

Washington Metropolitan Area Transit Authority
Board Action/Information Summary

☒ Action ☐ Information

MEAD Number:
202373

Resolution:
☒ Yes ☐ No

TITLE:

Fairfax County Free Student Bus Pass Expansion

PRESENTATION SUMMARY:

Staff seeks Board authorization to expand the Fairfax County Free Student Bus Pass Program to include Annandale High School, Davis Center, Falls Church High School and Marshall High School and to amend the fare buydown agreement.

PURPOSE:

Request Board authorization to expand the Fairfax County Free Student Bus Pass Program to include Annandale High School, Davis Center, Falls Church High School and Marshall High School, and to amend the fare buydown agreement and delegate to the GM/CEO authorization to approve future program changes.

DESCRIPTION:

Fairfax County is seeking to expand its Free Student Bus Pass Program to include Annandale High School, Davis Center, Falls Church High School and Marshall High School and to amend the fare buydown agreement.

Key Highlights:

- Resolution 2018-29 authorized the Fairfax County Free Student Bus Pass Pilot Program at Justice High School.
- Resolution 2019-26 authorized the GM/CEO to negotiate a fare buydown agreement and pilot program extension.
- Resolution 2020-29 authorized the current year program.
- Since program inception, the Fairfax County Free Student Bus Pass Pilot Program has provided approximately 105,000 rides generating over \$210,000 in revenue.
- Ridership grew by 17 percent during the 2019-2020 school year despite Covid-19 related Metrobus service changes.

Background and History:

The Fairfax County Free Student Bus Pass Program facilitates student ridership in Fairfax County, provides an alternative mode of transportation

while alleviating the financial burden on certain low-income students. Resolution 2018-29, approved by the Board of Directors in July 2018, authorized the Fairfax County Free Student Bus Pass Pilot Program at Justice High School. On July 25, 2019, the Board approved Resolution 2019-26, which authorized the execution of a fare buydown agreement (full fare reimbursement for Metrobus rides taken by eligible students) and pilot program extension through August 31, 2020. In 2020, The Board approved Resolution 2020-29 extending the term of the program.

The program broadens student access to transit services, jobs and regional connectivity. Since inception, the Fairfax County Free Student Bus Pass Pilot Program has provided approximately 105,000 rides generating over \$210,000 in revenue.

Discussion:

The Fairfax County Board of Supervisors is requesting expansion of the Fairfax County Free Student Bus Pass Program to include Annandale High School, Davis Center, Falls Church High School and Marshall High School, effective with the Fall 2022-2023 school year.

In addition to expanding the program, the current fare buydown agreement will be revised to allow quarterly payments as part of the Jurisdictional Subsidy invoice for the Fairfax County Free Student Bus Pass Program based on estimated usage. The new program terms will allow the County to further its data collection and program analysis, with Fairfax County paying full program costs, including any applicable increase to cost or fares.

Furthermore, Fairfax County anticipates additional program expansion to advance transit equity; therefore, to allow for future program modifications, staff recommends delegating authority to the GM/CEO to make future amendments to the fare buydown agreement to include additional facilities in the County.

FUNDING IMPACT:

No Funding Impact.	
Project Manager:	Tracey Foster
Project Department/Office:	CFO/TRES

TIMELINE:

Previous Actions	July 2018 – Board of Directors approved Resolution 2018-29, which authorized the Fairfax County Free Student Bus Pass Pilot Program at Justice High School. July 2019 – Board of Directors approved Resolution 2019-26 authorizing the execution of a fare buydown agreement and Fairfax County Free Student Bus Pass Pilot Program extension through August 2020. July 2020 - Board of Directors authorized Resolution 2020-29 to exercise the extension and all remaining options to continue the fare buydown agreement with Fairfax County.
Anticipated actions after presentation	Execution of Fairfax County's Free Student Bus Pass Program and revised fare buydown agreement.

RECOMMENDATION:

Board authorization to expand the Fairfax County Free Student Bus Pass Program and revise the fare buydown agreement to include Annandale High School, Davis Center, Falls Church High School and Marshall High School and delegate the GM/CEO authority to approve future program changes.

PRESENTED AND ADOPTED: July 28, 2022

**SUBJECT: AMENDMENT TO FAIRFAX COUNTY FREE STUDENT BUS PASS PROGRAM
MEMORANDUM OF AGREEMENT**

2022-20

**RESOLUTION
OF THE
BOARD OF DIRECTORS
OF THE
WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY**

WHEREAS, Resolution 2011-30 requires Board of Directors approval for all fare buydown agreements; and

WHEREAS, In Resolution 2018-29, the Board authorized the implementation of a one-year pilot of the Free Student Bus Pass Program for Justice High School students in Fairfax County until August 31, 2019, which was extended for an additional year by Resolution 2019-26; and

WHEREAS, In Resolution 2020-29 the Board authorized the General Manager and Chief Executive Officer (GM/CEO) to execute a fare buydown agreement for Fairfax County to pay the full costs and fares associated with a permanent Free Student Bus Pass Program ("FSBPP"); and

WHEREAS, WMATA and Fairfax County entered into that certain Free Student Bus Pass Program Memorandum of Agreement dated July 29, 2020; and

WHEREAS, The Fairfax County Board of Supervisors approved expanding the FSBPP to include Annandale High School, Davis Center, Fall Church High School and Marshall High School and appropriated funding for those schools;

NOW, THEREFORE, be it

RESOLVED, That the Board of Directors authorizes the General Manager and Chief Executive Officer to negotiate and execute an amendment to the Free Student Bus Pass Program Memorandum of Agreement to include additional schools as requested by Fairfax County, in substantially the same form shown in Attachment A, for Fairfax County to pay the full costs of the Free Student Bus Pass Program, including any applicable increase to cost or fares; and be it further

Motioned by Mr. Smedberg, seconded by Dr. Hadden Loh

Ayes: 8- Mr. Smedberg, Ms. Babers, Mr. Zappi, Ms. Kline, Mr. Alcorn, Dr. Hadden Loh, Mr. Drummer and Ms. Martin-Proctor

RESOLVED, That the Board of Directors authorizes the General Manager and Chief Executive Officer to negotiate and execute further amendments to the Fairfax County Free Student Bus Program Memorandum of Agreement to include additional schools as may be requested by Fairfax County so long as Fairfax County appropriates funding to pay the full cost of any additional schools; and be it finally

RESOLVED, That in order to continue the Fairfax County Free Student Bus Pass Program without interruption, this Resolution shall be effective immediately.

Reviewed as to form and legal sufficiency,



Patricia Y. Lee
Executive Vice President and General Counsel

WMATA File Structure No.:
9.12.9 Tariff (WMATA Fare Structure)

**SECOND AMENDMENT TO FAIRFAX COUNTY FREE STUDENT BUS PASS
PROGRAM AGREEMENT**

This Second Amendment to the Free Student Bus Pass Program Agreement ("Second Amendment") is entered into as of _____, 2022 by and between the Washington Metropolitan Area Transit Authority ("WMATA") and Fairfax County, ("the County") acting by and through Fairfax County Department of Transportation. WMATA and the County are each referred to herein by name or as a "Party" or collectively, as the "Parties".

RECITALS

WHEREAS, pursuant to that certain Free Student Bus Pass Program ("FSBPP") Agreement, dated July 29, 2020, by and between WMATA and the County ("FSBPP Agreement"), the County provides WMATA Metrobus service at no cost to eligible students as determined by the County;

WHEREAS, eligible students at Justice High School located at 3301 Peace Valley Lane, Falls Church, VA 22044 currently participate in the FSBPP;

WHEREAS, the County wishes to include more schools in the FSBPP to advance One Fairfax principles to promote equitable access and opportunity to fully participate in the region's economic vitality, contribute to students' readiness for the future, and to connect students to assets and resources; and

WHEREAS, the County desires and WMATA agrees to expand FSBPP to additional schools including, but not limited to, Annandale High School located at 4700 Medford Drive, Annandale, Virginia 22003; Davis Center located at 7731 Leesburg Pike, Falls Church, VA 22043; Falls Church High School located at 7521 Jaguar Trail, Falls Church, VA 22042; and Marshall High School located at 7731 Leesburg Pike, Falls Church, VA 22043 in accordance with the terms and conditions herein; and

NOW, THEREFORE, in consideration of the preceding and the promises, agreements, terms and conditions set forth herein, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

RIGHTS AND RESPONSIBILITIES

Article I – Definitions – Capitalized terms used but not defined herein shall have the meanings assigned to such terms in the FSBPP Agreement

- A. "Confidential Information" means all personal identifying information associated with students.

- B. “Fare Buydown Agreement” means an Agreement with a third-party payor, such as the County, of fare for a transit rider.
- C. “FSBPP Fare Product” means a WMATA-issued electronic pass that allows unlimited travel on certain Metrobus and Fairfax Connector (in the event that fare collection is underway, then also the City of Fairfax CUE system) as further specified in Exhibit A.

Article II – General Roles and Responsibilities:

- A. In addition to its other responsibilities under this Agreement, WMATA shall:
 - 1. Provide reimbursement billing through the end of the 2022-2023 School Year, and then in subsequent school years beginning in 2023-2024 School Year, WMATA shall invoice the County in accordance with WMATA processes and procedures for subsidy billing;
 - 2. Seek approvals and authorizations from the WMATA Board of Directors as may be required;
 - 3. Program the FSBPP Fare Product to provide access to select Metrobus routes as specified by the County and at no cost to the student; and
 - 4. Assist with card registration as may be requested by the County.
- B. In addition to its other responsibilities under this Agreement, the County shall:
 - 1. Submit timely payment to WMATA within 45 days of receipt of invoice;
 - 2. Promulgate eligibility criteria, user rules and regulations as necessary for the FSBPP Program and provide a copy thereof to WMATA;
 - 3. Request such approvals of the County Board of Supervisors as may be necessary to implement this Agreement;
 - 4. Enforce FSBPP individual and trip eligibility rules; and
 - 5. Seek funding appropriations by the County as set forth in this Agreement.

Article III – Program Requirements

A. Free Student Bus Pass Program

1. County shall specify the Metrobus route numbers to be programmed for the FSBPP Fare Product at the time an order for FSBPP Fare Media is placed with WMATA. The FSBPP Fare Product shall not permit access to the Metrorail system or any other WMATA provided service. No stored value may be loaded onto FSBPP Fare Media. Activated FSBPP Fare Product will be programmed onto each FSBPP Fare Media requested by the County.
2. WMATA will fulfill County FSBPP Fare Media orders as soon as possible. Customized FSBPP Fare Media in WMATA's inventory shall be delivered to the County within 14 business days. The County acknowledges that customized FSBPP Fare Media not in WMATA's current inventory may take up to six (6) months to receive due to manufacturer supply chain matters beyond WMATA's control.
3. The County shall be responsible for distributing and registering the FSBPP Fare Media to each FSBPP Student; provided, that the County may request that WMATA provide assistance in distributing and registering the FSBPP Fare Media, and the County shall be solely responsible for funding fees up to \$5,000 for WMATA to provide such assistance. The County shall provide a written request not less than 30 days in advance to WMATA outlining the distribution and registration assistance desired.
4. FSBPP Fare Media shall be available only to persons who are identified by the County as eligible FSBPP Students.
5. The County shall provide appropriate notice to each FSBPP Student, Students' parents/guardians and school administration that:
 - a. FSBPP Students must "tap to ride" and that WMATA will not provide any service in the absence of a valid fare media being properly used on Metrobus routes;
 - b. FSBPP students must use FSBPP Fare Media when using the Metrobus for FSBPP Program purposes;
 - c. FSBPP students must only use FSBPP Fare Media on Metrobus routes specified in FSBPP Fare Media information developed by the County. Such FSBPP Fare Media is not a valid, accepted Fare Media for Metrorail service. FSBPP

ATTACHMENT A

students must use a different form of fare payment to ride Metrobus routes not included;

- d. WMATA has a “No Card; No Ride” policy;
 - e. FSBPP Fare Media are not transferrable to any other person;
 - f. Transportation on approved Metrobus routes shall be available only to FSBPP Students who possess a valid FSBPP Fare Media;
 - g. Cash value may not be added or stored onto FSBPP Fare Media.
6. The County acknowledges and agrees that WMATA has no responsibility for monitoring the use of the Metrobus System for compliance with FSBPP Program eligibility terms and conditions, the County-imposed individual and trip eligibility requirements, including Metrobus routes and the hours of usage. WMATA is required to provide transportation to persons who present, through tapping, working Fare Media with a valid Fare Product. WMATA is required to enforce its Tariff on the Ridership Rules and Guidelines as well as local and federal laws pertaining to face masks and social distancing.

B. Card Use Verification Process; Deactivation of Lost, Damaged, Stolen, and Misused Cards

- 1. The County shall register FSBPP Fare Media in order to verify use and abuse of such FSBPP Fare Media. Written instructions on FSBPP Fare Media can be found in the SmarTrip® Online User Guide, attached as Exhibit B.
- 2. If the County determines that a FSBPP Fare Media should be deactivated because of loss, theft, misuse or any other reason, the County shall flag the serial number of the Fare Media immediately in the Registration system. WMATA will then deactivate the Fare Media within two (2) business days.
- 3. Damaged cards, including but not limited to manufacturer and technological defects, shall be returned to WMATA by the County. As soon as practicable, WMATA, in its sole discretion, will provide to the County either a full refund of purchase price or a replacement card for each damaged card.

Article IV --- FSBPP Billing

A. Reimbursement Invoice for 2022-2023 School Years

For School Year 2022-2023, WMATA shall invoice the County as a separate line item on the Jurisdictional Subsidy invoice on a quarterly basis in an amount equal to fare costs associated with actual rides made using the FSBPP Fare Media during the prior quarter. Actual rides will be calculated based on WMATA ridership reports and data. Such reports shall be provided to the County upon request. School Year 2022-2023 student rides are calculated for as follows: number of actual student rides boarded using FSBPP Fare Media during the previous quarter multiplied by the then current cost for Metrobus fare, (presently \$2). The cost of fare shall be determined at the time such ride is taken.

B. Fare Buydown Invoice for Subsequent School Years

For school years beginning 2023-2024 and all subsequent School Years, WMATA shall invoice the County on a quarterly basis shown as a separate line item on the Jurisdictional Subsidy invoice for the FSBPP. Such invoice shall be provided at least forty-five (45) days before the beginning of each quarter in an amount equal to the estimated use of FSBPP Fare Media as the form of payment for rides taken pursuant to this Agreement for the current school year. Estimated ridership for the current year shall be calculated with the aggregate number of actual rides provided under the Program for the previous school year multiplied by the then current fare divided into four equal quarterly payments.

C. The aggregate costs for the FSBPP shall be as follows:

1. Number of FSBPP Fare Media issued by WMATA to the County under this Agreement multiplied by the then current rate for Fare Media (currently \$2.00). A one-time payment shall become due and payable on the Second day of the new quarter after the County's receipt of FSBPP Fare Media issued by WMATA, if any.
2. The fare cost for FSBPP Fare Media for the current school year with actual rides calculated pursuant to Article IV A or estimated rides actual rides calculated pursuant to Article IV B to be invoiced and paid quarterly.
3. Actual cost of County-requested FSBPP Fare Media registration and/or distribution support (if any) provided by WMATA shall be added to the estimated quarterly payment.

Article V --- Cost of Goods and Services

Total amount of goods and services ordered under this Agreement shall be determined by the County according to the amount approved by the Board of Supervisors. To the extent that the County requests goods or services anticipated to exceed its appropriated funds, WMATA shall have no obligation to provide such goods or services until the County has identified and agreed to provide additional funding to cover the request for goods and services.

Article VI – Reconciliation

A. Process

1. WMATA shall complete a fiscal year-end reconciliation on or about June 30 of each school year based on actual riders taken with FSBPP Fare Media and shall apply any difference toward the FSBPP Program costs in the next occurring school year.
2. Reconciliation shall not include any return, refund or cost reduction for customized FSBPP Fare Media provided under this Agreement.
3. For the purposes of this calculation, the Reconciliation Amount shall be equal to the difference between the amount paid by the County pursuant to Article IV(B) and the cost of actual rides taken with FSBPP Fare Media during the then current school year subtracted by the number of such rides that qualified for free transfers with the sum multiplied by the then current fare rate.
4. Based upon the reconciliation, WMATA shall apply a credit or debit to the County equal to the Reconciliation Amount, if any.

B. Interest

Within thirty (30) days after the end of WMATA's fiscal year, the County shall receive an interest credit from WMATA for any Credit Amount pursuant to the WMATA Interest Policy as approved by the WMATA Board of Directors, as allowed by law.

Article VII - Data Sharing

A. WMATA shall monitor and provide the following information to the County:

1. The average cost per ride using the FSBPP Fare Product shall be calculated and included with the quarterly invoice.

2. The number of actual boardings on Metrobus routes using the FSBPP Fare Media shall be provided on a monthly basis.
3. The County may request additional aggregated data that the County may need from time to time related to the FSBPP Program, provided the information is reasonably available for WMATA to produce. WMATA data, records and reports shall be the official records for all purposes related to Article IV herein.
4. WMATA's books and records may be audited by the County not more than once per year and not later than three (3) years after the year of expenditure.

B. Limitation on Use

WMATA and the County are sharing Confidential Information solely for the purposes of the Parties and their employees or contractors performing their obligations under the Free Student Bus Pass Program, for the purposes of providing information to Program participants about their FSBPP Fare Media to allow them to utilize that Fare Media fully; to evaluate the efficiency and effectiveness of the Program; to help ensure the success of the Program; to help address or prosecute fraud or abuse; and to help ensure that County funds are expended efficiently and effectively (the "Authorized Purposes"). The Parties agree to use the Confidential Information solely for the aforementioned Authorized Purposes. Any other requested use of Confidential Information will require advance written approval by the Party providing the information.

C. Limitation on Disclosure

The Parties agree to limit dissemination of the Confidential Information to those personnel who are working on Authorized Purposes. All personnel to whom the Confidential Information is disclosed shall be apprised of its confidential nature and the general terms of this Agreement.

D. Required Disclosure

Nothing in this Agreement shall prohibit either Party from disclosing Confidential Information if legally required to do so by judicial or governmental order or in a judicial or governmental proceeding ("Required Disclosure"), provided that the Discloser then shall (i) give the other Party prompt notice of such Required Disclosure prior to disclosure; (ii) cooperate with the other Party in the event that that Party elects to contest such disclosure or seek a protective order with respect thereto, and (iii) in any event only disclose the exact Confidential Information, or portion thereof, specifically requested by the Required Disclosure.

E. Duty of Care

Each Party will use the same degree of care to avoid unauthorized disclosure of Confidential Information that is employed with respect to its/his/her own confidential information of like importance and take any steps as are reasonably requested by the Discloser to prevent or stop a breach or threatened breach of this Agreement.

F. Unauthorized Disclosure

Each Party shall immediately notify the other Party if it becomes aware of any unauthorized use, access, copying, or disclosure of any of the other Party's Confidential Information.

G. Remedies

In the event of any unauthorized disclosure of the Confidential Information, relief may be obtained in accordance with applicable law.

H. Return/Destruction

Except as specified below or in accordance with applicable law, within ten (10) business days of receipt of a written request, either Party will return all tangible forms of the Confidential Information (including all hard and electronic copies thereof) to the disclosing Party along with all copies and portions thereof, or certify in writing that all Confidential Information has been destroyed in accordance with industry best practices for destruction of such material, as elected by the disclosing Party. Notwithstanding the preceding, within thirty (30) business days of completion, cancellation, or any other termination of the Free Student Bus Pass Program, each Party shall return all tangible forms of the Confidential Information (including all hard and electronic copies thereof), along with all copies and portions thereof, or may choose to destroy all tangible forms of such Confidential Information in accordance with industry best practices for destruction of such material, and certify such destruction to the other Party.

I. Services Unique

It is expressly understood and agreed that the rights and benefits granted to the County hereunder are of a special, unique, unusual, extraordinary character, giving them a peculiar value, the loss of which cannot be reasonably or adequately compensated in damages in an action at law, and the County's failure or refusal to perform its obligations hereunder would cause irreparable harm or damage. Should the County fail or refuse to perform such obligations, WMATA shall be entitled to seek injunctive or other equitable relief against the County to prevent the continuation of such

failure or refusal or to prevent the County from performing services for or granting rights to others in violation of this Agreement.

Article VIII – General Matters

A. Dispute Resolution

In the event of a dispute under the Agreement, the Parties agree to “meet and confer” to ascertain if the dispute can be resolved without the need of a third party or judicial intervention. Fairfax County’s Department of Transportation Director and WMATA’s designee shall be authorized to conduct negotiations on behalf of their respective entities.

Any disputes between the County and WMATA 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 or if there is no response within thirty (30) days, the dispute may be resolved as discussed in Article VIII, Section B.

B. Court Jurisdiction

Each Party agrees to submit any action or proceeding relating to the subject matter of this Agreement to the sole and exclusive jurisdiction of the United States District Court for the Eastern District of Virginia, Alexandria Division.

C. Governing Law

This Agreement shall be governed by the laws of the Commonwealth of Virginia, except that in the event of any conflict of law, the WMATA Compact shall govern.

D. Amendments

This Agreement may not be amended or modified in any respect except by an instrument in writing signed by both Parties.

E. Term

This Agreement shall be effective on the date the last signature is affixed and shall continue in effect until August 1, 2027, unless terminated earlier under the terms of this Agreement.

The County may extend the period of this Second Agreement by exercising a maximum of five (5) one-year option periods for a maximum of ten (10) years. The County shall provide WMATA with written notice of its intent to exercise an option period on or before June 30 of the year in which expiration is scheduled to occur. Extensions of this Second Agreement exercised by option are subject to appropriation by the Fairfax County Board of Supervisors and if in any event such funding is depleted, WMATA shall have no obligation to provide service or any other obligation under this Second Agreement. WMATA may accept or reject an exercise of each option in its sole discretion.

F. Termination

This Agreement may be terminated for convenience by either Party upon providing 90 days' written notice, or unless sooner terminated in accordance with this Agreement.

G. Assignment

No transfer or assignment of this Agreement, or of any part thereof or interest therein, directly or indirectly, voluntarily or involuntarily, shall be made unless consent for such transfer or assignment is Second approved in writing by the Parties.

H. Notices

Any notice required or permitted under this Agreement shall be in writing and shall be delivered electronically, sent by courier or prepaid registered or certified mail with return receipt requested and addressed as appropriate to the following addresses (or to such other or further addresses as the Parties may designate by notice given in accordance with this paragraph). Such correspondence shall be deemed delivered, upon the earlier to occur of the following: the day delivered by email or courier; the third day following the day on which the same shall have been mailed by U.S. registered or certified mail, return receipt requested, with all postal charges prepaid, to the respective addresses set forth below; or actual receipt at the Parties' addresses.

Washington Metropolitan Area Transit Authority

Robert M. Haas
Vice President and Treasurer
Office of the Treasurer
P O BOX 44390
Washington DC 20026-4390

Email: RMHaas@wmata.com

General Counsel
Office of General Counsel 7E
PO BOX 44390
Washington, D.C. 20026-4390

Dennis Anosike
Office of the Chief Financial Officer 8W
P O BOX 44390
Washington, D.C. 20026-4390
Email: DAnosike@wmata.com

Director, Customer Service, Sales and Fare Media
Office of the Treasurer
PO BOX 44390
Washington, D.C. 20026-4390

Fairfax County Department of Transportation:

Tom Biesiadny, Director
Fairfax County Department of Transportation
4050 Legato Road
Fairfax, VA 22033
Email: tom.biesiadny@fairfaxcounty.gov

Division Chief, Coordination & Funding Division
Fairfax County Department of Transportation
4050 Legato Road
Fairfax, VA 22033

with a copy to:

County Attorney
Fairfax County
12000 Government Center Parkway
Fairfax, VA 22035

I. Sovereign Immunity

Nothing herein shall be deemed to be a waiver of any Party's sovereign immunity or other applicable immunity, privilege or protection.

J. Limitation of Liability

EXCEPT IN THE CASE OF FRAUD, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR LOSS OF PROFITS, OR ANY SPECIAL, CONSEQUENTIAL OR INCIDENTAL DAMAGES, HOWEVER CAUSED, KNOWN OR UNKNOWN, ANTICIPATED OR UNANTICIPATED, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.

K Independent Contractors

The Parties are and shall be independent contractors to one another, and nothing herein shall be deemed to create an agency, partnership, employment or joint venture between the Parties. Each Party's personnel shall be considered solely employees or agents of that Party and not employees or agents of the other Party. Neither Party has the authority to bind the other to any third party nor otherwise to act in any way as the representative of the other, unless otherwise expressly agreed to in writing and signed by both Parties. Further, nothing in this Agreement shall be construed as creating any rights or benefits for any third person or entity.

L. Title VI Obligations.

This Second Agreement is between WMATA and the County of Fairfax only and the Parties agree that no separate Title VI obligations are imposed on WMATA solely pursuant to this Agreement. The Parties further agree that any Title VI obligations created solely pursuant to this Agreement, including but not limited to a public hearing in the event of a discontinued special fare, are the obligations of the County.

M. Agent Liability

This Agreement shall not be construed as creating any personal liability on the part of any officer, employee or agent of either Party.

N. Non-Discrimination

The Parties shall abide by the provisions of Executive Order 11246, as amended; Title VI of the Civil Rights Act of 1964, as amended (78 Stat. 252; 42 U.S.C. §§ 2000d et seq.); Title V, Section 504 of the Rehabilitation Act of 1973, as amended (87 Stat. 394; 29 U.S.C. § 794); the Americans With Disabilities Act (104 Stat. 327; 42 U.S.C. §§ 12103 et seq.), the Age Discrimination Act of 1975, as amended (89 Stat. 728; 42 U.S.C. §§ 6101 et seq.); and with all other federal laws and regulations prohibiting discrimination on the grounds of race, color, national origin, disability, religion, or sex, in employment and in providing facilities and services to the

public. Nothing in the advertising for employees shall be done which prevent those covered by these laws from qualifying for employment.

O. Severance of Terms and Compliance with Applicable Law

The Parties shall comply with all applicable laws, regulations, and rules. This Agreement is subject to all applicable laws, regulations, and rules governing the Parties hereinafter enacted or promulgated. If any term or provision of this Agreement is held to be invalid or illegal, such term or provision shall not affect the validity or enforceability of the remaining terms and provisions of this Agreement. Meeting the terms of this Agreement shall not excuse any failure to comply with all applicable laws, regulations, and rules, whether or not these laws and regulations are specifically listed in this Agreement.

P. Captions

The headings throughout this Agreement are for convenience and reference only and shall in no way be held to explain, modify, amplify or aid in the interpretation, construction, or meaning of the provisions of this Agreement.

Q. Counterparts

This Agreement may be signed in one or more identical counterparts, whether transmitted by electronic mail or otherwise. Original signatures transmitted and received via facsimile or other electronic transmission of a scanned document, (e.g., .pdf or similar format) are true and valid signatures for all purposes hereunder and shall bind the Parties to the same extent as that of an original signature. Each such counterpart shall be deemed an original for purposes of this Agreement.

R. Representations and Warranties

1. WMATA represents and warrants:

- a) It has the power and authority to enter into this Agreement, execute, deliver, and perform the Agreement.
- b) During the Term, WMATA shall comply with all applicable laws that are associated with WMATA's performance of its obligations and rights granted to Counterparty under this Agreement.
- c) The execution, delivery, and performance of this Agreement by WMATA does not and will not result in any violation of any laws applicable to WMATA.
- d) **DISCLAIMER OF WARRANTIES. EXCEPT FOR THE SPECIFIC WARRANTIES SET FORTH IN THIS SECTION 8, WMATA**

DISCLAIMS ANY AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

2. The County represents and warrants:
 - a) It has the power and authority to enter into this Agreement, execute, deliver, and perform the Agreement.
 - b) During the Term, the County shall comply with all applicable laws that are associated with the County's performance of its obligations under this Agreement.
 - c) The execution, delivery, and performance of this Agreement by the County does not and will not result in any violation of any laws applicable to the County.

ATTACHMENT A

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the date Second set forth above.

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

By _____ Date _____
Robert M. Haas
Vice President and Treasurer

FAIRFAX COUNTY

By _____ Date _____
Tom Biesiadny, Director
Fairfax County Department of Transportation