

AGREEMENT FOR THE OPERATION OF THE GEORGE BUS SYSTEM  
BETWEEN ARLINGTON COUNTY, THE CITY OF FALLS CHURCH, AND THE  
NORTHERN VIRGINIA TRANSPORTATION COMMISSION

This Agreement is made and entered into this \_\_\_ day of \_\_\_\_\_, 2009, by and between Arlington County, Virginia ("County"), the City of Falls Church, Virginia ("City"), and the Northern Virginia Transportation Commission ("NVTC").

WHEREAS, the City has provided and desires to continue to provide a local bus service, known as the GEORGE bus system, to its citizens using clean-fuel buses (GEORGE buses); and

WHEREAS, the GEORGE bus service has operated since December 15, 2002 under a tri-partite agreement between the NVTC, the City, and the Washington Metropolitan Area Transit Authority ("WMATA"); and

WHEREAS, the County has contracted with a contract service provider (Contractor) for the operation of Arlington Transit (ART) services, including maintenance of ART buses, effective July 1, 2009 (Contract), which Contract had an option, at the County's discretion, for the Contractor to also administer and operate the GEORGE bus service; and

WHEREAS, the NVTC is a regional body of which both the City and the County are members, and which has supported the GEORGE system, receiving and disbursing federal and state funds, purchasing the GEORGE buses on behalf the City, and providing its technical knowledge and expertise and its support of the system; and

WHEREAS, the City desires to transfer administration and operation of the GEORGE bus service from WMATA to the County and its Contractor; and

WHEREAS, the County finds it feasible and convenient to administer and operate the GEORGE bus service through its Contract with Contractor; and

WHEREAS the City is willing and able to fully fund the GEORGE bus service so that the County will bear no extra costs in administering and operating the service.

NOW, THEREFORE, the parties agree as follows:

1. Term of Agreement. This Agreement shall be for an initial term commencing on July 1, 2009 and ending on June 30, 2010. This agreement shall be renewed automatically on a yearly basis for six (6) years, subject to adjustments in the price for such service as provided in Section 8 hereunder, unless terminated earlier in accordance with the provisions in Section 15.

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2. Operation of the Service. The County has contracted with a Contractor for the operation and maintenance of the ART service and bus fleet. The City was a participant in the County's most recent vendor selection, with the understanding that the Contract included an option, at the County's discretion, to allow the Contractor to operate the GEORGE bus service and maintain the GEORGE buses for the City under the terms and conditions of the Contract. See [Exhibit 1](#) for Contract between the County and the Contractor. The Contract will be amended upon execution of this Agreement to incorporate the GEORGE service and the terms of this Agreement.
3. Ownership of the Buses. There are four (4) buses currently used for the GEORGE bus service (GEORGE buses) in the City. Title to the buses is currently held by WMATA. Upon execution of this Agreement, NVTC shall cause the title to be transferred from WMATA to Arlington County. Upon the termination of this Agreement, Arlington County shall transfer title of the four (4) GEORGE buses to NVTC for \$1.00 consideration per bus.
4. Bus Warranty. The City will "warranty" the GEORGE buses for a period of six (6) months from the date of this Agreement for any unforeseen engine and major part failure over \$2000, excluding routine maintenance and repairs; provided, however, that no major repairs shall be performed without the City's prior approval.
5. Ownership of the Fareboxes. There are four (4) fareboxes used on the GEORGE buses. The fareboxes are owned by WMATA. Per a separate Agreement between the City, the County and WMATA ([See Exhibit 2](#)), WMATA shall lease the four (4) fareboxes to the City and the City will grant the County a license to use the four (4) fareboxes on the GEORGE buses. Upon termination of this Agreement, the City shall return the fareboxes to WMATA. The County shall be responsible for rekeying these fareboxes, and maintaining these fareboxes in good working condition for the duration of this Agreement.
6. Insurance and Indemnification. Pursuant to the Contract, the Contractor is required to maintain certain insurance coverages and provide a Certificate of Insurance evidencing such coverages. Said insurance coverages are in amounts that are sufficient to protect the County, City and NVTC. Upon execution of this Agreement, the County shall require the Contractor to amend the Certificate of Insurance to include the City and NVTC as additional insured. Additionally, the Contract will be amended to require the Contractor to indemnify the City and NVTC for damages arising out of the Contractor's intentional or negligent acts or omissions in the performance of the Contract.

7. Service. It is intended that the GEORGE service and buses shall be operated by the County and Contractor along the routes described in Exhibit 3 hereunder for the number of revenue hours specified therein, and during the hours of operation specified therein. However, the City may, after obtaining concurrence from the County, which shall not be unreasonably withheld, and upon sixty (60) days' notice to the County after obtaining such concurrence, reduce, modify, or add service or reduce or increase fares, during the life of this Agreement and the price will be adjusted accordingly.

The County will require that Contractor operate this service in a safe, reliable, professional, and efficient manner with emphasis on customer service. The County will monitor customer levels and service and verify the collection of revenues in the same manner in which it monitors customer levels and services and verifies revenue in the normal course for ART services and buses.

8. Price. The City will pay the Contractor directly the City's proportional share for operation and maintenance costs of GEORGE services. The City's share of the Contractor's fixed costs for the initial term of this Agreement shall be 4.57%. The City shall pay \$5,522.72 per month in fixed costs and will pay operations costs based on actual revenue hours at the rate of \$31.16 per revenue hour and maintenance costs at \$0.8166 per mile. Any special event services shall be billed at the per revenue hour rate. Each month, the County will receive the invoice for all services provided from the Contractor the previous month. The County will review the invoice for accuracy and provide an approved invoice to the City by the 20<sup>th</sup> of the month and payment will be due to the Contractor within twenty (20) days.

The City will pay the County directly for the actual costs of provision of tires and fuel. In addition, the City shall pay the County a five percent (5%) administrative fee for its services. This fee shall be calculated at five percent (5%) of the total monthly costs, including Contractor costs and tires and fuel. The County will invoice the City directly by the 20<sup>th</sup> of the month and payment will be due the County within 30 days.

For each year after the initial term of this Agreement, the County will calculate rates for the categories listed above, and provide those figures to the City no later than March 15. The City may request documentation to support the rates proposed by the County. The City will provide an annual funding commitment letter to the County by May 1 of each year, which will apply to the subsequent fiscal year.

Any charges by the County in addition to those described above shall be submitted to the City for approval in advance of billing. The County agrees to provide the City with the earliest possible notice, and in no event

less than 30 days notice, when the County determines that it will incur previously unanticipated costs or will be required to adjust prices for providing service consistent with the terms of this Agreement. All parties agree to cooperate to adjust service and/or fares if the City determines that funds will be insufficient to pay the County's costs for future billing periods under the terms of this Agreement. Adjustments for this purpose shall require sixty (60) days' notice from the City. If agreement is not reached, the City has the right to terminate the Agreement on terms described in Section 15. In any case, the County and Contractor shall be reimbursed for all costs incurred up to the date of termination, as specified in Section 6, and shall not be obligated to provide service in the absence of available funds.

The initial invoices from the County and Contractor will include start-up costs as well as operational costs incurred in order to effectuate this Agreement.

Subsequent invoices shall reflect costs, offset by farebox revenues for the previous month.

Failure by the City to pay any invoice within sixty (60) days shall permit the County to suspend this Agreement.

9. Records & Costs: The County shall require Contractor to maintain in good faith and make available to the NVTC, the City, and such other persons, institutions, researchers, or other persons if the parties agree, records showing:

- the maintenance and/or repair performed on the buses furnished hereunder, the cost of that maintenance and/or repair,
- parts used in maintaining or repairing the buses, and the costs of any of those parts,
- the costs of maintaining insurance required by this Agreement, the amount and costs of diesel fuel for the buses, compared to that used by conventional buses,
- records of periods when the buses are not available for regularly scheduled service, and the reasons therefore,
- the costs of labor for operation of the buses,
- such other records as the parties agree would be useful in determining the safety, efficiency, reliability, and performance characteristics of these buses, and
- such records as may be necessary to maintain warranties on the buses, their parts or the equipment thereon in effect or to comply with any federal requirements.

The County shall maintain in good faith and make available to the NVTC, the City, and such other persons, institutions, researchers, or other persons if the parties agree, records showing:

- Rider comment and complaint data; and
- passenger ridership and revenue data.

The records of maintenance and repair costs, fuel costs, and other direct costs maintained hereunder shall furnish the basis for calculating the direct costs of operation for purposes of the adjustments in price specified above. The County shall be obligated to have Contractor maintain records in good faith using established procedures for the maintenance of those records.

10. Substitute Buses. In the event the GEORGE buses provided hereunder are unavailable in sufficient numbers to provide the regularly scheduled GEORGE service, the County shall require Contractor to endeavor in good faith to substitute buses from the ART fleet or otherwise as provided in the Contract to provide the scheduled service. In addition, the Contractor may also use a City GEORGE bus in the event that one is needed to provide regularly scheduled ART bus service. However, the number of hours per month that a GEORGE bus is used as a substitute bus on a County route shall not exceed the number of hours per month that a County bus is used as a substitute bus on a City GEORGE route.

11. Annual Reconciliation and Payments. The Contractor shall collect bus fares on the service provided hereunder as provided for in the Contract. The County shall maintain sufficient records of the fares recovered hereunder and all other information required by law or regulation to be maintained hereunder to permit the City to verify the amount owing under this Agreement and such other information. At the end of the initial Agreement term, the County shall calculate whether the County owes any amounts to the City where annual revenues exceed annual costs or whether the City owes the County any amounts, where annual costs exceed annual revenues. The County shall also submit copies of the records of fares collected as well as annual costs incurred. Any additional maintenance costs above that which is reasonably and typically incurred that the City will have to pay for will also be included in this documentation regarding which entity owes money to the other.

At the end of the initial Agreement term, and each renewal year thereafter, if the County owes any amounts to the City, the County shall pay the City the amount outstanding within sixty (60) days of the date of a letter that the County will send indicating the calculated amount, subject to the availability of funds.

If at the end of the initial Agreement term and each renewal year thereafter, the City owes the County any amounts where allowed costs incurred have exceeded revenues, the City shall pay the County the amount outstanding within sixty (60) days of the date of a letter that the County will send indicating the calculated amount, subject to the availability of funds. If the City fails to pay the outstanding amount within sixty (60) days, the County will have authority to terminate the GEORGE service and this Agreement immediately upon written notice to the City and NVTC, notwithstanding the provisions of section 15.

Payment to the City of Falls Church shall be made by check payable to the City of Falls Church and sent to:

Treasurer  
City of Falls Church  
300 Park Avenue  
Falls Church, VA 22046

Or by wire transfer to an account designated by the City Treasurer

Bills and Invoices under this Agreement shall be sent to:

Chief Financial Officer  
Finance Department  
City of Falls Church  
300 Park Avenue  
Falls Church, VA 22046

Payment to Arlington County shall be made out to Treasurer, Arlington County and sent to:

Arlington County  
Department of Environmental Services, Transit Bureau  
2100 Clarendon Blvd, Suite 900  
Arlington, VA 22201

12. Federal Reporting. The County shall include all appropriate operating and cost information and data in any reports made to the National Transit Database maintained by the Federal Transit Administration.

Deleted: to the NVTC for reporting

13. Dispute Resolution. Any disputes between NVTC, the City, and the County arising out of this Agreement may be disposed of by the parties by written agreement and/or amendment of this Agreement. If the parties cannot resolve the dispute, then the party seeking a resolution shall

provide written notice of the nature of the dispute and the issue(s) to the other party. The other party may respond within thirty (30) days. If the dispute is not resolved within thirty (30) days following the response, the dispute will be resolved in accordance with Section 14.

14. Alternative Dispute Resolution ("ADR") and Court Jurisdiction

- i. ADR: The parties agree to make their best good faith efforts to resolve any disputes that relate to or arise under this agreement. Absent resolution, the parties agree to pursue any type of alternative dispute resolution procedure that appears to have a likelihood of successfully resolving any dispute. Any party may propose and the parties may agree to any type of dispute resolution procedure, including, but not limited to, mediation, arbitration, mini-trial, etc.
- ii. Court Jurisdiction: In the event the parties do not jointly elect to use the procedure set forth in subsection (A) of this section, any party may commence a civil action for resolution of the dispute in a court of competent jurisdiction.

15. Termination. This Agreement may be terminated by the City or the County at any time during the life of the Agreement. The City may effect termination only after giving 60-days notice to the County. The County may terminate this agreement after giving 60 days notice to NVTC and the City. When this Agreement terminates, title to the buses shall be transferred to NVTC for consideration of one dollar (\$1.00) for each bus.

16. Governing Law. This Agreement shall be governed by the law of Virginia.

17. Federal and State Grant Provisions. The parties incorporate herein and agree to be bound by all applicable required provisions of the federal and state grants used to fund this Agreement.

18. Further Assurances. The parties shall use the utmost good faith in ensuring that this Agreement is carried out in accord with its intent.

19. Counterparts. This Agreement may be executed in counterparts, which shall have the full force and effect of an original document.

20. Notices. Notices required hereunder shall be sent to:

Arlington County  
County Manager  
Arlington County  
2100 Clarendon Blvd.

Arlington, VA 22201

The City of Falls Church  
City Manager  
City of Falls Church  
300 Park Avenue  
Falls Church, VA 22046

NVTC  
Executive Director  
Northern Virginia Transportation Commission  
4350 N. Fairfax Drive, Suite 720  
Arlington, VA 22203

21. Severability. In the event that any provision of this Agreement shall be adjudged or decreed to be invalid, such ruling shall not invalidate the entire Agreement but shall pertain only to the provision in question and the remaining provisions shall continue to be valid, binding and in full force and effect.

22. Order of Precedence. The parties agree to abide by the terms of the Contract and in the event of any conflicts between this Agreement and the Contract, the terms of the Contract shall supersede.

\_\_\_\_\_  
Arlington County  
By: Ron Carlee  
County Manager

Date:

\_\_\_\_\_  
City of Falls Church  
By: F. Wyatt Shields  
City Manager

Date:

\_\_\_\_\_  
Northern Virginia Transportation Commission  
By: Richard Taube  
Executive Director

Date: