrawal did not result from some act or omission by Contractor.

**C. Maintenance of Traffic**

Contractor shall be responsible for mitigating impact to traffic.

**D. Noise and Vibration Control**

Contractor shall comply with all applicable City (Chesapeake, Hampton, Newport News, Norfolk, Portsmouth, Suffolk, or Virginia Beach, as appropriate), Commonwealth of Virginia, and federal laws, ordinances and regulations regarding control of noise and vibration. Contractor is responsible for applying for and obtaining any noise variances necessary for the Work at its own expense.

**54. FINAL PAYMENT AND RELEASE OF LIENS / CLAIMS**

Whenever the Contractor deems its obligations under the Contract have been fulfilled, the Contractor shall notify the RE in writing. Upon receipt of Contractor's notice of Final Completion, RE or his/her designee shall inspect the Work and within fifteen (15) days after receiving Contractor's notice of Final Completion either finally accept the Work or notify the Contractor in writing of Work yet to be performed on the Contract. Upon receipt of HRT's written Final Acceptance of the Work, Contractor shall invoice HRT for any amounts due under the Contract including retainage. HRT shall pay Contractor within thirty (30) days after receipt of the approved final invoice.

Neither the final payment nor any remaining retainage shall become due until Contractor submits to HRT (1) an affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the Work have been paid or otherwise satisfied, (2) consent of surety to final payment, and (3) if required by HRT, other data establishing payment or satisfaction of all obligations, such as receipts, releases, and waivers of liens arising out of the Contract, to the extent and in the form designated by HRT.

If, after Substantial Completion of the entire Contract, Final Completion is materially delayed through no fault of Contractor or by the issuance of Change Orders affecting final completion, HRT, without terminating the Contract, shall pay the balance due for that portion of the Work that is eligible for Final Completion. If the remaining balance of Work is less than the retainage stipulated in the Contract, and if bonds have been furnished as provided in the Contract, the written consent of the surety to the payment of the balance due for that portion of the Work eligible for Final Completion shall be submitted by Contractor prior to payment. Payment under this Article shall be made under the terms and conditions governing Final Payment, except that it shall not constitute a waiver of claims regarding any Work not eligible for Final Completion.

The making of final payment by HRT shall constitute a waiver of claims by HRT except those arising from: (1) liens, claims, security interests, or encumbrances arising out of the Contract and unsettled; (2) latent defects in the Work or failure of the Work to comply with the requirements of the Contract; (3) any misrepresentations or falsifications by the Contractor; or (4) terms of all warranties required by the Contract.

Acceptance of final payment by the Contractor, a Subcontractor, or a Supplier shall constitute a waiver of claims by the payee except those previously made in writing and identified by the payee as unsettled at the time of application for final payment. Such waivers shall be in addition to the waiver provided in this Section.

Notwithstanding the provisions herein, the risk of loss of all Materials incorporated in the Work shall remain with Contractor until Final Completion and Final Acceptance by HRT, to the extent loss or damage was not caused by HRT or its representatives.

Whenever the Contractor deems its obligations under the Contract have been fulfilled, the Contractor shall notify the RE in writing. Upon receipt of Contractor's notice of Final Completion, RE or his/her designee shall inspect the Work and within fifteen (15) days after receiving Contractor's notice of Final Completion either finally accept the Work or notify the Contractor in writing of Work yet to be performed on the Contract and any deliverables not yet accepted by HRT. Upon receipt of HRT's written Final Acceptance of the Work, Contractor shall invoice HRT for any amounts due under the Contract including retainage. HRT shall pay Contractor within thirty (30) days after receipt of the approved final invoice.

#### **FEDERAL FUNDING AND INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS**

The following provisions are required by the U.S. Department of Transportation (DOT), Federal Transit Administration or other public entities providing funding for this Contract, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, effective November 1, 2008, including amendments, modifications, or clarifications thereto, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any Commission requests which would cause the Commission to be in violation of the FTA terms and conditions.

#### **55. FEDERAL CHANGES**

Contractor shall at all times comply with all applicable regulations, policies, procedures and directives of the Federal Transit Administration (FTA), including without limitation those listed directly or by reference in the Master Agreement issued annually by FTA as entered into by the Commission and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

#### **56. ACCESS TO RECORDS**

The Contractor shall maintain records, and the Contracting Officer, the U.S. Department of Transportation, and the Comptroller General of the United States,

or any of their duly authorized representatives, shall, until the expiration of three years after final payment under this Contract, have access to and the right to examine any directly pertinent books, documents, papers and records of the Contractor, involving transactions related to this Contract, for the purpose of making audit, examination, excerpts and transcriptions. The Commonwealth of Virginia and any other public entity providing funding for this contract shall have the same rights as provided to the parties named herein.

The Contractor further agrees to include in all its subcontracts hereunder a provision to the effect that the subcontractor agrees that the Contracting Officer, the U.S. Department of Transportation and the Comptroller General of the United States or any of their duly authorized representatives shall, until the expiration of three years after final payment under the Contract, have access to and the right to examine any directly pertinent books, documents, papers and records of such subcontractor, involving transactions related to the subcontract, for the purpose of making audit, examination, excerpts and transcriptions. The Commonwealth of Virginia and any other public entity providing funding for this contract shall have the same rights as provided to the parties named herein.

**57. FEDERAL ENERGY CONSERVATION REQUIREMENTS**

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

**58. CIVIL RIGHTS REQUIREMENTS**

**A. Nondiscrimination** - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2002d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

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

1. **Race, Color, Creed, National Origin, Sex** - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect

construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

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

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

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

In accordance with the Code of Virginia, the contractor agrees to not discriminate against any employee or applicant for employment because of race, religion, color, sex, or national origin, except where religion, sex or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause. The contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state that such contractor is an equal opportunity employer. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purposes of meeting the requirements of this section.

**59. DAVIS-BACON, COPELAND AND CONTRACT WORK HOURS & SAFETY STANDARDS ACTS**

Minimum wages to be paid on this construction project have been established by the U.S. Department of Labor and are included in the Contract Documents. Submittal of certified payrolls is required.

**A. Overtime requirements** - No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of

laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

**B. Violation; liability for unpaid wages; liquidated damages** - In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$ 10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

**C. Withholding for unpaid wages and liquidated damages** - The Commission shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

**D. Subcontracts** - The contractor or subcontractor shall insert in any subcontracts the clauses set forth in this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this section.

**E. Payrolls and basic records** - (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide

such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

**60. NONDISCRIMINATION UNDER FEDERAL GRANTS**

No otherwise qualified handicapped individual in the United States, as defined in Section 7(6), shall solely by reason of his/her handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

**61. NO GOVERNMENT OBLIGATION TO THIRD PARTIES**

Notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of this contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to HRT, the Contractor, or any other party (whether or not a party to this contract) pertaining to any matter resulting from this contract.

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

**62. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS**

The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § § 3801 *et seq.* and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this contract. Upon execution, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the this contract. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

The Contractor agrees to include this provision in each subcontract, and to require subcontractors to do likewise. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

**63. SUSPENSION AND DEBARMENT**

This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the Contractor is required to verify that none of the Contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The Contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

**64. RECYCLED PRODUCTS**

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

**65. CLEAN AIR AND WATER**

The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq., and the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. . The Contractor agrees to report each violation to the Commission and understands and agrees that the Commission will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA regional office. The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

**66. COMPLIANCE WITH FEDERAL LOBBYING POLICY**

In accordance with the certification submitted as part of its offer as accepted by the Commission, Contractor will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Contractor shall obtain such certifications from its subcontractors and maintain a record thereof.

**67. BUY AMERICA**

The Contractor agrees to comply with 49 U.S.C. 5323(j), and its implementing regulations at 49 C.F.R. Part 661, any amendments thereto, and any implementing guidance issued by FTA, in accordance with the certifications

submitted with is offer as accepted by the Commission, or any approved modification thereto.

**68. SEISMIC SAFETY**

The Seismic Safety requirements apply only to contracts for the construction of new buildings or additions to existing buildings. The contractor agrees that any new building or addition to an existing building will be constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 CFR Part 41 and will certify to compliance to the extent required by the regulation. The contractor also agrees to ensure that all work performed under this contract including work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

**69. ADA ACCESS**

Plans for facility construction and/or facility alterations that are described in the scope of work detailed under this contract have been designed with the intent of ensuring, to the maximum extent feasible, that the facility, or alterations thereof, shall be accessible to persons with disabilities including individuals who use mobility aids. The Contractor agrees to make each modification detailed in the project plans in a manner that assures that the area constructed or alterations to any area within the facility is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs. Full compliance with the provisions of 49 CFR Part 37 is the intent of the facility owner and every aspect of this project, pursuant to this contract, shall be construed as being consistent with this intent and compliant with Subpart C – Transportation Facilities with particular reference to Subsection 37.43 of FTA’s regulations pursuant to the Americans with Disabilities Act of 1990 (ADA). If any aspect of the plans or specifications for this project appear to be inconsistent with Subsection 37.9 Standards for accessible transportation facilities or any guidance issued by the Access Board, it is essential that the Contractor notify the project manager designated by HRT about any such concern as soon as practicable.

**70. CARGO PREFERENCE**

The contractor agrees: (a) to use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels; (b) to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the Commission (through the contractor in the case of a subcontractor's bill-of-lading.); and (c) to include these requirements in all subcontracts issued pursuant to this contract

when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

**71. FLY AMERICA**

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

**72. SENSITIVE SECURITY INFORMATION**

Contractor shall take all appropriate measures to protect “sensitive security information” made available during the course of its performance hereunder, in accordance with the provisions of 49 U.S.C. Section 40119(b); the implementing U.S. Department of Transportation regulations at 49 CFR Part 15; 49 U.S.C. Section 114(s); and the implementing U.S. Department of Homeland Security regulations at 49 CFR Part 1520. Contractor shall ensure, and require its subcontractors to ensure, that the requirements of this section be included in subcontracts at all tiers.

**73. SEAT BELT USE**

Contractor is encouraged to adopt and promote one-the-job use of seat belts, and to include this provision in its subcontracts at all tiers, in accordance with Executive Order No. 13043, “Increasing seat Belt Use in the United States,” 04-16-1997, 23 U.S.C. Section 402 note.

**74. BRAND NAME OR APPROVED EQUAL**

If a brand name, make or model number, or descriptive material is included in the specification without the phrase "or approved equal," it is implied. To be accepted as an approved equal, a vendor must provide specific supporting documentation that the product offering proposed as “or equal” meets or exceeds the salient physical and functional characteristics of the product specified in the solicitation. Approval as an ‘approved equal’ must be in writing from the Contracting Officer. The contractor will be responsible that the product performs equally with the specified brand named product.

**END OF GENERAL CONDITIONS**