

## BROAD STREET BUS RAPID TRANSIT PROJECT

### DEVELOPMENT AGREEMENT

THIS BROAD STREET BUS RAPID TRANSIT PROJECT DEVELOPMENT AGREEMENT (the “Agreement”) is made and entered into as of the \_\_ day of \_\_\_\_\_, 201\_\_ by and between the Greater Richmond Transit Co., a Virginia corporation (“GRTC”), the City of Richmond, Virginia, a municipal corporation of the Commonwealth of Virginia (the “City”), Henrico County, Virginia, a political subdivision of the Commonwealth of Virginia (the “County”), the Virginia Department of Transportation, an agency of the Commonwealth of Virginia (“VDOT”), and the Department of Rail and Public Transportation, an agency of the Commonwealth of Virginia (“DRPT”).

WHEREAS, GRTC is the principal public transportation provider and transit-operator for the Richmond, Virginia urbanized area; and

WHEREAS, GRTC provides fixed-route, paratransit, and specialized transportation services to the City, the County, and express routes to other surrounding localities; and

WHEREAS, DRPT is the primary state level planning and funding agency for public transportation improvements in Virginia; and

WHEREAS, the City is part owner of GRTC and provides annual transit-operational funding for most GRTC routes; and

WHEREAS, the County is approximately 244 square miles in area and surrounds the City on three sides and provides operational funding for GRTC routes that serve both the east and west ends of the County; and

WHEREAS, GRTC, DRPT, the City, and the County (collectively, the “Project Partners”) desire to cooperate in the development of the Broad Street Bus Rapid Transit (“Broad Street BRT”) system, a 7.6 mile, \$49.8 million Bus Rapid Transit service that will follow a route utilizing Broad Street and Main Street through the City and the County as shown in the Plan as defined herein (the “Project”); and

WHEREAS, the United States Department of Transportation (“USDOT”) announced on September 12, 2014, that it intends to award a Transportation Investment Generating Economic Recovery (“TIGER”) grant in the amount of \$24.9 million (the “TIGER Grant”) to GRTC as the Broad Street BRT Project Sponsor, and GRTC shall allocate the federal TIGER funds as described and defined in the TIGER Grant Application (as defined herein); and

WHEREAS, the Federal Transit Administration (“FTA”) will administer the TIGER Grant on behalf of the USDOT; and

WHEREAS, the TIGER Grant provides 50 percent of the anticipated capital funding for the development and construction of the Project; and

WHEREAS, the Project Partners agree that GRTC should secure the grants and other capital funds needed for the Project, and, upon completion thereof, should be the transit-operator of the Broad Street BRT and provide maintenance of the Broad Street BRT; and

WHEREAS, the Project Partners and VDOT (collectively, the “Parties” and each a “Party”) agree that VDOT should contract for and oversee the implementation of the contract for the Project, including the Design and Construction (each defined herein) of the Broad Street BRT, in accordance with the terms of this Agreement; and

WHEREAS, it is the intent of the Parties to establish the roles, duties, responsibilities, and rights of each party during the implementation of the Project of the Broad Street BRT; and

WHEREAS, the Project is being undertaken in the interest of public convenience and safety and will benefit the citizens and the economy of the City and the County.

NOW, THEREFORE, in consideration of the mutual terms, conditions, promises, covenants, and payments hereinafter set forth, the Parties agree as follows:

1. RECITALS.

The accuracy of the Recitals set forth above are acknowledged by the Parties and, along with the exhibits attached to this Agreement, are incorporated herein by reference.

2. DEFINITIONS.

2.1. “Available Capital Funds” shall mean the Total Capital Funds minus the Principal Contingency Fund.

2.2. “Betterments” shall mean improvements that are not shown on the Final Plan and that the Project Partners have determined are beyond the Project scope.

2.3. “Broad Street BRT” shall mean the 7.6 mile bus rapid transit system traversing in a primarily east-west direction along surface streets, primarily Broad Street, from Willow Lawn to Rocketts Landing, as more particularly shown on the Plan (and, after it is approved by the Executive Oversight Board, as the Final Plan) and any amendments thereto made in accordance with the terms of this Agreement.

2.4. “Capital Cost Overrun” shall mean all actual capital and administrative costs for goods or services included in the Final Plan which exceed the Total Capital Funds, and which are not due to a change in the scope of the Project.

2.5. “Construction” shall mean the construction activities necessary to complete the Project, including but not limited to those duties specifically delineated in this Agreement.

2.6. “Design” shall mean professional services, including, but not limited to, architectural, civil, operational, mechanical, transportation, electrical engineering,

environmental, and geotechnical services, necessary to complete the Final Plan and the Project.

2.7. “Designated Project Partner Representatives” shall mean representatives from each Project Partner that shall carry out the duties described in Section 11.1.

2.8. “Executive Oversight Board” shall mean the board consisting of one representative of each Project Partner. The Board shall have the duties described in Section 12.3.

2.9. “Federal Grants” shall mean any current and future federal grants awarded by the USDOT for the Project, including the TIGER Grant.

2.10. “Federal Grant Agreements” shall mean the underlying agreement to any Federal Grant between the awarding federal agency and the grant recipient.

2.11. “Final Plan” shall mean the final Broad Street BRT plan as approved by the Executive Oversight Board in accordance with the terms of this Agreement.

2.12. “FTA” shall mean the Federal Transit Administration of the USDOT.

2.13. “Plan” shall mean the Broad Street BRT plan approved by the Planning Commission for the City of Richmond (“Planning Commission”) on November 16, 2015, attached hereto as Exhibit A and incorporated herein by reference. The term “Plan” shall include the conditions of approval imposed by the Planning Commission.

2.14. “Principal Contingency Fund” shall mean a portion of the Total Capital Funds as set forth in this Agreement, which shall only be used for the completion of the Project upon the approval of the Executive Oversight Board.

2.15. “Project” shall mean the Planning, preliminary and final Design, Construction and other tasks necessary for the completion of the Broad Street BRT.

2.16. “Project Completion” shall mean the completion of all requirements of the Project in accordance with the Final Plan and the operational readiness of the Broad Street BRT. Project completion does not occur until the Executive Oversight Board approves project completion.

2.17. “TIGER Grant” shall mean the grant awarded by the USDOT and administered by the FTA under the Transportation Investment Generating Economic Recovery supplementary discretionary grant program included in the American Recovery and Reinvestment Act of 2009, to GRTC on September 13, 2014, in the amount of \$24,900,000.

2.18. “TIGER Grant Agreement” shall mean the agreement between GRTC and FTA for the TIGER Grant fully executed as of September 14, 2015, including all Attachments and Exhibits thereto, attached hereto as Exhibit B and incorporated herein by reference.

2.19. “TIGER Grant Application Narrative” shall mean the project narrative included as a component of the TIGER Grant application transmitted to FTA on behalf of the Project Partners, a copy of which is attached hereto as Exhibit C and incorporated herein by this reference.

2.20. “Total Capital Funds” shall mean the total funds committed by the Project Partners and the TIGER Grant for the completion of the Project. Total Capital Funds are exclusive of those costs associated with maintenance and operation of the Broad Street BRT upon Project Completion.

### 3. PURPOSE OF AGREEMENT.

The purpose of this Agreement is to outline the roles, responsibilities, and allocated funding for development of the Broad Street BRT and to provide a means by which Project Partners may provide approvals and disapprovals, where necessary, and express their opinions and concerns regarding the completion of the Project.

### 4. BROAD STREET BRT DESCRIPTION.

The Broad Street BRT will improve transit service, increase livability, enhance economic opportunity, revitalize commercial properties, improve environmental sustainability, and stimulate economic development in the City, the County and the greater Richmond, Virginia region. Starting from Rocketts Landing at the easternmost terminus of the system, the Broad Street BRT buses will connect major employment centers and primary activity centers and terminate at Willow Lawn to the west. The system is approximately 7.6 miles in length and will be served by 14 stations, as more fully described the TIGER Grant Application narrative and as further described in Section 2.3 of this Agreement.

### 5. FUNDS

5.1. The Total Capital Funds shall be \$49,800,000, the sources of which are set forth in this section. The Project Partners acknowledge and agree that VDOT’s ability to complete the Project is contingent upon GRTC receiving the following funds.

5.1.1. Federal Funds. \$24,900,000 granted to GRTC for the Project pursuant to the terms of the TIGER Grant Agreement.

5.1.2. DRPT Funds. \$16,900,000 granted to GRTC through the DRPT Capital Grant Funding Program pursuant to the terms of DRPT Grant Agreement 50017-01.

5.1.3. City Funds. \$7,600,000 to be made available by City to GRTC as follows: \$3,800,000 made available during City Fiscal Year 2016 and deposited into an account held by GRTC within 30 days after the execution of this Agreement and \$3,800,000 made available during City Fiscal Year 2017 and deposited into an account held by GRTC within 30 days after the first day of the City Fiscal Year 2017.

5.1.4. County Funds. \$400,000 to be made available by County to GRTC as follows: \$200,000 made available during County Fiscal Year 2016 and deposited into an account held by GRTC within 30 days after the execution of this Agreement and \$200,000 made available during County Fiscal Year 2017 and deposited into an account held by GRTC within 30 days after the first day of the County Fiscal Year 2017.

5.2. Principal Contingency Fund.

5.2.1. Ten percent of the Total Capital Funds (\$4,980,000) shall be initially designated as the Principal Contingency Fund. Once the Final Plan is completed and approved by the Executive Oversight Board, the Principal Contingency Fund may decrease to five percent of the Total Capital Funds (\$2,490,000).

5.2.2. Once the Final Plan is completed and the Construction is 50 percent complete, the Principal Contingency Fund may decrease to two percent of the Total Capital Funds (\$996,000).

5.2.3. Once the Final Plan is completed and the Construction is ninety percent complete, the remaining funds in the Principal Contingency Fund may be released upon the approval of the Executive Oversight Board.

5.2.4. Neither the Principal Contingency Fund nor any portion thereof shall be utilized by or provided to VDOT unless approved by the Executive Oversight Board.

5.3. Available Capital Funds. The amount of the Available Capital Funds is the Total Capital Funds minus the Principal Contingency Fund. Subject to the fiscal year one limitations set forth in subsections 5.1.3 and 5.1.4, the Available Capital Funds may be utilized by the GRTC or VDOT without the approval of the Executive Oversight Board, except as specified in Section 5.2 of this Agreement.

5.4. Increase in Total Capital Funds.

5.4.1. VDOT may, but is under no obligation to, increase the Total Capital Funds by providing its own funding or, with the approval of the Project Partners, by securing funding from sources other than the Project Partners. VDOT may request additional funding, of up to \$1,400,000 from the Commonwealth Transportation Board, which will be used solely to provide incentives, as described in Section 6.4.1.2 of this Agreement and will not otherwise increase the Total Capital Funds. Such incentive funding is subject to availability of appropriated funds and allocation by the Commonwealth Transportation Board.

5.5. The Project Partners are not obligated in any way to contribute funds to increase the Total Capital Funds; provided, however, that VDOT is not obligated to provide any Betterment unless the Project Partner or Partners requesting the Betterment

provide the funds to increase the Total Capital Funds to cover the cost of the Betterment. The Project Partners may voluntarily provide funds to increase the Total Capital Funds; provided, however, that any funds provided by the City and County must be appropriated by their respective governing bodies.

5.6. Surplus Funds. If Project Completion is achieved without utilizing all of the Total Capital Funds, then the remaining funds on provided to GRTC, under this Agreement or any other related agreement, shall be returned to the appropriate Party in an amount equal to the pro-rata share of each applicable Party's contribution of funds.

5.7. Capital Cost Overruns. DRPT shall be responsible for any Capital Cost Overruns exceeding the Total Capital Funds, except those that are explicitly stated in this Agreement to be the responsibility of another Party, to the extent funds are appropriated and allocated as provided in this Agreement.

## 6. PROJECT MANAGER

6.1. General. In accordance with this Agreement, and without exceeding the Total Capital Funds, VDOT shall implement and complete the Project, including the Design, Construction, and other tasks necessary to achieve Project Completion.

6.2. Design. VDOT shall complete the Design and Final Plan of the Broad Street BRT. The Final Plan shall include the procurement, design, and installation of all vehicles and off-board fare collection infrastructure or ticket vending machines associated with the Project as provided by GRTC. The Executive Oversight Board must approve the Final Plan. Each member of the Executive Oversight Board shall either approve or disapprove any proposed final plan and state all reasons for disapproval within 10 days of receiving such plan from VDOT. The parties acknowledge that in the event that the Final Plan is inconsistent with the Plan, the City Charter for the City of Richmond may require further Location, Character and Extent approval by the City's Planning Commission, depending upon the scope of the inconsistencies.

6.2.1. If the estimated cost of implementing a proposed Final Plan exceeds the Total Capital Funds, VDOT shall provide the Executive Oversight Board an itemization of all costs included in the proposed final plan, along with VDOT's recommended alternative whose estimated cost does not exceed the Total Capital Funds. Under no circumstances shall the Executive Oversight Board approve a Final Plan which exceeds the Total Capital Funds unless the VDOT obtains additional funding.

6.3. Construction. VDOT shall complete the Construction of the Project in accordance with the approved Final Plan. The project shall not be deemed complete unless and until the Executive Oversight Board has determined that Project Completion has been achieved. VDOT shall make its best efforts to achieve Project Completion by October 31, 2017; however, failure to achieve Project Completion by that date shall not, in and of itself, be construed as a breach of this Agreement.

6.4. Non-exhaustive List of Duties. In completing the Design, Construction, and other tasks necessary for the completion of the Project, and in accordance with the approved Final Plan, VDOT shall:

6.4.1. Provide all necessary conceptualization, planning, design, engineering, contract administration, procurement, construction supervision, and administrative services for the Project. VDOT shall be solely responsible for the competitive selection, award, and administration of all professional and consultant services, and those construction contracts necessary for the completion of the Project. All contracts shall comply with the FTA Master Agreement and all applicable state and federal procurement laws, including, but not limited to: 49 C.F.R. pt. 18.36, 49 C.F.R. § 200 et seq., 49 U.S.C. § 5301-5340, Pub. L. 105-178, FTA Cir. 4220.1F, FTA Cir. 5010.1D, and FTA Cir. 9030.1C.

6.4.1.1. VDOT may contract with third parties to provide those services necessary to design, implement or review the goods and services necessary to achieve Project Completion.

6.4.1.2. VDOT may, in any Request for Proposal or contract, include incentives that may, in VDOT's discretion, encourage the completion of the Project in a timely and cost effective manner. Such incentives may be in addition to the Total Capital Funds, provided the cost is paid as described in Section 5.4.1.

6.4.1.3. For procurements VDOT is conducting on the Project, GRTC will: a) be given the opportunity to review the procurement documents prepared by VDOT to ensure all required FTA clauses are included and required FTA procurement processes are being followed; b) promptly provide the necessary resources to conduct such reviews; c) receive and maintain copies of all executed contracts and procurement documents, to include, but not be limited to, price/cost analyses, so that GRTC can readily produce them should FTA request to audit the Project's procurement records; and d) be provided with a copy of all executed change orders issued by VDOT, including any request for change order documents, VDOT's independent cost estimates, and contractor's cost proposals.

6.4.2. Acquire all permits necessary to complete the Project. The costs of such permits shall be reimbursable in accordance with section 7.2 of this Agreement.

6.4.3. Not be responsible for the procurement and design of all vehicles and off-board fare collection infrastructure or ticket vending machines, validation equipment, and real-time bus arrival signs and related equipment associated with the operation of the Broad Street BRT. These excluded duties shall be the responsibility of the GRTC in accordance with section 7.6 of this Agreement.

6.4.4. Pay all fees necessary for the completion of the Project including, but not limited to, utility connection fees, communication installation fees, and all fees associated with the permitting and installation of the equipment and infrastructure for the Broad Street BRT that are not otherwise paid for by the owner of such utilities, equipment and infrastructure. The payment of such fees shall be reimbursable in accordance with section 7.2 of this Agreement.

6.4.5. Ensure all plans and specifications for the Broad Street BRT comply with industry best practices, including without limitation reliability and maintainability, for all Project elements.

6.4.6. Provide or make available to each Project Partner, upon Project Completion, a complete set of full-sized reproducible record drawings and, if requested, electronic copies.

6.4.7. Retain and make available for audit all records and accounts related to the Project for all time periods required by any grant used for the Project, the Virginia Public Records Act, VDOT's applicable record retention schedule, and any other applicable law.

6.4.8. In accordance with the standards and requirements of the jurisdiction in which the utilities reside, ensure that all utility facilities, private and public, impacted by the Project are protected in place or timely removed, relocated, or otherwise adjusted, to the extent the Party in control of the right-of-way has not protected, removed, relocated or otherwise adjusted such utility facilities. This duty shall include the payment of any cost necessary to comply with this subsection. The payment of such costs shall be reimbursable in accordance with section 7.2 of this Agreement.

6.4.9. Provide to the Project Partners documentation of cultural, archeological, and paleontological resources encountered.

6.4.10. To the extent allowed under the TIGER Grant Agreement and all applicable laws, acquire those interests in real property, including resolution of all easements or other clouds on title to property owned or under the control of VDOT or any of the Project Partners at the time of this agreement, necessary for the completion of the Project. This duty shall include the payment of any cost for acquiring such real property interest which shall be reimbursed by GRTC in accordance with Section 7.2 of this Agreement. Any real property interests acquired by VDOT under this section shall be conveyed to the Party in control of the right-of-way prior to Project Completion.

6.4.11. Communicate, in good faith, with the Project Partners regarding the status of the Project including, but not limited to, providing such documents, updates, and information required elsewhere in this Agreement.

6.4.12. Ensure that the performance of the obligations hereunder is in accordance with the terms of the TIGER Grant, all other applicable FTA requirements, any other applicable grant, and all applicable state and federal laws.

6.4.13. Remediate any hazardous materials encountered during Construction. The costs of such remediation shall be reimbursed by GRTC in accordance with section 7.2 of this Agreement.

6.5. VDOT shall maintain the control of traffic operations and traffic signals within VDOT's jurisdiction and control, including those related to the Broad Street BRT, unless otherwise agreed to in writing by VDOT.

## 7. SPONSOR

7.1. Funds. GRTC will be the grant recipient of funds awarded under the TIGER Grant as well as all remaining Total Capital Funds and shall adhere to all local, state and federal laws and regulations associated with the use of such funding. Any payments for the capital costs of the Project will be consistent with the associated State and Federal Grant Agreements.

7.1.1. GRTC shall deposit and maintain funds provided by City and County (the "City Funds" and the "County Funds") in separate accounts, and shall not commingle those funds with any other funds during the Project. GRTC may use such funds to pay the City and County's respective proportionate share of costs to complete the Project as set forth in Section 7.2 of this Agreement and shall account for the use of those funds upon request from the City or County.

7.2. Payment. GRTC shall remit portions of the Available Capital Funds and, upon approval of the Executive Oversight Board, portions of the Principal Contingency Fund, to VDOT and the Project Partners as described in this section. All payments for costs incurred in relation to the Project shall be made from the funds provided in Sections 5.1.1 through 5.1.4 on a pro-rata basis in proportion to the amount of Total Capital Funds committed by each Party. GRTC shall not be obligated to remit any funds that exceed the Total Capital Funds. If VDOT or any Project Partner, as applicable, submits to GRTC an invoice for any matter that is outside of the scope of the Final Plan, as determined by the Executive Oversight Board, then GRTC shall not be obligated to remit funds to the party presenting such invoice.

7.2.1. Upon receipt of proper invoices from contractors working on the Project, VDOT shall provide payment in compliance with applicable state and federal prompt payment requirements.

7.2.2. VDOT (or Project Partner, as applicable) shall send an invoice to GRTC monthly for payments made to contractors or for other reimbursable costs incurred for their work on the Project.

7.2.3. GRTC shall review all invoices and contact VDOT (or Project Partner, as applicable) within seven business days if GRTC requires additional supporting or corrected information.

7.2.4. If no changes to an invoice or supporting information are required, GRTC shall seek reimbursement from the FTA or DRPT, as appropriate, within seven business days of receipt of the invoice. If changes to the invoice or supporting information are necessary, GRTC shall seek reimbursement from the FTA or DRPT within seven business days of receipt of the revised invoice from VDOT (or Project Partner, as applicable).

7.2.4.1. GRTC shall seek Federal funds from the TIGER Grant award through the FTA online system, in accordance with the policies and procedures of the FTA.

7.2.4.2. GRTC shall send supporting documentation and a reimbursement request to DRPT in order to receive state funding committed by DRPT. This request for reimbursement shall follow the process GRTC typically uses in requesting funding from DRPT on other projects.

7.2.4.3. DRPT shall reimburse GRTC within 30 calendar days, in accordance with DRPT's normal operating procedure.

7.2.5. If no changes to the invoice or supporting information are required, GRTC shall process the portion of such reimbursement due from the City Funds and County Funds, as appropriate, within 30 business days of receipt of the invoice. If changes to the invoice or supporting information are necessary, GRTC shall process the portion of such reimbursement due from the City Funds and County Funds, as appropriate, within seven business days of receipt of the revised invoice from VDOT (or Project Partner, as applicable). GRTC shall document all transactions relating to such funds and shall make such documentation available to any Project Partner.

7.2.6. GRTC shall reimburse VDOT (or Project Partner, as applicable) for expenditures within three business days after the receipt of reimbursement funds from all funding sources and the processing of the City and County Funds as set forth in Section 7.2.5.

7.3. Grants. GRTC shall be responsible for ensuring completion of the Project complies with the requirements of the TIGER Grant Agreement and any other applicable grant agreement. This responsibility shall include making requests for amendment of the project schedule contained in the TIGER Grant Agreement and making any modifications to any documents that may be required pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. § 4321 *et seq.* GRTC shall provide a primary point contact to VDOT, the FTA, and any other government agency to assist in complying with all of the grants.

7.4. Public Outreach. GRTC shall engage in all appropriate public outreach and solicit public input related to the Project and the Broad Street BRT.

7.5. Operation and Maintenance. GRTC shall operate and maintain the Broad Street BRT in accordance with any applicable provisions of this Agreement, all applicable laws, and any subsequent agreement between GRTC and the remaining Parties regarding the operation and maintenance of the Broad Street BRT. Notwithstanding the foregoing, the City, the County, and VDOT shall maintain control of their respective traffic operations and traffic signals, including those related to the Broad Street BRT, unless otherwise agreed by the City, the County, or VDOT in writing.

7.6. GRTC shall be responsible for the procurement and design of all vehicles, off-board fare collection infrastructure and ticket vending machines, validation equipment, real-time bus arrival signs and related equipment associated with the Project or with the operation of the Broad Street BRT. GRTC shall provide to VDOT all information necessary to include such items in the proposed final plan submitted to the Executive Oversight Board. GRTC shall be the owner of all such items procured in accordance with this paragraph.

7.6.1. GRTC shall request and receive reimbursement for its activities performed under Section 7.6 of this Agreement, including its administrative costs for such activities, through the same process described in Section 7.2 of this Agreement.

7.7. Within 30 days of the execution of this Agreement, VDOT must submit a final invoice to DRPT for all Project costs incurred by VDOT prior to the date of this Agreement. Within 30 days of receipt of such final invoice from VDOT, DRPT shall submit a request for reimbursement to GRTC, for such costs incurred by VDOT prior to the execution of this Agreement that DRPT is responsible to pay to VDOT. Such reimbursement by GRTC shall be proportioned among the collected funds, except that GRTC shall not reimburse DRPT the portion of funds that would have been paid from DRPT funds under this Agreement.

## 8. CITY

8.1. Contribution of Funds. Subject to appropriation of the Council for the City of Richmond (“City Council”), the City shall make available to GRTC the City’s portion of the Total Capital Funds as set forth in Section 5 of this Agreement.

8.2. Utilities. Notwithstanding section 6.4.8, the City may remove, replace, or otherwise protect certain utility facilities impacted by the Project upon approval by VDOT, the cost of which shall be reimbursed in accordance with Section 7.2 of this Agreement (such reimbursement shall include costs incurred prior to the execution of this Agreement).

8.3. Public Outreach. The City shall engage in all appropriate public outreach and solicit public input related to the Project and Broad Street BRT.

8.4. Review. The City acknowledges that time is of the essence regarding this Project and, subject to all legal requirements, the City agrees to work in good faith to review applications for permits and any other necessary authorizations for use of City right-of-way; or for any permits or approvals otherwise required for the completion of the Project. The City agrees to appoint a designated representative to coordinate with VDOT related to the requirements to acquire such permits and authorizations.

8.5. Operation and Maintenance. The City shall continue to maintain control of its traffic operations and traffic signals in the City, including those related to the Broad Street BRT.

8.6. The City shall notify VDOT, at least 10 days in advance, of any events of any kind, of which the City has knowledge, within the portion of the Project area under City's jurisdiction, which may require temporary suspension of Construction activities. In such cases where the City does not have knowledge 10 days in advance including, but not limited to, situations in which the City must temporarily suspend Construction activities to protect health, safety, and welfare, the City will notify VDOT as soon as reasonable in such circumstance.

## 9. COUNTY

9.1. Contribution of Funds. Subject to appropriation of the Board of Supervisors for Henrico County ("County Board"), the County shall make available to Sponsor the County's portion of the Total Capital Funds as set forth in Section 5 of this Agreement.

9.2. Review. The County acknowledges that time is of the essence regarding this Project and, subject to all legal requirements, the County agrees to work in good faith to review applications for permits and any other necessary authorizations for use of County right-of-way or for any permits or approvals otherwise required for the completion of the Project. The County agrees to appoint a designated representative to coordinate with VDOT related to the requirements to acquire such permits and authorizations.

9.3. The County shall notify VDOT, at least 10 days in advance, of any events of any kind, of which the County has knowledge, within the portion of the Project area within the County's jurisdiction, which may require temporary suspension of Construction activities. In such cases where the County does not have knowledge 10 days in advance including, but not limited to, situations in which the County must temporarily suspend Construction activities to protect health, safety, and welfare, the County will notify the VDOT as soon as reasonable in such circumstance.

9.4. Operation and Maintenance. The County shall continue to maintain control of its traffic operation and traffic signals in the County, including those related to the Broad Street BRT.

## 10. DRPT

10.1. Funds. Subject to the terms of the DRPT Grant Agreement 50017-01, DRPT shall make available to GRTC DRPT's portion of the Total Capital Funds as set forth in Section 5 of this Agreement, to be provided to GRTC as set forth in Section 7.2 of this Agreement.

10.2. DRPT may consult with VDOT, and any applicable contractors under agreement with VDOT in relation to the Project, in implementing the Project consistent with any applicable federal grants, including the TIGER Grant.

10.3. DRPT shall make available for use by VDOT any on-call contracts DRPT may have for services that VDOT may desire for the implementation of the Project, as permitted under any applicable procurement laws or regulations. VDOT shall comply with the terms and obligations of such contracts when using the services of those vendors under such DRPT on-call contracts.

## 11. COORDINATION AND COOPERATION.

The Project Partners and VDOT recognize the need for cooperation to expedite the development of the Project. The Project Partners and VDOT agree to coordinate their participation in the Project through those designated representatives appointed by each Project Partner.

11.1. Designated Project Representatives. Within 10 days following the date of this Agreement, the Project Partners and VDOT shall each designate one representative ("Designated Project Representative"), who shall be authorized to:

11.1.1. Coordinate the use of the Project Partner and VDOT staff assigned to the Project, and the resources allocated to the Project.

11.1.2. Communicate on behalf of their respective organization with other Designated Project Representatives.

11.1.3. Serve as the central point of contact for their respective organization with regards to the Project.

11.1.4. Present any issues affecting timely progress of the Project to their respective organization with appropriate recommended courses of action to any issues as they arise.

11.2. Designated Project Representatives are not authorized to amend this Agreement and cannot bind their respective organization to terms not specifically agreed to by the Parties pursuant to this Agreement, or to make other agreements, as may be required by the Project.

11.3. Changes in Designated Project Representative. The Parties reserve the right to change their respective Designated Project Representatives, upon written notice

to the other Project Partners and VDOT, at any time. GRTC shall maintain an up-to-date list of Designated Project Representatives.

11.4. Additional Agreements. The Project Partners and VDOT agree to work in good faith to enter into any additional agreements, as may be necessary, to effectuate the terms of this Agreement, and to ensure the effective operation and maintenance of the Broad Street BRT. Any additional agreements with terms that conflict with the language in this Agreement shall not override the intent herein.

## 12. PROJECT OVERSIGHT

12.1. The Project Partners shall be afforded an active oversight role for the Project. VDOT shall provide to the Project Partners, copies of, or access to, all major Project deliverables and Project management documents related to Design, engineering, procurement, Construction, budget, schedule, risk management and other project management documents, reports, and deliverables.

12.2. The Project Partners may initiate and conduct oversight reviews and activities which may approximate those typically conducted by the FTA under its PMOC program for major capital projects; and VDOT agrees to fully coordinate and participate with such oversight reviews and activities. The Project Partners agree to conduct such oversight reviews and activities in such a manner so as to limit any unnecessary interference with VDOT's ability to perform its duties under this Agreement.

12.3. An Executive Oversight Board for the Project shall be established consisting of representatives from the Project Partners. Unless otherwise specifically provided, the approval of any item or issue by the Executive Oversight Board requires approval of all members.

12.3.1. Members of the Executive Oversight Board shall include:

DRPT: Director, or his/her designee.

Chief Administrative Officer ("CAO") for the City of Richmond or such City employee designated by the CAO.

Henrico County: County Manager or his/her designee.

GRTC: Chief Executive Officer or his/her designee.

12.3.2. Principal Contingency Fund. The Executive Oversight Board shall control the Principal Contingency Fund in accordance with Section 5.2 of this Agreement. No funds shall be expended or released from the Principal Contingency Fund without approval of the Executive Oversight Board.

12.3.3. Any individual expenditure or change order whose value exceeds five percent of the Project contract value, excluding any incentives in the design-build contract, must be approved by the Executive Oversight Board. Additionally,

when the aggregate value of all change orders exceeds ten percent of the Project contract value, excluding any incentives in the design-build contract, any subsequent change orders must be approved by the Executive Oversight Board.

12.3.4. Final Plan. Any proposed project final plan shall not be the Final Plan unless approved by the Executive Oversight Board. After a Final Plan is established, the Final Plan may be amended with the approval of the Executive Oversight Board and concurrence by VDOT.

12.3.5. Project Completion. VDOT shall provide notice of Project Completion to the Executive Oversight Board. The official date of Project Completion shall be the date such completion is approved by the Executive Oversight Board.

12.3.6. Betterments. No Betterments shall become part of the Final Plan unless an amendment to the Final Plan to add the Betterment is approved by the Executive Oversight Board; provided, however, that the Executive Oversight Board shall approve the Betterment if the requesting Party provides the necessary additional funds for adding the Betterment to the Final Plan and the Betterment does not cause construction delays. The additional amount provided shall include sufficient funds to cover any costs to complete the Project which would not have been incurred but for the approval of the Betterment.

12.4. VDOT shall set up accounting methods that are reasonably acceptable to the Executive Oversight Board and which are in compliance with applicable state and federal laws to track all expenditures specific to the Project. VDOT will also provide for accounting of all funds received, expended and available throughout the life of the Federal Grant Agreements, as required by DRPT and the USDOT.

12.5. Until Project Completion, GRTC shall, in consultation with VDOT, prepare detailed monthly financial reports and submit such reports to the Project Partners within 30 days of the reporting period end date. These reports shall have an executive summary which shall clearly identify any changes to the Project budget realized during the reporting period.

### 13. PERMIT AND ENFORCEMENT AUTHORITY.

Each Project Partner shall, to the extent legally permitted, use commercially reasonable efforts, acting in good faith, to expedite any and all permit reviews for the Project.

### 14. EQUIPMENT AND INFRASTRUCTURE.

Upon installation and acceptance, all Broad Street BRT equipment, appurtenances, and infrastructure shall be the property of the jurisdiction (i.e., the City or the County) in which they are located except as otherwise specifically provided herein or as may be otherwise specifically provided in any subsequent agreement between the applicable parties. All vehicles, ticket vending machines and station communication equipment associated with the Project shall be the property of GRTC.

14.1. If for any reason after the commencement of Construction (including after the commencement of revenue service of the Broad Street BRT, but prior to Project Completion) the Project or the operation of the Broad Street BRT is terminated (or any individual piece of equipment, appurtenance, or infrastructure component becomes obsolete or unnecessary for operation of the Broad Street BRT for reasons other than negligent Design, Construction, or installation), the owner of the particular piece of equipment, appurtenance, or infrastructure component, shall be responsible for the timely removal of such item in accordance with applicable laws. Subject to and unless otherwise specified by the terms of any subsequent operations and maintenance agreement between the relevant Parties, the owner of the particular piece of equipment, appurtenance, or infrastructure component, shall be responsible for the timely removal of such item provided that funds are available to such Party for such removal or replacement.

14.2. The City and GRTC agree to share use of fiber communication facilities and resources installed as part of the Project in accordance with the terms of an anticipated subsequent and separate agreement between the City and GRTC.

#### 15. INDEMNIFICATION BY THIRD PARTIES.

VDOT shall require all private third party vendors providing any goods or services related to the Project to defend, indemnify, and hold harmless the Project Partners, and each of their respective officers, directors, agents, and employees, whether elected, appointed, or otherwise (collectively referred to as the “Indemnitees” and individually as the “Indemnitee”) from and against any and all liabilities, losses, damages, costs, expenses, claims, obligations, penalties, and causes of action (including without limitation, reasonable fees and expenses for attorneys, paralegals, expert witnesses, and other consultants, at their respective prevailing market rates for such services) (collectively, “Damages”) whether based upon negligence, strict liability, absolute liability, product liability, misrepresentation, contract, implied or express warranty, or any other principle or theory of law or equity, that are imposed upon, incurred by, or asserted against an Indemnitee or the Indemnitees or which an Indemnitee or the Indemnitees may suffer or be required to pay and which arise out of or relate in any manner from the respective third party’s performance of any work (or failure to perform any obligation or duty associated with such work) associated with the Project, and which is caused in whole or in part by the respective third party, or any of its agents, employees, officers, directors, contractors, subcontractors, affiliates, or anyone directly or indirectly employed by any of them, or anyone for whose acts or omissions any of them may be liable. Nothing contained in this section shall constitute or be construed to mean or result in any indemnification of any matter by any Project Partner to any other party. Nothing in this Agreement shall inure to the benefit of any third party for the purpose of allowing a claim otherwise barred by sovereign immunity or other operation of law, nor shall any portion of this Agreement be construed as a waiver of sovereign immunity or a waiver of the right to assert a defense of sovereign immunity by any of the Parties.

#### 16. THIRD PARTY INSURANCE.

VDOT shall require all private third party vendors providing any goods or services related in any way to the Project and in any way related to the Broad Street BRT to

provide and maintain insurance in accordance with the insurance coverage policies of GRTC or applicable state or federal laws for such third party goods and services providers. The respective policy or policies must name each of the Parties as an additional insured. Nothing contained herein shall require any Project Partner or VDOT to itself obtain any insurance. Nothing in this Agreement, including the requirement to list the Parties as “additional insureds” on any insurance policy shall constitute a waiver by the City, the County, or the Commonwealth of its grants and privileges under the principles of sovereign immunity, including the limitations of liability contained therein. GRTC shall provide evidence of insurance required by this Section to any Project Partner upon its request, which shall not be more frequently than twice per year.

## 17. RESOLUTION OF DISPUTES.

It is the desire and intent of the Parties to avoid, if possible, the expense and delay inherent in litigation. Therefore, the Parties agree that whenever any of the Parties cannot resolve an issue amongst another Party or other Parties, including negotiations amongst the designated project representatives or through the Executive Oversight Board, the affected Parties will engage in the alternative dispute resolution process described below prior to resorting to litigation.

17.1. Any Party may give another Party written notice of any dispute not resolved in the normal course of business, with copies to the other non-disputing Parties (“Notice”). Within 10 business days after delivery of the Notice, the receiving Party shall submit to the disputing Party a written response with copies to the other Party (“Response”). The Notice and Response shall each include: (1) a statement of the position of the Party delivering the Notice or the Response, as the case may be, and a summary of arguments supporting the Party’s position; and (2) the name and title of the person who will represent that Party in the negotiation to resolve the dispute and of any other person who will accompany the representative.

17.2. In the event there is a dispute, within 10 business days after delivery of the Response, the representatives of the Parties shall meet at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary, to attempt to resolve the dispute. All reasonable requests for information made by one Party to the other will be honored. In an effort to facilitate the negotiation process, such representatives may agree to have an unrelated third Party moderate and facilitate the negotiations. If a Party intends to be accompanied at a dispute resolution meeting by an attorney, the other Party shall be given at least three business days’ notice of such intention. Attorneys will follow the Virginia State Bar’s Rules of Professional Conduct regarding attendance at meetings.

17.3. If the dispute has not been resolved within 30 calendar days after delivery of the Notice, or if the parties fail to meet within 20 calendar days, any of the Parties directly involved in the dispute may give written notice to the other Parties declaring the dispute resolution process terminated.

17.4. The Parties regard the obligations to notify other Parties of a dispute and to negotiate such dispute pursuant to this Section as an essential provision of this Agreement and one that is legally binding on each of them. In case of a violation of such obligation

by any Parties, the other Parties may bring an action to seek enforcement of such obligation to any court of law having jurisdiction. Each Party shall bear its own costs and expenses incurred in connection with any negotiations and dispute resolution and litigation arising out of this Agreement.

17.5. Upon failure to resolve any dispute in accordance with this Section, the Parties may engage in mediation, or any other dispute resolution process at their discretion, or pursue other legal remedies.

## 18. TERM.

18.1. Effective Date. This Agreement shall be effective when executed by all Parties.

18.2. Expiration; Termination. This Agreement shall immediately terminate and be of no further effect upon the Parties, other than obligations which expressly survive the term hereof, upon the soonest to occur of the following (as applicable, the "Termination Date"):

18.2.1. Upon Project Completion, provided that the applicable Parties have executed and delivered a valid and effective agreement concerning the operations and maintenance of the Project.

18.2.2. Upon notice from GRTC to the parties hereto following termination by USDOT of the TIGER Grant Agreement pursuant to Section 5 thereof.

18.2.3. Upon 12 months following the Grant Termination Date, as such term is defined in the TIGER Grant Agreement.

## 19. MISCELLANEOUS.

19.1. Modification. This Agreement may only be amended or modified prior to the Termination Date by written agreement executed and delivered by each of the parties hereto.

19.2. Effective Date. This Agreement shall be effective when executed by all Parties.

19.3. Construction of this Agreement. This Agreement is intended by the Parties to be construed as whole and indivisible and its meaning is to be ascertained from the entire instrument. In the event any provision of this Agreement is capable of more than one reasonable interpretation, one which render the provision invalid and one that would render the provision valid, the provision shall be interpreted so as to render it valid. All parts of the Agreement are to be given effect with equal dignity, including but not limited to the recitals at the beginning of this Agreement, and all such parts, including the recitals, are to be given full force and effect in construing this Agreement. No provision of any recital shall be construed as being controlled by or having less

force than any other part of this Agreement because the provision is set forth in a recital.

19.4. Captions, Headings, and Table of Contents. The captions, headings, and the table of contents of this Agreement are for convenience of reference only and in no way define, limit, or otherwise describe the scope or intent of this Agreement nor shall in any way affect this Agreement or the interpretation or construction thereof.

19.5. Governing Law. This agreement shall be construed under the laws of the Commonwealth of Virginia.

19.6. Assignment. No Party may assign this Agreement, or any portion thereof, without the prior, written consent of each of the Parties.

19.7. Third Parties. There shall be no third party beneficiaries with respect to this Agreement, and no right, nor any cause of action, shall accrue to or for the benefit of any third party.

19.8. Compliance. Except as explicitly provided for herein, any provision that permits or requires a Party to take action shall be deemed to permit or require, as the case may be, the Party to cause the action to be taken.

19.9. Further Assurances. The Parties shall cooperate and work together in good faith to the extent reasonably necessary to accomplish the mutual intent of the Parties as expressed and anticipated herein.

19.10. No Joint Venture or Agency. Nothing contained in this Agreement or any other document executed in connection herewith is intended or shall be construed to establish any of the Parties as a joint venturer or partner, team member, contractor, agent or assign of the other Parties. Each Party represents and warrants that it cannot create any obligation or responsibility on behalf of any other Party, nor bind them in any manner. Each Party is acting on its own behalf, and have made its own independent decision to enter into this Agreement, and have likewise determined that the same is appropriate, proper, and in its own self-interest based upon its own judgment and the advice from such advisers as it may deem necessary and proper. Additionally, the Parties, along with their respective agents, contractors, and subcontractors, shall perform all activities that are required and anticipated by this Agreement as separate and independent entities and not as agents of the other Party hereto.

19.11. Authority to Execute and Comply. The Parties each represent and warrant that their respective signatories hereunder have been duly and lawfully authorized by the appropriate body or official(s) to execute this Agreement. Additionally, the Parties each represent and warrant that they have respectively complied with all applicable requirements and preconditions of law necessary to enter into and be bound by this Agreement, and that they have full power and authority to comply with the terms and provisions of this Agreement.

19.12. Except as specifically otherwise set forth in this Agreement, the Chief Administrative Officer for the City of Richmond or the designee thereof may provide any authorization, approvals, and notices contemplated herein on behalf of the City.

19.13. All payments and other performance by the City under this Agreement are subject to appropriations by the City Council; consequently, this Agreement shall bind the City only to the extent the City Council appropriates sufficient funds for the City to perform hereunder.

19.14. All payments and other performance by the County under this Agreement are subject to appropriations by the County Board of Supervisors; consequently, this Agreement shall bind the County only to the extent the County Board of Supervisors appropriates sufficient funds for the County to perform hereunder.

19.15. All payments and other performance by DRPT or VDOT under this Agreement are subject to appropriations by the General Assembly and approval of allocations by the Commonwealth Transportation Board; consequently, this Agreement shall bind DRPT or VDOT only to the extent the General Assembly appropriates and the Commonwealth Transportation Board allocates sufficient funds for DRPT or VDOT to perform hereunder.

19.16. Binding Nature of this Agreement. This Agreement shall be binding upon and shall inure only to the benefit of the Parties hereto.

19.17. Computation of Time. In computing any period of time prescribed or allowed under this Agreement, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday, or legal holiday, in which case the period shall run until the end of the next day which is neither a Saturday, Sunday, or legal holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation.

19.18. Counterparts; Copies. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement. True and accurate photocopies, facsimiles, or other mechanical reproductions shall have the same force and effect as the validly executed original, and, in lieu of the validly executed original, any party hereto may use such reproduction of this Agreement in any action or proceeding brought to enforce or interpret any of the provisions contained herein.

[SIGNATURE PAGES FOLLOW]

**IN WITNESS WHEREOF**, the undersigned Parties have duly and lawfully approved this Agreement and have authorized its execution and delivery by their respective authorized agents, who have set their hands and had their seals affixed below, all as of the date first written hereinabove.

**GRTC:** **GREATER RICHMOND TRANSIT CO.,**  
a Virginia corporation

DATE: \_\_\_\_\_ By: \_\_\_\_\_ (SEAL)  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**VDOT:** **VIRGINIA DEPARTMENT OF**  
**TRANSPORTATION,** an agency of the  
Commonwealth of Virginia

DATE: \_\_\_\_\_ By: \_\_\_\_\_ (SEAL)  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**DRPT:** **THE DEPARTMENT OF RAIL AND PUBLIC**  
**TRANSPORTATION,** an agency of the  
Commonwealth of Virginia

DATE: \_\_\_\_\_ By: \_\_\_\_\_ (SEAL)  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

***[Counterpart to Broad Street Bus Rapid Transit Project Development Agreement]***

**CITY:**

**THE CITY OF RICHMOND, VIRGINIA,**  
a municipal corporation of the Commonwealth of  
Virginia

DATE: \_\_\_\_\_

By: \_\_\_\_\_ (SEAL)  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

**COUNTY:**

**HENRICO COUNTY, VIRGINIA,**  
a political subdivision of the Commonwealth of  
Virginia

DATE: \_\_\_\_\_

By: \_\_\_\_\_ (SEAL)  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
County Attorney

***[Counterpart to Broad Street Bus Rapid Transit Project Development Agreement]***

**EXHIBIT A**

**The Broad Street BRT plan approved by the Planning Commission for the City of  
Richmond on November 16, 2015**

Attached hereto

**EXHIBIT B**

**TIGER Grant Agreement dated September 14, 2015**

Attached hereto

**EXHIBIT C**

**TIGER Grant Application Narrative**

Attached hereto

**BROAD STREET BUS  
RAPID TRANSIT PROJECT  
DEVELOPMENT AGREEMENT  
BY AND AMONG  
GREATER RICHMOND TRANSIT CO.  
CITY OF RICHMOND, VIRGINIA  
HENRICO COUNTY, VIRGINIA  
VIRGINIA DEPARTMENT OF TRANSPORTATION  
AND  
VIRGINIA DEPARTMENT OF RAIL AND PUBLIC  
TRANSPORTATION**

\_\_\_\_\_, 201\_

**BROAD STREET BUS RAPID TRANSIT PROJECT DEVELOPMENT AGREEMENT**

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