

INTRODUCED: September 23, 2019

AN ORDINANCE No. 2019-265

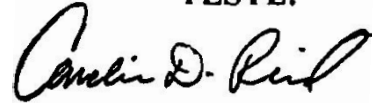
To authorize the Chief Administrative Officer, for and on behalf of the City of Richmond, to execute a Franchise Agreement by and between the City of Richmond and the Greater Richmond Transit Company for the purpose of facilitating the placement of advertisements on Bus Rapid Transit stations.

Patron – Mayor Stoney

Approved as to form and legality
by the City Attorney

A TRUE COPY:

TESTE:



City Clerk

PUBLIC HEARING: OCT 14 2019 AT 6 P.M.

§ 1. That the Chief Administrative Officer, for and on behalf of the City of Richmond, be and is hereby authorized to execute a Franchise Agreement by and between the City of Richmond and the Greater Richmond Transit Company for the purpose of facilitating the placement of advertisements on Bus Rapid Transit stations. The Franchise Agreement shall be approved as to form by the City Attorney and shall be substantially in the form of the document attached to this ordinance.

§ 2. This ordinance shall be in force and effect upon adoption.

AYES: 9 NOES: 0 ABSTAIN: _____

ADOPTED: OCT 14 2019 REJECTED: _____ STRICKEN: _____



CITY OF RICHMOND
INTRACITY CORRESPONDENCE

O & R REQUEST

4-9094

AUG 26 2019

Office of the Chief Administrative Officer

O&R REQUEST

DATE: August 21, 2019 EDITION: 1

TO: The Honorable Members of City Council

THROUGH: The Honorable Levar M. Stoney, Mayor

Handwritten initials and date 7/13/19

THROUGH: Selena Cuffee-Glenn, Chief Administrative Officer

Handwritten initials SGO

THROUGH: Lenora Reid, DCAO, Finance and Administration

Handwritten initials LR

THROUGH: John Wack, Director of Finance

Handwritten initials JW

THROUGH: Jay Brown, Director, Budget & Strategic Planning

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THROUGH: Robert Steidel, DCAO, Operations

Handwritten initials RS

FROM: Bobby Vincent Jr., Director of Public Works

Handwritten initials BV

SUBJECT: TO AUTHORIZE THE CHIEF ADMINISTRATIVE OFFICER TO ENTER INTO A BRT FRANCHISE AGREEMENT WITH GREATER RICHMOND TRANSIT COMPANY (GRTC).

ORD. OR RES. No. _____

PURPOSE: To authorize the Chief Administrative Officer (the "CAO") for and on behalf of the City of Richmond, to enter into a Bus Rapid Transit (Pulse BRT) Franchise Agreement with Greater Richmond Transit Company (GRTC). The Agreement gives GRTC the right to find sponsors for the Pulse BRT and have advertisements placed within the Pulse BRT Stations. The term of this agreement is five (5) years from the effective date.

REASON: To enable the CAO to enter into the Pulse BRT franchise agreement.

RECOMMENDATION: Approval is recommended by the City Administration.

BACKGROUND: The City of Richmond and GRTC through the Broad Street Bus Rapid Transit Project Development Agreement (the "BRT Agreement"), assumed obligations, including funding, maintenance and operation, relating to the establishment of a bus rapid transit system (the

“Pulse BRT”) dated April 18, 2016. Pursuant to the BRT Agreement, the City owns all infrastructure comprising, identifying and located at each Pulse BRT station served by the Pulse BRT; with the exception of the ticket vending machines and communications equipment that are attached to the BRT Stations. This agreement allows GRTC, to identify sponsors that will pay for the right to sponsor the Pulse BRT and have advertisements placed within the BRT Stations, to support operation and maintenance costs.

FISCAL IMPACT TO CITY/COST: None.

FISCAL IMPLICATIONS: Not signing this agreement gives GRTC no authority to accept funds from sponsors to assist in the operations and maintenance of the Pulse and BRT stations.

BUDGET AMENDMENT NECESSARY: No.

REVENUE TO THE CITY: N/A

DESIRED EFFECTIVE DATE: Upon adoption

REQUESTED INTRODUCTION DATE: September 23, 2019

CITY COUNCIL PUBLIC HEARING: October 14, 2019

REQUESTED AGENDA: Consent

RECOMMENDED COUNCIL COMMITTEE: Governmental Operations September 26, 2019

CONSIDERATION BY OTHER GOVERNMENTAL ENTITIES: N/A

AFFECTED AGENCIES: Department of Public Works

RELATIONSHIP TO EXISTING ORD. OR RES.: Ord. No. 2015-263

REQUIRED CHANGES TO WORK PROGRAM(S): N/A

ATTACHMENTS: BRT Franchise Agreement, GRTC Advertising Policy and Pulse Station sponsor spaces

STAFF: Dironna Moore Clarke, DPW (646-3074)
Neil Gibson, City Attorney (646-1234)

FRANCHISE AGREEMENT

THIS FRANCHISE AGREEMENT (this “Agreement”) is made and entered into as of _____, 2019 (the “Effective Date”), by and between the City of Richmond, Virginia, a municipal corporation of the Commonwealth of Virginia (the “City”), and the Greater Richmond Transit Company, a Virginia corporation (“GRTC”).

WHEREAS, the City and GRTC (collectively the “Parties”) were signees to the Broad Street Bus Rapid Transit Project Development Agreement (the “BRT Agreement”), dated April 18, 2016, by which agreement the Parties assumed obligations, including those of funding, maintenance and operation, relating to the establishment of a bus rapid transit system (the “Pulse BRT”) principally located in the city of Richmond, Virginia;

WHEREAS, pursuant to the BRT Agreement, the City owns all infrastructure comprising, identifying and located at each station to be served by the Pulse BRT (“BRT Station,” collectively the “BRT Stations”), with the exception of ticket vending machines and communications equipment attached to the BRT Stations;

WHEREAS, GRTC, which pursuant to the BRT Agreement will operate and maintain the Pulse BRT, has identified sponsors (the “Sponsors”) who will pay for the right to sponsor the Pulse BRT and have advertisements placed within the BRT Stations (the “Advertisements”);

and

WHEREAS, GRTC desires, and the City is willing to grant to GRTC, a franchise in accordance with Section 15.2-2100 of the Code of Virginia and Article VII, Section 9 of the Constitution of Virginia, to use the BRT Stations for placement of the Advertisements.

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

- 1.0 Recitals.** The accuracy of the Recitals set forth above are acknowledged by the Parties and, along with the attachments to this Agreement, are incorporated herein by reference.
- 2.0 Definitions.** Words, terms and phrases used in this Agreement shall have the meanings ascribed to them by the sections below, unless the context clearly indicates another meaning is intended.
- 2.1 Advertisement Revenue.** “Advertisement Revenue” means all revenue associated with the Advertisements that GRTC receives from the Sponsors. With the exception of Section 5.3.4 herein “Advertisement Revenue” means revenue net of any commission paid by GRTC to secure the Sponsors.
- 2.2 Claims.** “Claims” means that term as defined in paragraph 9.0 of this Agreement.

- 2.2 Franchise.** “Franchise” means the franchise granted to GRTC by the City, as further described in paragraph 3.1 below, and as conditioned by this Agreement.
- 2.3 Public Ways.** “Public Ways” means the public ways of the City, as defined in Chapter 24 of the 2015 Richmond City Code.
- 2.4 Term.** “Term” means the term of the Franchise, as set forth in paragraph 4.0 below.
- 3.0 Franchise.**
- 3.1 Grant of Franchise.** City grants to GRTC the Franchise for the Term and subject to the conditions and limitations hereinafter stated, for the sole purposes of (i) placement and display of the Advertisements and logos of the Sponsors within those areas of the BRT Stations, to-wit: one side of one windscreen; one ticket vending machine; and space on each station’s totem, all as depicted on Exhibit A attached hereto and incorporated herein and (ii) any necessary access to the BRT Stations, to the extent not already available to GRTC, to allow GRTC to exercise its rights and fulfill its obligations under this Franchise. GRTC shall not place, and shall not permit placement of, the Advertisements or GRTC’s or Sponsors’ logos anywhere in or on the BRT Stations other than within those areas identified in this Agreement.
- 3.2 Extent of Franchise.** The Franchise will apply to every BRT Station.
- 3.3 No Effect on City’s Rights.** The City’s granting of the Franchise will not affect its right, as owner of the BRT Stations, to engage in any lawful activity in, on or around the BRT Stations at any time.
- 3.4 No Additional Use of Public Ways or City Property.** This Franchise does not grant to GRTC any use of the Public Ways not permitted to the general public, or use of any City-owned structure or other City property, other than as set forth in paragraph 3.1 above.
- 4.0 Term.** The Franchise will take effect on the Effective Date and, unless terminated in accordance with paragraph 3.1 below, will expire on the same day and month five (5) years after the Effective Date.
- 4.1 Termination.** The City, at its option, may terminate this Agreement before expiration of the Term upon the occurrence of either of the following:
- i) any material breach of this Agreement, should GRTC fail to correct such breach within ninety (90) days after receiving specific written notice of such material breach from the City or, if the breach cannot be reasonably corrected within 90 days, within a reasonable time as agreed to by the Parties; or
 - ii) the ceasing of operation of the Pulse BRT.
- 5.0 Advertisements.**

- 5.1 Advertisement Policy.** GRTC agrees that the content of the Advertisements will satisfy the conditions of GRTC's advertising policy as of the Effective Date, which policy is attached hereto as Attachment B, as same may be lawfully amended from time to time.
- 5.2 Intellectual Property Rights.** GRTC represents and warrants that the Advertisements will not infringe on any valid copyright, patent, service mark, trademark or other form of intellectual property rights.
- 5.3 Advertisement Revenue.**
- 5.3.1 Use of Advertisement Revenue.** GRTC agrees to use the Advertisement Revenue exclusively for the funding of Pulse BRT operation and maintenance expenses. Pulse BRT station maintenance includes cleaning, trash removal, landscaping, snow removal on stations platforms, and maintenance of station lighting.
- 5.3.2 Demonstration of Use of Advertisement Revenue.** GRTC agrees to demonstrate its use of the Advertisement Revenue in accordance with paragraph 5.3.1 above by submitting a report to the City on February 1 and July 1 of each year that reconciles the Advertisement Revenue with BRT operations and maintenance expenses to date.
- 5.3.3 No Placement in Restricted Fund.** GRTC shall not allocate the Advertisement Revenue or any portion thereof to the contingency fund established by GRTC for emergency operational or capital expenditures.
- 5.3.4 Advertisement Revenue Minimum; City Contribution.** GRTC agrees that during the Term, (i) no agreement or combination of agreements between GRTC and any of the Sponsors will permit or allow, absent a breach, for the gross Advertisement Revenue to be less than \$127,500 per fiscal year, and (ii) it will separately identify in its budget any gross Advertisement Revenue.
- 6.0 Restoration.** GRTC shall, at its own cost and expense, replace, repair and restore as close as reasonably possible to its prior condition any City property and Public Ways damaged or altered during any exercise of GRTC's rights under the Franchise.
- 7.0 Safety Precautions.** GRTC, in any exercise of its rights and obligations under the Franchise, shall, at its own cost and expense, ensure such exercise is i) undertaken such as to prevent accidents in accordance with applicable law and ii) performed, using materials of good and durable quality, in a safe, thorough and reliable manner in accordance with industry, professional, state, and federal standards.
- 8.0 Liability.** Neither the City nor its officers, employees, agents or contractors will be responsible to GRTC for any liability or costs as a result of or in connection with, i) any exercise of rights or obligations set forth in this Agreement by or on behalf of GRTC, ii) any lawful use, operation, maintenance, repair, replacement or removal of the BRT Stations

by the City, or iii) any emergency related to the health and safety of the public; provided, however, nothing in this paragraph shall waive any rights GRTC may have against the City for any willful misconduct or negligent acts by the City. Nothing herein may be construed as a waiver of the sovereign immunity granted to City by the Commonwealth of Virginia Constitution, statutes, and applicable case law. This paragraph will survive the termination or expiration of this Agreement.

9.0 Indemnification. GRTC agrees to indemnify, defend and hold City and City's officers, agents, contractors and employees harmless against and from any and all actual, threatened or alleged claims of liability or loss, causes of action, judgments, penalties, fines, administrative actions and costs, collectively Claims, including without limitation attorney's fees and court costs, caused by either a breach of this Agreement or any willful misconduct or negligent act or omission by GRTC, or its officers, employees, agents, or contractors, except to the extent such Claims are entirely due to the negligence or willful misconduct of City or its officers, employees, agents or contractors. Nothing herein may be construed as a waiver of the sovereign immunity granted to City by the Commonwealth of Virginia Constitution, statutes, and applicable case law. This paragraph will survive the termination or expiration of this Agreement.

10.0 Insurance. Throughout the Term, GRTC shall, at its own expense, maintain liability insurance policies in a form reasonably acceptable to the City. Upon request, GRTC shall provide a certificate of liability insurance demonstrating that GRTC is maintaining the insurance requirements of this paragraph. Each certificate shall include the City as an additional insured as its interest may appear. Such policies shall be issued by companies duly authorized or permitted to conduct business in the Commonwealth of Virginia. Such policies shall insure GRTC, and excluding Workers' Compensation and Employer's Liability, include the City as an additional insured as its interest may appear. GRTC shall include the following among such policies:

- (a) Commercial General Liability Insurance (including, but not limited to, premises-operations, products/completed operations, contractual liability, independent contractors, personal injury) with limits of not less than two million dollars (\$2,000,000) combined single limit for each occurrence for bodily injury and property damage (limits may be satisfied with primary and/or excess coverage);
- (b) Commercial Automobile Liability Insurance with limits of not less than one million dollars (\$1,000,000) combined single limit for each accident for bodily injury and property damage;
- (c) Workers' Compensation insurance meeting all statutory requirements of the Commonwealth of Virginia;
- (d) Employer's Liability insurance with limits of not less than one million dollars (\$1,000,000) each accident/disease/policy limit;

- (e) Umbrella Liability insurance shall be maintained above the primary Commercial General Liability, Commercial Automobile Liability, and Employers' Liability policies required herein. The limit of such Umbrella Liability insurance shall not be less than two million dollars (\$2,000,000) each occurrence and aggregate.

The foregoing minimum limitations shall not prohibit GRTC from obtaining a liability insurance policy or policies in excess of such limitations.

11.0 Miscellaneous Provisions.

11.1 Assignment. This Agreement shall be binding upon and shall inure to the benefit of the successors and permitted assigns of the parties hereto; provided, however, that in no event may GRTC assign, transfer or otherwise dispose of this Agreement or any of its rights, benefits, duties or obligations without the prior written consent of the City, which consent the City will not be obligated to give.

11.2 Captions. All section titles or captions in this Agreement are for convenience of reference only. They should not be deemed to be part of this Agreement or to in any way define, limit, extend, or describe the scope or intent of any provisions of this Agreement.

11.3 Entire Agreement. This Agreement contains the entire understanding between the Parties and supersedes any prior understandings and written or oral agreements between them respecting this subject matter. There are no representations, agreements, arrangements, or understandings, oral or written, between the Parties relating to the subject matter of this Agreement that are not fully expressed in this Agreement.

11.4 Governing Law and Forum Choice. All issues and questions concerning the construction, enforcement, interpretation and validity of this Agreement, or the rights and obligations of the City and GRTC in connection with this Agreement, shall be governed by, and construed and interpreted in accordance with, the laws of the Commonwealth of Virginia, without giving effect to any choice of law or conflict of laws rules or provisions, whether of the Commonwealth of Virginia or any other jurisdiction, that would cause the application of the laws of any jurisdiction other than those of the Commonwealth of Virginia. Any and all disputes, claims and causes of action arising out of or in connection with this Agreement, or any performances made hereunder, shall be brought, and any judicial proceeding shall take place, only in the Circuit Court of the City of Richmond, Virginia. GRTC accepts the personal jurisdiction of any court in which an action is brought pursuant to this article for purposes of that action and waives all jurisdiction- and venue-related defenses to the maintenance of such action. Each party shall be responsible for its own attorneys' fees in the event this Agreement is subject to litigation.

11.5 Modifications. This Agreement may be amended, modified and supplemented only by the written consent of both the City and GRTC preceded by all formalities required as prerequisites to the signature by each party of this Agreement.

11.6 No Joint Venture. The terms and conditions of this Agreement shall not be construed or interpreted in any manner as creating or constituting the City as a partner or joint venture with GRTC or as making the City liable for the debts, defaults, obligations or lawsuits of GRTC or its assigns, contractors or subcontractors.

11.7 No Third-Party Beneficiaries. Notwithstanding any other provision of this Agreement, the City and GRTC hereby agree that, i) no individual or entity shall be considered, deemed or otherwise recognized to be a third-party beneficiary of this Agreement; ii) the provisions of this Agreement are not intended to be for the benefit of any individual or entity other than the City or GRTC; iii) no individual or entity shall obtain any right to make any claim against the City or GRTC under the provisions of this Agreement; and (iv) no provision of this Agreement shall be construed or interpreted to confer third-party beneficiary status on any individual or entity. For purposes of this section, the phrase "individual or entity" means any individual or entity, including, but not limited to, individuals, tenants, subtenants, contractors, subcontractors, vendors, sub-vendors, assignees, licensees and sub-licensees, regardless of whether such individual or entity is named in this Agreement.

11.8 Notices. All notices, offers, consents, or other communications required or permitted to be given pursuant to this Agreement shall be in writing and shall be considered as properly given or made if delivered personally, by messenger, by recognized overnight courier service or by registered or certified U. S. mail with return receipt requested, and addressed to the address of the intended recipient at the following addresses:

A. To City:

Dironna Moore Clarke
Senior Manager for Multimodal Transportation & Strategic Planning
Department of Public Works
City of Richmond
900 East Broad Street, Room 707
Richmond, Virginia 23219
(804)646-3074
Dironna.Clarke@richmondgov.com

B. To _____:

Either party may change any of its address information given above by giving notice in writing stating its new address to the other party.

- 11.9 Waiver.** The failure of either of the Parties to insist upon the strict performance of any provision of this Agreement shall not be deemed to be a waiver of the right to insist upon strict performance of such provision or of any other provision of this Agreement at any time. Waiver of any breach of this agreement shall not constitute waiver of a subsequent breach.
- 11.10 Signature Authority.** Each of the Parties hereto warrants to the other that the person or persons executing this Agreement on behalf of such Party has the full right, power and authority to enter into and execute this Agreement on such Party's behalf and that no consent from any other person or entity is necessary as a condition precedent to the legal effect of this Agreement. Following the authorization of this Agreement by the City Council, the City's Chief Administrative Officer shall have the authority to execute this Agreement on behalf of the City, and the Chief Administrative Officer or her designee shall have the authority to provide any notices or authorizations contemplated under this Agreement on behalf of the City.

SIGNATURES ON FOLLOWING PAGE

CITY OF RICHMOND
a municipal corporation

By: _____
Selena Cuffee-Glenn
Chief Administrative Officer


Pursuant to the Authority Granted
In Ordinance No: _____

Greater Richmond Transit Company

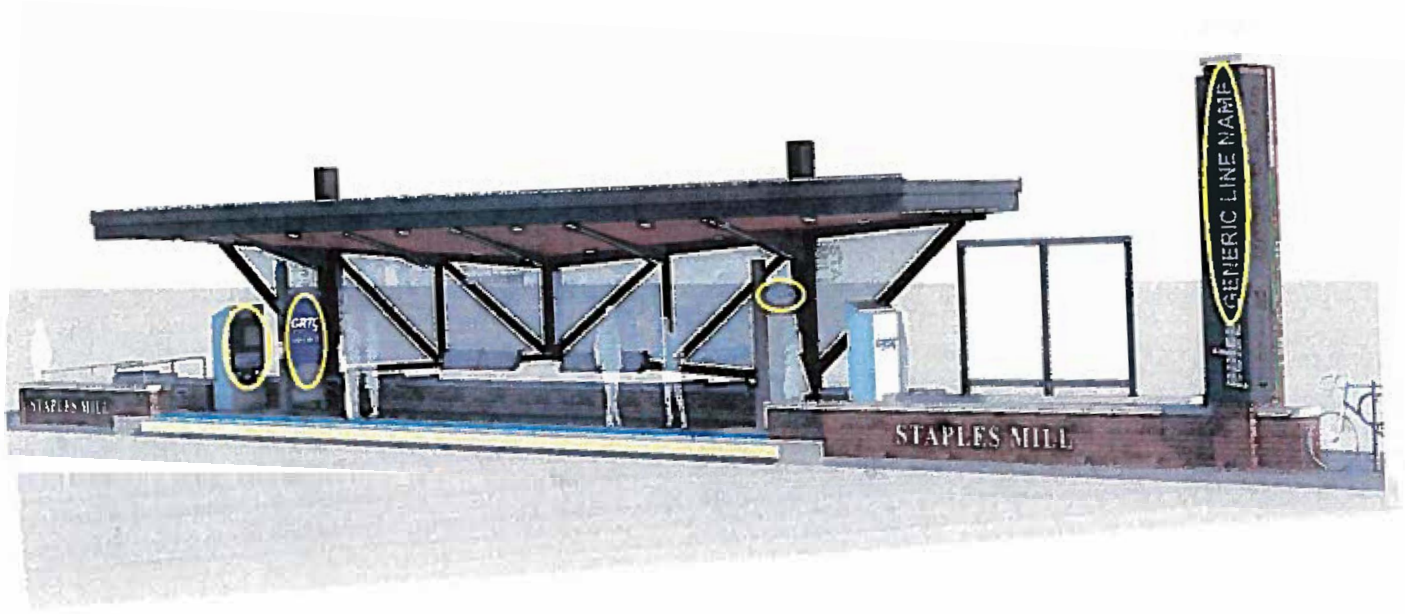
Greater Richmond Transit Company

By: _____
Sheryl Adams
Interim Chief Executive Officer

Prepared and approved as to form:



Neil R. Gibson
Assistant City Attorney



GRTC Advertising Policy

GRTC Transit System believes that advertising on bus vehicles is best performed when guided by a standard set of established criteria. GRTC intends for this Advertising Policy to articulate those criteria by a viewpoint neutral advertising standard to be consistently applied and objectively enforced. Enactment of this Policy represents GRTC's declared intent not to allow any of its transit vehicles or property to become a public forum for dissemination, debate, or discussion of public issues.

All advertising is subject to approval by GRTC and/or its designated representatives. GRTC prohibits the display of the following types of advertising copy or graphics:

1. False, misleading, or deceptive.
2. Relates to or promotes an illegal activity.
3. Explicit sexual material, obscene material, or material harmful to minors.
4. Alcohol or tobacco related.
5. Violence and/or anti-social behavior.
6. Language which is obscene, vulgar, profane, or scatological.
7. Appears to promote the use of firearms.
8. Contains images, copy or concepts that actively denigrate public transportation, GRTC Transit System, or any of its divisions or services.
9. Religious or anti-religious messages regardless of viewpoint.
10. Derogatory or defamatory messages, hate speech and/or language whose message targets or bashes individuals or specific groups.
11. All political ads.
12. Adult entertainment, including cinematic and live venues and sexually oriented products or services.
13. Contains images or symbols that depict or represent graffiti.
14. Contains internet address(es) and/or telephone number(s) that direct(s) viewers to materials, images or information that would violate this advertising policy if they were contained in advertising displayed or posted on GRTC Transit System vehicles.
15. Contains content that would violate exclusive sponsorship rights.

The Advertising Contractor shall review each advertisement submitted for display on GRTC vehicles to determine whether the advertisement falls within, or may fall within, one or more of the categories set forth above. If the Advertising Contractor determines that an advertisement falls within, or may fall within, one or more of the categories set forth above, then the Advertising Contractor will submit the advertisement, along with the name of the advertiser, size and number of the advertisements, and the dates and locations of display, to the GRTC Marketing department for review of the advertisement by GRTC.

Upon determination of whether or not the advertisement falls into one of the categories listed in this policy, the GRTC Marketing department will advise the Advertising

Contractor of the decision. GRTC reserves the right to reject or remove any advertising when it deems not to be in compliance with these guidelines.

GRTC reserves the right to market and promote its own image and services, including co-promotions with for-profit and other non-profit entities.