ARLINGTON COUNTY, VIRGINIA

County Board Agenda Item
Meeting of June 12, 2010

DATE: May 25, 2010

SUBJECT: Approval of Master Agreement Between the County Board and the Virginia Department of Rail and Public Transportation ("DRPT") For Use of Commonwealth Transportation Funds

C. M. RECOMMENDATION:

Approve a Master Agreement for Use of Commonwealth Transportation Funds between the Department of Rail and Public Transportation ("DRPT") and the County Board, in the form attached hereto, and authorize the County Manager to execute the Agreement and Amendment, subject to approval as to form by the County Attorney.

ISSUES: Additional State and Federal funds cannot be accepted and appropriated for specified activities until this new Master Agreement and Amendment #1 thereto are approved by the County Board and executed on behalf of the Board.

BACKGROUND: The Arlington County Commuter Services ("ACCS") program is funded primarily using State and Federal transportation funds. In order to receive these funds, DRPT requires that localities, including the County, enter into a Master Agreement for use of Commonwealth Transportation Funds ("Master Agreement"). The County Board approved the current Master Agreement on October 18, 2008. Since that time, DRPT advised County staff that a new (revised) Master Agreement, and Amendment #1 thereto, need to be executed to reflect the new rules and regulations for receiving Federal and State transportation funds.

DISCUSSION: The attached Master Agreement, dated July 1, 2009, defines the current purpose and source of funds, allowable costs, acceptable payments procedures, maintenance of records for audit purposes, and other State and Federal grant guidelines. The significant differences between the existing Master Agreement and the proposed revised Agreement are as follows:

- Article 25 (page 26) was added by DRPT as a certification by the County that "it does not, and that it shall not, during the performance of the Agreement and any Project Agreement, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986…" and will require County contractors to comply with this provision. Such a provision is included in the County standard form contracts.

County Manager: MB MAA

County Attorney: BAK/SAM

25.

Staff: Paul E. Culver, Dept. of Environmental Services – Transportation Division

- New definitions were added by DRPT for "Major Capital Project," "Peer Review," "Project," and "Value Engineering" (pages 4-5).
- Section 11.4 was added by DRPT so that all previously executed Master Agreements would be replaced with the terms and conditions of the current Master Agreement.
- The Amendment #1 clarifies the definition of "Application" in Article 1. Definitions of the Agreement, and increases the record retention requirement under Article 6. Maintenance of Records from three to four years.

County staff recommends that the County Board approve the revised Agreement.

FISCAL IMPACT: The new (revised) Master Agreement, and Amendment #1, will enable Arlington County to receive State and Federal funds to reimburse the County's ACCS expenses for FY 2010 and for future fiscal years.

MASTER AGREEMENT

FOR USE OF

COMMONWEALTH TRANSPORTATION FUNDS

GRANTEE: Arlington County

July 1, 2009

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MASTER AGREEMENT FOR THE USE OF COMMONWEALTH TRANSPORTATION FUNDS

THIS MASTER AGREEMENT ("Agreement""), is made and executed as of July 1, 2009 between the Virginia Department of Rail and Public Transportation, (the "Department"), acting by and through its Director, and the *Arlington County*, hereinafter referred to as the "Grantee." This Agreement sets out the terms and conditions for the receipt of grants supported by the Commonwealth Transportation Funds and shall govern and be incorporated by reference in all Project Agreements approved by the Department. The terms of this Agreement shall apply to all grant transactions from the date of this Agreement forward until a new Master Agreement for the Use of Commonwealth Transportation Funds ("New Agreement") is executed, including those grants awarded in the years in which the Master Agreements for Use of Commonwealth Funds dated July 1, 2001, July 1, 2007 and July 1, 2008 were in effect.

By signing this Agreement, the Grantee agrees to adhere to separate requirements issued by the Department as follows:

A. Grant administration requirements to administer the grant after award
B. Maintenance of Asset Inventory through the Department's On-Line Grant Administration System (OLGA)
C. Performance Reporting through OLGA

ARTICLE 1. DEFINITIONS

A. **Application** means the proposal submitted by or on behalf of the Grantee for State financial assistance, including any amendment thereto, with all explanatory, supporting, and supplementary documents filed with and accepted by the Department and approved by the Commonwealth Transportation Board.

B. **Contractor** means private contractor(s), including consultants, which may be engaged by Grantee to perform work.

C. **Designated Representative(s)** means a person or persons appointed by the Grantee or the Department to represent, in whole or in part, the party in issues associated with this Agreement and subordinate Project Agreements.

D. **Director** means the Director of the Department.

E. **Force Majeure Event(s)** means fire, flood, war, rebellion, riots, strikes, or acts of God, which may effect or prevent either party from timely or properly performing its obligations under this Agreement.

F. **Major Capital Project** means any capital project with a total cost in excess of $10 million.

G. **Peer review** means a process used by the Grantee in the planning, design and implementation of capital projects to solicit a second opinion where it can be useful to decision makers.

H. **Project** means the overall purpose for which Department grant funds are awarded, and shall include equipment, facilities, etc.

I. **Project Agreement** means an agreement approved by the Department that includes the total cost of the Project, the Department and the Grantee participation, Project time period, and any subsequent amendments thereto. Project Agreements are subordinate to and shall incorporate by reference all terms and conditions of this Agreement.

J. **Project Equipment** means any tangible personal property with a value of $5,000 or more.

K. **Project Facilities** means any real property constructed or purchased with State financial assistance under this Agreement.

L. **Project Reimbursement Form** means the form provided by the Department to the Grantee to use for reimbursement of eligible Project costs incurred by the Grantee.

M. **Value Engineering** means the systematic, multi-disciplined approach designed to optimize the value of each dollar spent. To accomplish this goal, a team of architects/engineers identifies, analyzes and establishes a value for a function of an item or system. The objective is to satisfy the required function at the lowest total costs (capital, operating and maintenance) over the life of a project consistent with the requirements of performance, reliability, maintainability, safety and aesthetics.

ARTICLE 2. PROGRAMS AND FUNDING

Section 2.1 This Agreement contains requirements that must be adhered to by the Grantee for all State funds received from the Department.

Section 2.2 Funding is subject to annual appropriation by the General Assembly and allocation by the Commonwealth Transportation Board ("CTB"). For any of the grants administered by the Department, the CTB or the Virginia General Assembly may change the percentage of the local share that can be financed by State aid for public transportation to a higher or lower percentage than that set forth in the Project Agreement. In the event such a change occurs, the applicable percentage will be the new percentage set by the CTB or the General Assembly. All expenditures incurred prior to the date of the change will be governed by the previous share.

Section 2.3 In the event that the Grantee receives subsequent allocation(s) of State funding from another source or receives Federal funding applicable to Projects governed by this Agreement, the allocation(s) of State funds shall be reduced by the amount of the subsequent allocation(s) or Federal funding. Grantees shall notify the Department in writing when subsequent allocations or Federal funding are received.

Section 2.4 The Grantee agrees that it will provide funds from sources other than Federal funds (except as may otherwise be authorized by Federal statute), in an amount sufficient, together with the grant, to assure payment of the total Project cost. The Grantee further agrees that no refund or reduction

of the amount so provided will be made at any time, unless there is at the same time a refund to the Department of a proportional amount of the grant funds being refunded or reduced. The Grantee's obligation to provide the local share is calculated on the Project as a whole.

ARTICLE 3. REIMBURSEMENT OF GRANTEE

Section 3.1 Payment to the Grantee of the Department's share of the Project cost shall be made on a schedule for Project Agreements involving operating costs and on a reimbursement basis for all other Project Agreements. Reimbursement basis is defined as the expenditure having been incurred but not necessarily having been paid. Payment of State funds under this Agreement shall not exceed the sum identified in the Project Agreement or amendments thereto. The final reimbursement request must be submitted to the Department within 90 calendar days following the end date of the Project.

Section 3.2 The Grantee shall submit reimbursement requests no more frequently than once a month using the form provided by the Department. Reimbursement requests must be supported by third party evidence wherever possible. Subject to approval by the Department for payment, reimbursement will be made within 30 calendar days of receipt of the request by the Department.

Section 3.3 Incomplete reimbursement requests or those not adequately supported with documentation may result in a delayed or a partial reimbursement to the Grantee.

Section 3.4 Any expenditures reimbursed to the Grantee by the Department subsequently found not to be in accordance with the provisions of this Agreement, related Project Agreements, or Federal, State, or local law will be repaid to the Department by the Grantee within 60 calendars days of such notice.

Section 3.5 The Grantee shall remit payment to contractors/vendors within 5 business days of receipt of the reimbursement from the Department. Should the Grantee be unable to meet this provision for any reason, the Grantee must immediately notify the Chief Financial Officer of the Department in writing and deposit funds received in an interest bearing account with interest proceeds to be utilized toward the Project as additional state funding requiring the appropriate local match. The Department may require

the repayment of the funds depending on the revised date that the Grantee will remit payment(s) to its contractors/vendors. If the Grantee fails to comply with this requirement, the Department will require the Grantee to submit reimbursement requests **only** after payment has been made by the Grantee to its contractors/vendors.

Section 3.6 The Grantee is responsible for payment of all contractors. The Grantee shall attach to each reimbursement request copies of contractor's invoices.

Section 3.7 With the exception of debt service specifically identified in a project agreement, a project amendment may not be made for the purpose of providing any reimbursement for any interest payment or charge made pursuant to this Article, nor may any cost reimbursement claim include any amount for reimbursement for any such interest charge.

ARTICLE 4. ALLOWABLE COSTS

Section 4.1 The Grantee agrees to incur obligations against and make disbursements of Project funds in accordance with Project Agreements and all provisions of this Agreement. Funding provided pursuant to Project Agreements shall be for the reimbursement of eligible Project costs as listed in the Project Agreements and for no other purpose. Funds shall be spent on a pro rata basis as identified in the Project Agreements with respect to each partner's funding share. All purchases made as a matter of this Agreement shall be charged at the actual cost(s) to the Grantee with no markups.

Section 4.2 Eligible Project costs must meet the following requirements:

A. Be necessary in order to accomplish the activities in the approved Project Agreement;

B. Be reasonable in amount for the goods or services purchased;

C. Be actual net costs to the Grantee (i.e., the price paid minus any refunds, rebates, or other items of value received by the Grantee which have the effect of reducing the cost actually incurred and paid);

D. Be incurred and paid during the time period specified in the approved Project Agreement;

E. Be in accordance with the Federal Office of Management and Budget ("OMB") Circular A-133;

F. Be based on a cost allocation plan that has been approved in advance by the Department if they are indirect costs.

The Department shall make the final determination as to what costs are eligible.

ARTICLE 5. LAPSE OF FUNDS

Section 5.1 A Project Agreement obligates the Grantee to undertake and complete a Project within the period of availability as defined in the Project Agreement. Funds will cease to be available at the end of the Project's period of availability. Expenditures incurred on or before the Project end date will be reimbursed up to 90 days after the end date.

ARTICLE 6. MAINTENANCE OF RECORDS

Section 6.1 The Grantee and its subcontractors shall maintain all books, documents, papers, accounting records, and any other evidence, supporting their activities and the costs incurred. These records shall be kept in accordance with commonly accepted industry business procedures. Such information shall be made available for audit and inspection at Grantee's respective offices at all reasonable times during the Project Agreement period and for a period of three years from the date of final payment for a Project Agreement by the Department to the Grantee, except for records pertaining to facilities, which shall be kept until the Department notifies the Grantee in writing that the records no longer need to be kept. Copies of such information shall be furnished by the Grantee to the Department upon request.

ARTICLE 7. AUDIT AND INSPECTION OF RECORDS

Section 7.1 The Grantee and its subcontractors shall permit the authorized representatives of the Department to inspect and audit all records of the Grantee and its subcontractors relating to the performance of this Agreement or any Project Agreement.

Section 7.2 All Grantees must follow the requirements of OMB Circular A - 133, *Audits of States, Local Governments, and Non-Profit Organizations*. A Single Audit is required when an entity spends Federal funds of $500,000 or more in a year. Recipients must maintain auditable records and adequate supporting documentation. Recipients spending less than $500,000 of Federal assistance during any one fiscal year are not required to have a Single Audit performed unless specifically requested by the Department. However, the Department reserves the right to require any recipient of State funds, regardless of amount, to have an audit performed and to designate the scope of such audit.

Section 7.3 If an independent CPA, other auditor, the Department, or any other party conducting an authorized audit finds the recipient not to be in compliance with any provision of this Agreement, Project Agreement or any relevant Federal or State law or regulation, the recipient must provide a satisfactory corrective action plan to DRPT within 60 days of that finding. The scope of any audit conducted must include expenditures made by subrecipients of the grant, including consultants, subconsultants, and any other recipients of pass-through funds.

Section 7.4 The Grantee agrees that following the completion of any audit performed in accordance with this Article, it will promptly refund to the Department within 60 calendar days any payments that are found by the Department to be unsupported by acceptable records or in violation of any other provisions of this Agreement or related Project Agreement. Acceptable records are defined as original documents (such as timesheets, invoices, etc.) that were used to generate amounts on the reimbursement forms submitted to the Department. The Department also may require the Grantee to furnish certified reports of all expenditures under any subcontracts.

Section 7.5 All Grantees must submit audited financial statements to the Department within six months following the Grantee's fiscal year end. E-mail a .pdf copy to FrontDesk@drpt.virginia.gov or send a hard copy to:

Virginia Department of Rail and Public Transportation
Attention: Audit Manager
600 East Main Street, Suite 2102
Richmond, VA 23219

ARTICLE 8. ANNUAL MANAGEMENT REPRESENTATION LETTER

Section 8.1 Every recipient of State financial assistance from the Department must provide an annual management representation letter indicating management's responsibility for ensuring compliance with all provisions of all grant agreements and relevant Federal and State laws and regulations. In the management representation letter, the management should specifically assert its responsibility for:

- Complying with all of the requirements specified in the grant agreements, as well as all related and relevant Federal and State laws and regulations.
- Establishing and maintaining effective internal control over compliance.
- Evaluating any sub-recipient's compliance with grant requirements, or, if more appropriate, evaluating the sub-recipient's controls and procedures for ensuring compliance and detecting noncompliance.
- Disclosing all known instances of noncompliance to the Department in writing.
- Making all compliance related documentation available to the Department.
- Stating management's interpretations of any compliance requirements for which multiple interpretations are possible.

- Disclosing any communications from any regulatory agencies, internal auditors, independent auditors, and other financial practitioners concerning possible or potential noncompliance, including communications received through the date of the management representation letter.
- Disclosing any known noncompliance occurring subsequent to the date of the management representation letter, within one week after such noncompliance becomes known.

E-mail a .pdf copy to FrontDesk@drpt.virginia.gov or send a hard copy to:

Virginia Department of Rail and Public Transportation
Attention: Audit Manager
600 East Main Street, Suite 2102
Richmond, VA 23219

ARTICLE 9. REQUEST FOR PROPOSALS AND SUBCONTRACTOR APPROVAL

Section 9.1 The Department reserves the right to review and approve, in advance, any request for proposals or solicitation to bid to any prospective contracting organizations. The Department also reserves the right to require that the Grantee not execute any contract, amendment, or change order thereto, or to obligate itself in any manner with any third party with respect to its rights, duties, obligations, or responsibilities under this Agreement unless and until authorized to do so in writing by the Department.

ARTICLE 10. ASSIGNMENTS

Section 10.1 Assignment of any portion of this Agreement shall have the prior written approval of the Department.

ARTICLE 11. TERM, ENTIRE AGREEMENT, AND AMENDMENT

Section 11.1 This Agreement shall be effective immediately upon its execution.

Section 11.2 This Agreement constitutes the entire and exclusive agreement between the parties relating to all specific matters covered herein. All prior or contemporaneous verbal or written agreements, understandings, representations, and/or practices relative to the foregoing are hereby superseded, revoked and rendered ineffective for any purpose.

Section 11.3 This Agreement may be altered, amended, or revoked only by an instrument signed by both parties. Such signature may include electronic signatures using Personal Identification Number (PIN) based access.

Section 11.4 In order to effect a uniform set of rules governing the grant transactions, the Grantee and the Department hereby agree to vacate the terms of any and all previous Master Agreements for the Use of Commonwealth Transportation Funds, including those dated July 1, 2001, July 1, 2007 and July 1, 2008, and to replace those terms with the terms of this Agreement for all grant funding transactions, from the date of this Agreement until a New Agreement is executed. At that time, it is agreed that the terms of this Agreement shall be vacated, and be replaced by the terms of the New Agreement.

ARTICLE 12. NOTICES AND DESIGNATED REPRESENTATIVE

Section 12.1 All notices or communications with respect to this Agreement shall be in writing and shall be deemed delivered upon delivery by hand, upon the next business day if sent prepaid overnight delivery service, or on the third business day following mailing by U.S. Mail, certified, postage prepaid, return receipt requested, to the addresses set forth below or such other addresses as may be specified by delivery of prior notice by a party to the other parties.

Department: Virginia Department of Rail and Public Transportation
600 East Main Street, Suite 2102
Richmond, VA 23219
Attention: Terry Brown, Manager of Financial Programming
terry.brown@drpt.virginia.gov

William S. Pittard, Chief Financial Officer
600 East Main Street, Suite 2102
Richmond, VA 23219
steve.pittard@drpt.virginia.gov

Nancy C. Auth, Senior Assistant Attorney General
Office of Attorney General
900 East Main Street
Richmond, VA 23219
NAuth@oag.state.va.us

Grantee: _____
NAME AND TITLE

_____
ADDRESS

_____
E-MAIL ADDRESS

With a copy to:

_____
NAME AND TITLE

_____
ADDRESS

_____
E-MAIL ADDRESS

ARTICLE 13. TERMINATION OF AGREEMENT OR PROJECT AGREEMENT

This Agreement or the subordinate Project Agreement shall be terminated upon the occurrence of any of the following:

Section 13.1 The Grantee may terminate the Project at any time by notifying the Department in writing 30 calendar days in advance. If such termination occurs, the Grantee shall repay the Department all funds received according to the provisions of this Article.

Section 13.2 The Grantee may terminate the Agreement at any time it is determined by Virginia law that the Department has materially breached this Agreement and has failed to cure such breach within 90 calendar days. Should such occur, the Grantee shall be entitled to whatever remedies may be provided

for by law. Furthermore, the Grantee will not be required to repay any funds that have been provided by Department pursuant to this Agreement.

Section 13.3 Upon 30 calendar days notice to the Grantee, the Department may terminate, in whole or in part, the funding under this Agreement at any time it is determined that Grantee has materially breached this Agreement and has failed to cure said breach after 90 calendar days notice or if compliance within 90 calendar days is not reasonable as solely determined by the Department, then within such time period as the Department may agree. The Department shall notify the Grantee promptly in writing of such a determination and the effective date of the termination. The Grantee may request reconsideration by notifying the Department within 30 calendar days of the date of the Department's notification. The Department shall not terminate funding until after the request has been reconsidered but may withhold funds in the interim. Following reconsideration, if requested, the decision of the Department will be final. If this Agreement is terminated by the Department for the Grantee's material breach, the Grantee will repay the Department all funds received for the Project. Such payment shall be made within 60 calendar days following notification by the Department of the amount to be repaid.

Section 13.4 Upon 30 calendar days notice to the Grantee, the Department may terminate, in whole or in part, the funding under this Agreement at any time if (1) the Department fails to secure the necessary budgetary appropriation to fulfill its obligations under this Agreement, (2) the Grantee becomes insolvent, (3) the Grantee fails to apply provided funds as intended under this Agreement or the Project Agreement, or (4) statutory changes affecting the program under which these funds were provided render funding this Agreement impossible. The Department shall notify the Grantee promptly in writing of such a determination and the effective date of the termination. The Grantee may request reconsideration by notifying the Department within 30 calendar days of the date of the Department's notification. The Department shall not terminate funding until after the request has been reconsidered

but may withhold funds in the interim. Following reconsideration, if requested, the decision of the Department will be final.

Section 13.5 Should the Project be terminated by Department as a result of lack of funds or statutory changes, the Department will exercise best efforts to seek funds to be used to defray costs of shutting down the Project and the Grantee need not repay any funds already paid to the Grantee if such funds represent eligible Project costs that the Grantee has incurred. The Grantee shall repay the Department all funds paid associated with this Agreement or the Project Agreement should the Grantee become insolvent or if the Grantee fails to apply funds as intended under this Agreement or the Project Agreement.

Section 13.6 Delays caused by Force Majeure events during construction shall not be deemed a breach or default under this Agreement. Upon the occasion of a Force Majeure event, as determined by the Department, which makes it impossible for the Project to be constructed and/or moots the need for the Project, the Department may terminate this Agreement at its discretion. Force Majeure events occurring during the performance period of this Agreement will automatically result in day-for-day extension(s) to the performance period if any is specified in this Agreement or the Project Agreement.

Section 13.7 All reimbursements from the Grantee may also require the payment of interest, using the prevailing statutory legal rate of interest established by the Virginia General Assembly, calculated from the date payment is made by the Department to date of repayment by the Grantee.

ARTICLE 14. LIABILITY WAIVER

Section 14.1 The Grantee shall be responsible to the extent allowable by law for all damage to life and property due to its activities and those of its employees in connection with the work performed under this Agreement or a Project Agreement. Even if the Grantee is not allowed by law to indemnify, the Grantee shall either carry sufficient insurance which is acceptable to the Department in the Department's

sole discretion to cover the risks for work performed under this Agreement or a Project Agreement for the Grantee, its employees, agents and subcontractors. In lieu of carrying insurance for its agents or subcontractors, the Grantee may require all its agents or subcontractors who perform any work or activity of any type in connection with this Agreement or a Project Agreement to carry insurance sufficient to cover the risks for all damage to life and property due any and all activities in connection with the work performed under this Agreement or a Project Agreement. However, such insurance does not relieve the Grantee of the burden of carrying insurance to cover the actions of its employees. Such insurance, purchased by either the Grantee or its agents or subcontractors, shall list the Commonwealth of Virginia, the Department, the Virginia Department of Transportation and the officers or agents and employees of these entities as additional insureds. Payment of any funds by the Department shall not waive any of the rights of the Department contained in this section nor release the Grantee from any responsibilities or duties contained in this Agreement or a Project Agreement. Further, to the extent allowable under Virginia law, it is expressly understood that the Grantee shall indemnify, defend and hold harmless the Commonwealth of Virginia, the Department, the Virginia Department of Transportation, its officers, agents, and employees from and against all damages, claims, suits, judgments, expenses, actions and costs of every name and description, arising out of or resulting from any negligent act or omission in the performance by the Grantee or its subcontractors of the work covered by this Agreement or a Project Agreement. The obligations of this section shall survive the termination or completion of this Agreement or a Project Agreement.

ARTICLE 15. CONFLICT OF INTEREST

Section 15.1 The provisions of the Virginia Conflict of Interest Act for State and Local Governments, § 2.2-3100 *et seq.* of the *Code of Virginia* (1950), shall apply for any Grantee that is a local government or a local governmental agency.

Section 15.2 The following shall apply to all Grantees not subject to the Virginia Conflict of Interest Act for State and Local Governments, § 2.2-3100 et seq. of the *Code of Virginia* (1950):

1. The following definitions shall apply concerning conflict of interest provisions in this Agreementand any Project Agreement:

"Contract" or "agreement" means any agreement, including any contract or subcontract, whether written or not, to which the Grantee is a party or any agreement on behalf of the Grantee, including any subcontract, which involves the payment of funds appropriated by the General Assembly of Virginia distributed pursuant to or subject to this Agreement or any Project Agreement.

"Employee" means any person employed by the Grantee, whether full time or part time.

"Thing of pecuniary value" means any thing having a monetary value including gifts, loans, services, securities, tangible objects, and business and professional opportunities.

2. Other than the salary and remuneration received from the Grantee as a normal attribute of employment with the Grantee, no employee of the Grantee shall solicit, offer to accept, or accept, any money or other thing of pecuniary value or financial benefit or advantage, for the employee or for any other person, especially for any of the following reasons:

a. in consideration of the use of the employee's position or status with the Grantee to obtain for any person or business any employment with or any contract with the Grantee or with any subcontractor or supplier of the Grantee, including any consulting or professional services contract.

b. from any person or business other than the Grantee for performing any services for the Grantee in connection with any projects funded pursuant to or subject to this Agreement or any Project Agreement written hereunder.

c. from any person or business other than the Grantee for rendering any decision or directing any course of action in connection with any Projects funded pursuant to or subject to this Agreement or any Project Agreement.

3. If any contract is obtained in violation of this Article or if the terms of this Article are violated, the Department may require the Grantee to take whatever legal action is necessary to rescind, void, invalidate, or cancel such contract or other action taken and/or to recover any funds paid in violation of the provisions of this Article, and remit recovered funds to the Department.

ARTICLE 16. COVENANT AGAINST CONTINGENT FEES

Section 16.1 - The Grantee warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Grantee, to solicit or secure the Project Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the Grantee, any fee, commission, percentage, brokerage fee, or other considerations, contingent upon or resulting from the award or making of a Project Agreement. For breach or violation of this warranty, the Department shall have the right to terminate this Agreement or any Project Agreement without liability, and the Grantee shall repay all grant funds with interest at the prevailing rate set by the Virginia General Assembly.

ARTICLE 17. NON-DISCRIMINATION

Section 17.1 In the solicitation or awarding of any contracts directly related to this Agreement, the Grantee shall not discriminate against a bidder or offeror because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by Virginia law relating to discrimination in employment.

Section 17.2 During the performance of this Agreement, the Grantee agrees as follows: (a) the Grantee will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or other basis prohibited by Virginia law relating to discrimination in employment. The Grantee agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause; (b) the Grantee, in all solicitations or advertisements for employees placed by or on behalf of the Grantee, will state that the Grantee, where applicable, is an equal opportunity employer. Notices, advertisements and solicitations placed in accordance with Federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.

Section 17.3 In all solicitations, either by competitive bidding or negotiation made by the Grantee for work to be performed under a subcontract, including procurement of materials or equipment, each potential subcontractor or supplier shall be notified by the Grantee of the Grantee's obligations under this Agreement and the regulations relative to nondiscrimination on the grounds of age, race, religion, sex, color, disability or national origin.

ARTICLE 18. DRUG-FREE WORKPLACE

Section 18.1 During the performance of this Agreement, the Grantee agrees to (a) provide a drug-free workplace for its employees; (b) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the workplace

and specifying the actions that will be taken against employees for violations of such prohibition; (c) state in all solicitations or advertisements for employees placed by or on behalf of the Grantee that the Grantee maintains a drug-free workplace; and (d) include the provisions of the foregoing clauses in every subcontract or purchase order of over $10,000, so that the provisions will be binding upon each subcontractor or vendor. For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to a contractor in accordance with this chapter, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the Agreement.

ARTICLE 19. SMALL, WOMEN, AND MINORITY (SWAM) BUSINESSES

Section 19.1 The Grantee is encouraged to seek and use Small, Women, and Minority (SWAM) enterprises in relation to any Project Agreement issued pursuant to this Agreement.

ARTICLE 20. PERSONS WITH DISABILITIES

Section 20.1 The Grantee, its agents, employees, assigns or successors, and any persons, firms or agencies of whatever nature with whom it may contract or make an agreement shall comply with the provisions of the Virginians with Disabilities Act (§ 51.5-40 through § 51.5-46 of the *Code of Virginia* 1950, as amended), the terms of which are incorporated herein by reference.

ARTICLE 21. NONRESTRICTIVE CLAUSE

Section 21.1 Solicitation documents will be based upon clear and accurate descriptions of the technical requirements for the material, product, or service to be procured. The descriptions will not contain features that unduly restrict competition.

ARTICLE 22. SPECIAL CAPITAL PROVISIONS

Section 22.1 The American with Disabilities Act ("ADA") established universal access by requiring complementary paratransit services to be provided for visitors if they have been certified as "ADA paratransit eligible" by a public entity. Grantees that provide paratransit services must honor the certification of a visitor qualified by another public entity for a period of sixty days during a calendar year. The visiting rider shall not have to provide any additional documentation, participate in interviews or any other reviews to gain the complementary certification. If the visitor needs service beyond the sixty days in a calendar year, he or she must go through the paratransit system's qualification process.

Section 22.2 The purchase of all Project Equipment and services and the construction of any Project Facilities financed in whole or in part pursuant to this Agreement shall be undertaken by the Grantee in accordance with the Department's standard procurement procedures, Virginia law, and accepted good business practices. All plans, specifications, estimates of costs, award of contracts, performance and acceptance of work, and procedures in general are subject at all times to all applicable laws, rules, regulations, and orders. The Department reserves the right to review and approve all solicitations for purchase of equipment, facilities, and services prior to their issuance by the Grantee.

Section 22.3 The Grantee agrees that the equipment and facilities funded under this Agreement and related Project Agreements shall remain in service in the area and be used for the purpose for which they were purchased for the duration of their useful lives. If any Project Equipment or Facilities are not used in this manner or are withdrawn from public transportation services, the Grantee shall immediately notify the Department. The Department shall have the option of requiring the Grantee either to relinquish title to the project equipment to the Department or to remit to the Department an amount equal to a proportional share of the fair market value of the equipment based upon the ratio of participation by the Department. In the case of Project Facilities, the Grantee shall remit to the

Department the proportional share of the fair market value of the facilities purchased under this Agreement and Project Agreement, based upon the ratio of participation by the Department pursuant to this Agreement and the applicable Project Agreement. The Grantee shall keep records of the use of the Project Equipment and Facilities for review by the Department upon request.

Section 22.4 The Grantee shall permit the Department or its authorized representatives to inspect at any time all vehicles, facilities and equipment purchased or constructed by the Grantee as part of the Project; all transportation services rendered by the Grantee using such vehicles, facilities and equipment; and all relevant Project data and records.

Section 22.5 The Grantee shall maintain, in amount and form satisfactory to the Department, and in accordance with the laws of the Commonwealth of Virginia, such insurance or self-insurance as will be adequate to protect Project Facilities or Equipment and persons using such Facilities or Equipment throughout the period of required use. The Department will be named as insured in the insurance policy on any vehicles or facilities purchased with funds provided under this Agreement and each Project Agreement.

Section 22.6 In contracting for construction or facility improvements, the Grantee shall follow its own requirements relating to bid guarantees, performance bonds, and payment bonds, except for contracts exceeding $100,000. For those contracts exceeding $100,000, the minimum requirements shall be as follows:

- A bid bond from each bidder from a surety company selected by this bidder which is legally authorized to do business in Virginia. The amount of the bid bond shall be five percent (5%) of the bid price. This bid bond is a guarantee that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.
- A performance bond on the part of the contractor for one hundred percent (100%) of the contract price. This performance bond is one executed in connection with a contract to secure fulfillment

of all the contractor's obligations under such contract in strict conformity of the plans, specifications, and conditions of this contract.

- A payment bond on the part of the contractor for one hundred percent (100%) of the contract price. This payment bond is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.
- In lieu of a bid payment or performance bond, a bidder may furnish a certified check in the face amount required for the bond.
- Grantee may seek Department approval of its bonding policy and requirements if they do not comply with these criteria.

Section 22.7 Any motor vehicles purchased under this grant will comply with Motor Vehicle Safety Standards as established by the United States Department of Transportation and with the Motor Vehicle Standards of the *Code of Virginia* (Title 46.2).

Section 22.8 A debt service payment including interest on local or agency bonds that complies with the requirements of Article 4 "Allowable Costs" of this Agreement is an allowable capital cost under this Agreement and any subordinate Project Agreement.

Section 22.9 When any motor vehicle is purchased with funds supplied by the Department pursuant to this Agreement or any Project Agreement hereunder, the Department reserves the right, at its sole discretion, to require that a lien or security interest be placed upon the title of said vehicle to secure the amount of the funds supplied by the Department, with the lien or security interest to be perfected and recorded upon the certificate of title in the manner prescribed by law, with the certificate of title to be sent to the Department.

Section 22.10 Service life of rolling stock begins on the date the vehicle is placed in revenue service and continues until it is removed from service. Minimum normal service lives for buses and vans are

A. Large, heavy-duty transit buses (approximately 35'-40', and articulated buses): at least 12 years of service or an accumulation of at least 500,000 miles.

B. Medium-size, heavy-duty transit buses (approximately 30'): 10 years or 350,000 miles.

C. Medium-size, medium-duty transit buses (approximately 30'): 7 years or 200,000 miles.

D. Medium-size, light-duty transit buses (approximately 25-35'): 5 years or 150,000 miles.

E. Other light-duty vehicles such as small buses and regular and specialized vans: 4 years or 100,000 miles.

Section 22.11 The Department requires Value Engineering ("VE") on Major Capital Projects, and encourages the application of VE techniques to all construction projects. A Major Capital Project is usually identified during the grant review process. VE on a project should be performed early in the design process before major decisions have been completely incorporated into the design, at or near the end of preliminary engineering ("PE") or at 30 percent of design. Some large or complex projects may need to conduct more than one VE study over their duration. Grantees with Major Capital Projects are required to submit a VE report to the Department indicating the results of their VE efforts upon completion of the Value Engineering phase.

a. The Department may also require that VE be performed on individual projects under that $10 million threshold.

b. Grantees are encouraged to conduct VE on all construction Projects including bus maintenance and storage facilities whose costs are estimated to exceed $2 million, as well as on those Projects regarding revenue railcar acquisition and rehabilitation.

Section 22.12 The Department encourages the Grantee to use the peer review process to confer with other transit operations and maintenance experts in order to benefit from their experiences and to improve the performance of the process or product being reviewed. Although the Grantee is encouraged to conduct peer review with all capital projects, the Department may require peer review in some instances.

a. Grantees are encouraged to perform crime prevention reviews during the design phase of all Department funded transit facilities with particular focus on the incorporation and use of crime prevention through environmental design techniques. This review should be carried out as a project intended to improve and increase the safety and security of an existing or planned transit system or facility for both transit patrons and transit employees. The level of the review should complement the project size and scope. Local crime prevention professionals should be included in the review process. Review documentation should remain on file by the Grantee and be available for Department review upon request.

ARTICLE 23. MISCELLANEOUS PROVISIONS

Section 23.1 No member, officer, or employee of the Department, during his tenure or one year thereafter, shall have any interest, direct or indirect, that is prohibited by Virginia law in this Agreement or related Project Agreement.

Section 23.2 This Agreement shall, in all respects, be governed by the laws of the Commonwealth of Virginia.

Section 23.3 If any term or provision of this Agreement is determined to be invalid, illegal or unenforceable, it shall not affect the legality or validity or enforceability of any other part of this Agreement, and the remaining parts of this Agreement shall be binding upon the parties.

Section 23.4 All provisions of this Agreement shall be binding upon the parties and their respective successors and assigns.

ARTICLE 24. INCORPORATION OF PROVISIONS

Section 24.1 All covenants and provisions of this Agreement shall be made expressly a part of any subcontracts executed by the Grantee, and shall be binding on the subcontractors, their agents, and employees.

ARTICLE 25. ILLEGAL ALIENS

Section 25.1 The Grantee certifies that it does not, and that it shall not, during the performance of this Agreement and any Project Agreement, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986 (the Act). The Grantee will also contractually require any contractors who participate in any Project funded pursuant to this Agreement and any Project Agreement to comply with this provision. Unauthorized alien means, with respect to the employment of an alien (which is defined as any person not a citizen or national of the United States), at a particular time, that the alien is not at that time either (a) an alien lawfully admitted for permanent residence, or (b) authorized to be so employed by the Act or by the United States Attorney General.

IN TESTIMONY THEREOF, the parties have caused this Agreement to be executed, each by its duly authorized officers, all as of the day, month, and year hereinabove first written.

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF RAIL AND PUBLIC TRANSPORTATION

BY: _____ 6/19/09
DIRECTOR DATE

WITNESS: _____ 6/19/09
(NAME AND TITLE) DATE

PUBLIC BODY

BY: _____
CHIEF EXECUTIVE OFFICER DATE

WITNESS: _____
(NAME AND TITLE) DATE

AMENDMENT #1

MASTER AGREEMENT

FOR USE OF

COMMONWEALTH TRANSPORTATION FUNDS

GRANTEE: County Board of Arlington County, VA

July 1, 2009

MASTER AGREEMENT FOR THE USE OF COMMONWEALTH TRANSPORTATION FUNDS

THIS MASTER AGREEMENT ("Agreement""), is made and executed as of July 1, 2009 between the Virginia Department of Rail and Public Transportation, (the "Department"), acting by and through its Director, and the *County Board of Arlington County, Virginia*, hereinafter referred to as the "Grantee." This Agreement sets out the terms and conditions for the receipt of grants supported by the Commonwealth Transportation Funds and shall govern and be incorporated by reference in all Project Agreements approved by the Department. The terms of this Agreement shall apply to all grant transactions from the date of this Agreement forward until a new Master Agreement for the Use of Commonwealth Transportation Funds ("New Agreement") is executed, including those grants awarded in the years in which the Master Agreements for Use of Commonwealth Funds dated July 1, 2001, July 1, 2007 and July 1, 2008 were in effect.

By signing this Agreement, the Grantee agrees to adhere to separate requirements issued by the Department as follows:

A. Grant administration requirements to administer the grant after award

B. Maintenance of Asset Inventory through the Department's On-Line Grant Administration System (OLGA)

C. Performance Reporting through OLGA

ARTICLE 1. DEFINITIONS

A. **Application** means the proposal submitted by or on behalf of the Grantee for State financial assistance, including any amendment thereto, with all explanatory, supporting, and supplementary documents filed with and accepted by the Department and approved by the Commonwealth Transportation Board.

Amendment #1, March 1, 2010

Revisions to the July 1, 2009 Master Agreement for Use of Commonwealth Transportation Funds –

Replace Section 6.1, under ARTICLE 6. MAINTENANCE OF RECORDS, with the following:

Section 6.1 The Grantee and its subcontractors shall maintain all books, documents, papers, accounting records, and any other evidence, supporting their activities and the costs incurred. These records shall be kept in accordance with commonly accepted industry business procedures. Such information shall be made available for audit and inspection at Grantee's respective offices at all reasonable times during the Project Agreement period and for a period of four years from the end of the state fiscal year (i.e., June 30) in which the final payment is made for a Project Agreement by the Department to the Grantee, except for records pertaining to facilities and land. Records for facilities shall be kept for the useful life of the facility and records for the land shall be kept in perpetuity. Copies of such information shall be furnished by the Grantee to the Department upon request.

Add to SECTION 25.1 under ARTICLE 25. ILLEGAL ALIENS, the following:

The terms of this section will only apply to grants awarded from the date of this Agreement forward, until a new Master Agreement for Use of Commonwealth Transportation Funds is executed.

IN WITNESS WHEREOF, the DEPARTMENT and the PUBLIC BODY have executed this Amendment #1 effective July 1, 2009.

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF RAIL AND PUBLIC TRANSPORTATION

BY: Thelma Drake 3/1/10
DIRECTOR OR DESIGNATED REPRESENTATIVE DATE

WITNESS: Executive Asst 3/1/10
(NAME AND TITLE) DATE

PUBLIC BODY

BY: _____
CHIEF EXECUTIVE OFFICER DATE

WITNESS: _____
(NAME AND TITLE) DATE