

RECEIVED
CIRCUIT COURT FOR
BALTIMORE CITY

MAYOR AND CITY COUNCIL
OF BALTIMORE,
A Municipal Corporation of the
State of Maryland
100 N. Holliday Street
Baltimore, MD 21202

IN THE
CIRCUIT COURT

18 SEP 12 AM 11:45
CIVIL DIVISION

FOR
BALTIMORE CITY

Plaintiff,

CASE NO.

v.

TRANSDEV NORTH AMERICA, INC.
8601 Georgia Avenue
Silver Spring, MD 20910

JURY TRIAL DEMANDED

and

TRANSDEV SERVICES, INC.
2100 Huntingdon Avenue
Baltimore, MD 21211

Defendants.

Serve on:
The Corporation Trust, Incorporated
2405 York Road
Suite 201
Lutherville Timonium, MD 21093-2264
Resident Agent
Transdev North America, Inc.
Transdev Services, Inc.

COMPLAINT

The Mayor and City Council of Baltimore ("City") brings this action against Transdev North America, Inc. and Transdev Services, Inc. ("Transdev") for breach of contract, and states:

INTRODUCTION

1. Transdev overcharged the City more than 20 million dollars for the operation of the Charm City Circulator, the free shuttle service available to City residents, downtown employees, students, tourists, and anyone who wants to ride.

2. Instead of invoicing the City for the hours it actually operated the Circulator, as the agreement for the operation of the Circulator required, Transdev invoiced the City for thousands more scheduled hours for passenger transport.

3. Transdev's overbilling practice resulted in the City overpaying Transdev over 16 million dollars. The City seeks compensation for the overpayment.

PARTIES

4. Plaintiff the Mayor and City Council of Baltimore is a municipal corporation of the State of Maryland, with legal offices located at 100 N. Holliday Street, Baltimore, Maryland 21202. The City derives its power and authority from the Constitution of Maryland, applicable Public General or Local Laws of the State of Maryland, and the Charter of Baltimore City.

5. Defendant Transdev North America, Inc., a Delaware corporation, formerly known as Veolia Transportation, Inc., is qualified to do business in Maryland as a foreign corporation, with its principal office in Silver Spring, Maryland.

6. Defendant Transdev Services, Inc., formerly named Veolia Transportation Services, Inc., is a corporation formed in Maryland and existing under the laws of the State of Maryland, with its principal office in Baltimore, Maryland.

JURISDICTION AND VENUE

7. The Court has subject matter jurisdiction over this matter under § 1-501 of the Maryland Code, Courts and Judicial Proceedings Article.

8. The Court has personal jurisdiction under § 6-102 and § 6-103(b)(1)(2)(5) & (6) of the Maryland Code, Courts and Judicial Proceedings Article because: a) Transdev is organized under the laws of and/or maintains its principal place of business in Maryland; b) Transdev transacts

business and/or performs work or service in the State; c) Transdev contracted to supply services in the State; d) Transdev has an interest in, uses, or possesses real property in the State; and e) Transdev contracted to insure on a contract to be performed within the State at the time the contract was made.

9. Venue is proper in this Court under § 6-201 of the Maryland Code, Courts and Judicial Proceedings Article because Transdev carries on a regular business in Baltimore City and because Transdev Services, Inc. maintains its principal offices in Baltimore City, Maryland, and the cause of action arose in Baltimore City.

BREACH OF CONTRACT

10. On or around February 11, 2009, the City and Transdev entered into a transit service agreement for shuttle bus services within Baltimore City, known as the Charm City Circulator, Contract No. B50000482 (the "Contract"). A true and authentic copy of the Contract (tabs and voluminous and irrelevant exhibits and amendments omitted) is attached hereto and incorporated herein as Exhibit A.

11. The Contract required Transdev to procure and maintain Commercial Garage Liability Insurance, Business Automobile Liability Insurance, Automobile Physical Damage Insurance, and Workers' Compensation Insurance.

12. The Contract, as approved by the City Board of Estimates, anticipated over 28 million dollars in costs to the City for the first five years of the Contract.

13. The compensation and method of payment terms of the Contract required the City to pay Transdev for each Revenue Service Hour, a term defined in the Contract.

14. Revenue Service Hour is defined in Section I.v. of the Contract as:

Revenue Service Hour: A Revenue Service Hour shall be defined as any sixty minute increment of time a vehicle is available for passenger transport within the pre-established schedules approved by the City. A vehicle is available for passenger transport from the time it arrives at the starting terminal point of the first scheduled trip and ends at the final terminal point of the last scheduled trip, excluding deadhead time, any meal breaks, service breaks, mechanical breakdowns and time a vehicle is down due to a preventable accident.

15. A City consultant reported to the City that it appeared that Transdev had billed the City for 29,419.62 hours when a bus had not been available for passenger transport based on a comparison of Charm City Circulator invoices and service reports from Transdev for the period July 2015 through June 2017, for a National Transit Database Report prepared February 7, 2017. These invoices resulted in greater than two million dollars in overbilling by Transdev.

16. In a letter dated March 2, 2018, the City Department of Transportation Director advised Transdev that the City had reviewed the Transdev Charm City Circulator invoices from July 2015 through June 2017 and discovered that it appeared that Transdev had invoiced more Revenue Service Hours than Transdev reported on its operating logs.

17. In her March 2nd letter, the Director requested that by March 16, 2018, Transdev provide a reconciliation of each invoice since July 2015 conforming the billing to the Revenue Service Hours recorded in operating logs. The Director requested that the Transdev response also detail hours that had been billed in prior invoices that were hours when a vehicle was not available for passenger transport. And, the Director requested Transdev specify the refunds due to the City.

18. Finally, in her March 2nd letter, the Director stated that the City would require Transdev, beginning with the February 2018 invoices and forward, to submit weekly service logs showing daily Revenue Service Hours and Revenue Service Miles by bus and route. The Director further stated that the City would verify the weekly service logs and make future payments based upon the number of Revenue Service Hours actually operated.

19. Transdev failed to provide either the reconciled invoices, the operating logs, or any accounting of refunds due.

20. Instead, Transdev admitted to the City Department of Transportation Director, in a letter dated April 11, 2018, that it had in fact invoiced the City for scheduled hours for the Charm City Circulator and not the Revenue Service Hours when vehicles were actually operated.

21. In its April 11th letter, Transdev claimed that it had reached an unwritten mutual agreement with unnamed City “representatives,” pursuant to which Transdev would simply bill and receive payment for scheduled hours, regardless of actual Revenue Service Hours.

22. On June 1, 2018, the City Purchasing Agent rejected by letter Transdev’s purported justification for its faulty invoicing because, among other reasons, contracts with the City cannot be orally amended. In her June 1st letter, the City Purchasing Agent explained that as a matter of law and pursuant to the explicit terms of the contract, all contract amendments must be in writing, executed by City officials with appropriate contracting authority, approved by the City Solicitor’s Office for form and legal sufficiency, and if over certain dollar expenditure thresholds, must be approved by the City Board of Estimates. The City Purchasing Agent further pointed out that the expenditure threshold for Board of Estimates approval at the time of the Agreement was \$5,000 and, at the time of her June 1st letter, was \$25,000.

23. The City Purchasing Agent's June 1st letter also demanded that Transdev immediately deliver to her offices the operating logs documenting Circulator service hours from July 2015 until the present, which she had previously requested to be delivered on March 16th. In addition, the Purchasing Agent demanded that Transdev produce operating logs for the period prior to July 2015, no later than June 15, 2018.

24. In her June 1st letter, the City Purchasing Agent further stated that a City Department of Transportation consultant had concluded that Transdev's overbilling resulted in a two million dollar discrepancy. The Purchasing Agent noted that Transdev's April 11th admission that it had billed for scheduled hours indicated that Transdev had overbilled since it commenced performance of the contract in 2010.

25. The City Purchasing Agent concluded her June 1st letter by stating that the City would convene a meeting with Transdev the following week with the hope that the parties could "reach a mutually agreeable resolution."

26. City officials met with Transdev on June 6, 2018 but did not resolve the matter.

27. Subsequently, by letter dated August 6, 2018, the City Purchasing Agent demanded that Transdev pay the City \$2,212,412.74 within 30 calendar days to partially compensate the City for Transdev's overbilling under the Contract. The Purchasing Agent noted that the City and Transdev had been communicating regarding Transdev's overbilling without resolution since early June.

28. The Purchasing Agent's August 6th letter reiterated that Transdev's actions had resulted in a more than two million dollar billing discrepancy, and it pointed out that Transdev had not yet provided the operating logs necessary for the determination of whether Transdev had overbilled the City since the inception of the Contract in 2010.

29. In addition, in her August 6th letter, the Purchasing Agent again requested adequate information to determine the amount of overbilling that had occurred, and she reiterated her request for corrected and verifiable outstanding invoices.

30. The City Purchasing Agent concluded her August 6th letter by stating that if the City did not receive the repayment as demanded, the City reserved the right to sue for damages in court or to take any other appropriate legal actions, and that the letter did not prejudice or waive any other rights or remedies the City may have under the Contract or under the law.

31. In a letter to the City Purchasing Agent dated August 17, 2018, Transdev again admitted that it invoiced the City for scheduled hours for the Charm City Circulator and not the actual service hours provided. Transdev further stated that it had done so for nearly eight years, beginning in 2010, and the City had routinely paid Transdev's invoices in full.

32. Transdev's submission of invoices to the City, and its acceptance of payment, for scheduled hours for the Charm City Circulator and not actual service hours, or Revenue Service Hours, as defined under the compensation and method of payment terms of the Contract, constitute a material breach of the Contract.

33. The City estimates that Transdev has overbilled the City over 20 million dollars. Upon information and belief, the City has overpaid Transdev at least 16 million dollars.

34. To date, Transdev has not repaid the City for the overbillings that the City paid to Transdev, and the City has incurred an over 16 million dollar loss as a result of Transdev's breach of the Contract.

WHEREFORE, Plaintiff the Mayor and City Council of Baltimore demands judgment against Defendants Transdev North America, Inc. and Transdev Services, Inc., jointly and severally, in an amount that exceeds \$75,000, plus interest, costs, attorneys' fees, and such other relief as this Court deems just and equitable.

Respectfully submitted,

MAYOR AND CITY COUNCIL OF BALTIMORE

Dated: Sept. 12, 2018

By: _____



ANDRE M. DAVIS
BALTIMORE CITY SOLICITOR
SUZANNE SANGREE
DIRECTOR OF AFFIRMATIVE LITIGATION
ELIZABETH RYAN MARTINEZ
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JURY TRIAL DEMAND

Plaintiff the Mayor and City Council of Baltimore demands a trial by jury of this action, pursuant to Maryland Rule 2-325.

Respectfully submitted,

MAYOR AND CITY COUNCIL OF BALTIMORE

Dated: Sept. 12, 2018

By: Andre M. Davis

ANDRE M. DAVIS
BALTIMORE CITY SOLICITOR
SUZANNE SANGREE
DIRECTOR OF AFFIRMATIVE LITIGATION
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**TRANSIT SERVICE AGREEMENT
BY AND BETWEEN
THE MAYOR AND CITY COUNCIL OF BALTIMORE
AND
VEOLIA TRANSPORTATION SERVICES, INC.**

THIS AGREEMENT is entered into this FEB 11 2009 day of 02 2009 (the "Effective Date") by and between the **MAYOR AND CITY COUNCIL OF BALTIMORE**, a municipal corporation of the State of Maryland, acting through its Department of Transportation (hereinafter referred to as the "CITY") and **VEOLIA TRANSPORTATION SERVICES, INC.**, a Maryland corporation with an office located at 2100 Huntingdon Avenue, Baltimore, MD 21211 and its principal office located at 720 East Butterfield Road, Suite 300, Lombard, IL 60148 (hereinafter referred to as "Veolia").

WHEREAS, Veolia is a Maryland corporation in the business of operating multiple modes of transportation in North America, including bus, rail, paratransit, shuttle and taxi services; and

WHEREAS, the City has determined that the continued growth and development of Baltimore's downtown and waterfront areas will cause a significant number of intersections to reach a failing level of service in the next three to five years, thus requiring more mobility options; and

WHEREAS, the City went through a competitive bidding process in June 2008 whereby it sought proposals from transportation firms or teams of firms to plan and operate the City-Sponsored Shuttle System; and

WHEREAS, the City therefore desires to engage Veolia to plan and operate circulator transit service in and around the downtown and waterfront communities of Baltimore City, pursuant to the terms and conditions set forth herein.

NOW THEREFORE, THIS AGREEMENT WITNESSETH: That in consideration of the terms, conditions, obligations and promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged the parties hereto agree as follows:

I. DEFINITIONS

In this Agreement, the following terms have the meanings specified or referred to below:

- a. **ADA:** Americans with Disabilities Act of 1990. Federal civil rights legislation which mandates accessibility for people with disabilities. Included is a requirement that all public transit agencies operating fixed route bus service provide complementary Para transit service to persons functionally unable to



- use accessible fixed route systems. The fixed route service operated under this agreement shall be accessible as required by the ADA. However, Veolia is not required by this Agreement and will not be operating complementary paratransit service under this Agreement.
- b. AVL: Automatic Vehicle Locator equipment. AVL is satellite-assisted advanced computer modeling that tracks vehicles on routes.
 - c. Bid Bond: Surety furnished by Veolia in its proposal for this project as guarantee it will enter into a contract for work at the price quoted in its proposal if its proposal is accepted.
 - d. Buses: As used in this Agreement, the terms "Buses", "vehicles" or "equipment" refer to the buses described in Section IV.D.
 - e. Bus Purchase Agreement: The agreement between Veolia and the OEM for the purchase by Veolia of the Buses.
 - f. City: The Mayor and City Council of Baltimore and City staff assigned to the oversight and coordination of this engagement.
 - g. Director: The Director of the Department of Transportation, or his or her designee.
 - h. Deadhead: For contracted fixed route services, refers to either miles or hours when a vehicle is not in revenue service, including travel to the location where a vehicle starts the route, from the end of the route back to the yard, from the ending terminal point of one trip to the beginning terminal point of the next trip when a vehicle does more than one trip requiring it to be off route and travel during driver breaks and other out of service times.
 - i. Headway: The time between buses on the same route. Headway coordination shall be accomplished to maintain at least nine (9) minutes, and no more than eleven (11) minutes between vehicles on all routes, at all times.
 - j. Holidays: The official City holidays are: New Year's Day, Martin Luther King, Jr.'s Birthday, President's Day, Good Friday, Memorial Day; Independence Day; Labor Day; Columbus Day, General Election Day, Veteran's Day, Thanksgiving Day; and Christmas Day. In addition, the City may direct a reduced level of services on unofficial holidays and during holiday periods.
 - k. MBE-WBE: Minority Business Enterprise (MBE) or Women-owned Business Enterprise (WBE) is a business that is owned, operated and controlled by one or more minority group members or one or more women, who have at least 51% ownership, and is located in the Baltimore City Market area. (See also Baltimore City Code Article 5, Subtitle 28 – Minority and Women's Business Enterprises.)
 - l. MDT: Mobile Data Terminal. A MDT is required in every vehicle equipped with AVL equipment.
 - m. No-Strand Policy: Requires that Veolia does not miss any end of day trips.

- n. OEM:** DesignLine USA, LLC, the manufacturer of the Buses. Original Equipment Manufacturer.
- o. Off Route:** Time and/or mileage traveled while a vehicle is deadheading between revenue trips. This may happen when a vehicle does multiple trips or is interlining with another route.
- p. Proposal:** A properly signed, guaranteed and written offer of Veolia to perform the work and to furnish the labor and materials at the unit price quoted in a Proposal.
- q. Recovery Time:** Any period of time when a revenue vehicle in fixed route service available for passenger transport has completed a trip and is waiting at the point of origin or designated layover zone for the next scheduled run to begin.
- r. Total Vehicle Miles:** All accrued mileage from the time a vehicle pulls out of the yard to go into revenue service until the time it pulls back into the yard.
- s. Tripper Service:** A fixed route revenue vehicle used for short-term additional service on a line. Trippers may be scheduled in advance or dispatched at the time needed to address capacity issues. The City shall approve requests for vehicle service hours. Tripper services may be requested by Veolia or scheduled by the City in response to capacity issues. Tripper services requested by the City will incur a three hour minimum charge per vehicle. If tripper services require operation with less than a 15% vehicle spare ratio, no liquidated damages will be assessed by the City for missed trips caused by lack of tripper vehicles.
- t. Recovery Point:** A location among a revenue service route where trips end and/or begin.
- u. Revenue Start Point:** The location along any revenue service route where revenue service commences either in the morning or at any time during the day when additional vehicles enter revenue service.
- v. Revenue Service Hour:** A Revenue Service Hour shall be defined as any sixty minute increment of time a vehicle is available for passenger transport within the pre-established schedules approved by the City. A vehicle is available for passenger transport from the time it arrives at the starting terminal point of the first scheduled trip and ends at the final terminal point of the last scheduled trip, excluding deadhead time, any meal breaks, service breaks, mechanical breakdowns and time a vehicle is down due to a preventable accident.
- w. Trip:** The service operated on one route starting at the revenue service start location or at the recovery point and returning to the recovery point.
- x. Vehicle Revenue Miles:** Miles traveled while the vehicle is in revenue service.

y. Vehicle Revenue Service: The time a vehicle is available for passenger transport within Veolia's established hours of service. For Contracted Fixed Route services, a vehicle is available for passenger transport from the time it arrives at the Revenue Start Point of the first scheduled trip and ends at the last terminal point of the last scheduled trip, excluding deadhead time, meal breaks, mechanical breakdowns, and time a vehicle is down due to a preventable accident.

II. PURPOSE

The purpose of this Agreement is to engage Veolia to purchase the buses to be used under this Agreement, and to plan and operate circulatory transit service in and around the downtown and waterfront communities of Baltimore City.

III. ORDER OF PRECEDENCE

Veolia will operate a circulatory transit service for the City in accordance with the proposal submitted by Veolia dated July 16, 2008 consisting of a Technical Proposal and Financial Proposal (the "Proposal") in response to the City's Request for Proposals for Baltimore City Shuttle/Transit Service dated June 25, 2008 (the "RFP"). The RFP and Proposal are hereby incorporated into this Agreement and are both attached as Exhibit A. Should there be any inconsistency in the terms and/or conditions between or among this Agreement, the RFP and the Proposal, the order of precedence of said documents from highest precedence to lowest shall be as follows:

1. This Agreement;
2. The RFP
3. The Proposal

IV. SCOPE OF SERVICES

- A. It is the intent of the City to provide fixed route circulator services which are designed individually and collectively to serve a variety of ridership markets, including residents, workers, tourists, etc. in the service area.
- B. Veolia will initially operate three circulator routes, generally as follows, which are subject to change at the request of the City:
 1. Red Route: An east/west loop generally along Pratt and Lombard Streets, with connections to Harbor East and the University of Maryland Biopark/fringe parking lots on the east and west ends of the route, respectively. Veolia will operate seven (7) buses on this route for a total of 31,467 revenue service hours per year.
 2. Yellow Route: A north/south loop generally along Charles and St. Paul Streets connecting the Inner Harbor to Penn Station. Veolia will

operate five (5) buses on this route for a total of 20,675 revenue service hours per year.

3. Green Route. A southeast loop connecting fringe parking lots along I- 83/Fallsway and the Shot Tower/Marketplace Station to Harbor East and Fells Point, then connecting to Johns Hopkins Hospital via Broadway. Veolia will operate six (6) buses on this route for a total of 31,287 revenue service hours per year.
- C. As an option to the City, the City reserves the right to add up to two (2) additional routes to the service area at the same per unit rate as other services (provided that a 15% bus spare ratio will be maintained at all times which is agreed to be 3 Buses out of a total of 21). These routes are as follows:
1. Route D. A South Baltimore loop connecting Locust Point/Fort McHenry to the Hamburg Street Light Rail Station, Gateway South development area, Camden Yards MARC Station and the Inner Harbor.
 2. Route E. A Canton/Patterson Park loop connecting said communities to Johns Hopkins Hospital.
- D. The fleet will be comprised of twenty-one (21) 35' BRT Design Line Low Floor Hybrid buses with 2 doors and perimeter seating as described in Exhibit F, and as identified on Exhibit B (to be completed upon delivery of the Buses) (the "Buses", which are also referred to as "buses" or "equipment" or "vehicles").
- E. All services will operate on ten minute headways during all service hours. The City intends to make traffic engineering improvements along the routes in order to assist Veolia in keeping to ten minute headways. Traffic engineering improvements may include dedicated lanes, signal priority/preemption, queue jumping, etc. .
- F. Hours of service shall be as follows:
- Summer Hours (April 1st through October 31st)
- | | |
|-------------------------|---------------------------|
| Monday through Thursday | 6:30 AM to 10:00 PM |
| Friday | 6:30 AM to 12:00 Midnight |
| Saturday | 8:00 AM to 12:00 Midnight |
| Sunday | 10:00 AM to 10:00 PM |
- Winter Hours (November 1st through March 31st)
- Monday through Thursday 6:30 AM to 9:00 PM

Friday	6:30 AM to 12:00 Midnight
Saturday	8:00 AM to 12:00 Midnight
Sunday	10:00 AM to 9:00 PM

- G. Service hours are subject to change from time to time by the City during the term of the contract. The City reserves the right to make changes in the scheduled miles and hours up to 15% above or below the total estimated hours and miles with no change in cost per unit rate. The parties agree that the 15% variance is based on 94,000 revenue service hours. Any changes in scheduled miles and hours that exceed 15% may result in a negotiated rate adjustment.
- H. Veolia will purchase from OEM pursuant to the Bus Purchase Agreement, twenty-one (21) Buses, using funds provided by the City and Veolia as provided elsewhere in this Agreement. If Veolia fails to satisfy the Delivery Conditions (as set forth in Section VI below), with respect to at least eleven (11) Buses, on or before the date which is one year after the Effective Date, then Veolia shall be in default hereunder, without notice from the City or any opportunity to cure such failure. Time is of the essence of this provision, but the Director shall have the right to extend such date in his sole discretion. Notwithstanding the foregoing, the parties acknowledge the fundamental importance to the City of having twenty-one (21) Buses available for services described herein. Therefore if all twenty-one (21) Buses are not placed in service as required by this Agreement within a reasonable time after the expiration of such one-year period, taking into account delays caused by force majeure, or by the OEM, and all other circumstances not within Veolia's control, the City shall have the right to terminate this Agreement. Before the City exercises such right it shall give written notice to Veolia that it is considering the exercise of such right and shall discuss the situation with Veolia.

V. **RESPONSIBILITIES OF THE PARTIES**

- A. Veolia's responsibilities under this Agreement shall include but are not necessarily limited to the following:
1. Day-to-day operation and management of the services described in the instant Agreement, in compliance with Standard Operating Procedures approved by the City, as well as all applicable local, state and federal laws and regulations.
 2. Perform overall branding and marketing of the services (including printing and distribution of route and schedule information).
 3. Handle all customer comments related to the services including development of written responses to customer complaints and inquiries, with input from the City, and as described in the RFP.

4. Provide and/or maintain operating and service facilities adequate to support the continued operation and potential expansion of the services described in the instant Agreement.
5. Schedule and dispatch all drivers and vehicles, including run-cutting and driver assignments.
6. Maintain all vehicles and related equipment used in operation of this service in A-1 condition, including revenue and non-revenue vehicles, wheelchair lifts/ramps, signage (excluding bus stop signs), and maintenance equipment.
7. Operate vehicles that are free of debris, garbage, trash, graffiti, broken glass and body damage.
8. Maintain sufficient parts, materials and supply inventories for the operation and required maintenance of all vehicles and equipment.
9. Recruit, hire and train all personnel with management, operations, and maintenance expertise necessary to operate the service.
10. On-going management and supervision of all personnel (drivers, dispatchers, supervisors/ambassadors, office and maintenance personnel) including hiring, testing, training, supervision and evaluation.
11. Prepare and submit all operating reports on time and in the prescribed formats as described in the RFP.
12. Except as provided for herein, provide all revenue and non-revenue vehicles.
13. Provide and maintain all office and equipment identified in the RFP in addition to other equipment deemed necessary to operate services, except as provided for herein.
14. Attend periodic meetings with City staff to submit reports and updates, or at other times, as needed.
15. Maintain compliance with all current local, state and federal rules and regulations including the Americans with Disabilities Act (ADA), specifically: wheelchair lifts/assistance and major stop/transfer point announcements. Any material change in the law may trigger an amendment to this Agreement.
16. Maintain compliance with all performance standards, as described in Exhibit E.
17. Perform contract start-up and transition activities as required.
18. Except as provided herein, Veolia shall be responsible for all of the costs associated with those responsibilities including:

- i. Staffing: staffing for those functions covering the times and requirements outlined in the Proposal. Those persons shall be employed by Veolia which shall be responsible for all employment costs including salaries, wages, payroll taxes, workers compensation, health insurance and other benefits.
 - ii. Reporting: Veolia's General Manager will work to report to the City's contract manager and the parties will mutually cooperate to resolve any operational issues.
 - iii. Technology: all software, hardware, set up and maintenance costs will be Veolia's responsibility.
 - iv. Telephone and internet: telephone (including hardware) and internet charges will be the responsibility of Veolia.
 - v. Office supplies.
 - vi. Postage & Shipping.
 - vii. Equipment Maintenance/Service Contracts.
 - viii. Computer Supplies & Maintenance.
 - ix. Drug Testing of safety sensitive staff.
 - x. Driver hiring, training and management (including wages, payroll taxes, benefits, hiring, training and qualification costs).
 - xi. System operation including all functions involved in the completion of routes, customer pick-ups and drop-offs.
 - xii. Office facility and other operating location(s).
19. Veolia shall in a workman like and professional manner operate the circulatory transit services system for the City.
- B. The City's responsibilities under this Agreement include the following:
- 1. Establish overall service operations and maintenance parameters for Veolia.
 - 2. Establish fare policies and fare structure including transfer agreements with partners such as the Maryland Transit Administration, Water Taxi, etc. Should the City institute a fare on the services, the City shall provide for off-board fare collection including repair, training, parts, labor and replacement equipment, at its sole cost and responsibility. (Veolia would be responsible for validating fares upon passenger boarding.)
 - 3. Administer and monitor the Contract Agreement including performance monitoring, audits, and accident/incident investigation, as defined herein.
 - 4. Receive invoices, verify monthly reports, and process payments to Veolia per agreement.
 - 5. Determine compliance with service performance requirements and assess penalties as specified in the Agreement.
 - 6. Perform installation and on-going maintenance of bus stops, except for Next Bus arrival system as described herein.

7. Attend meetings with Veolia's General Manager and others as needed.
8. Review and approve Veolia's Standard Operating Procedures as described herein.
9. Monitor contract performance.
10. Provide vendor with timely schedule changes, closings, etc.
11. Approve and process payments in a timely manner.

VI. COMPENSATION AND METHOD OF PAYMENT

A. Revenue Service Hours

The City shall pay Veolia during years 1-5 for each Revenue Service Hour, at the rates outlined below:

1. Year 1: \$ 62.38
2. Year 2: \$ 64.87
3. Year 3: \$ 67.12
4. Year 4: \$ 69.98
5. Year 5: \$ 72.34

Revenue Service Hours shall include the expenses as described in Exhibit C ("Hourly Rate/Operating Expenses"). Year 1 shall begin on the date that at least 11 Buses are placed in revenue service as described in Section VI.D ("Commencement of Services").

In the event the City, at its option, elects to begin revenue service with less than 21 buses, then the parties shall agree upon an interim Revenue Service Hour rate. If the parties agree, such agreement must be evidenced by a written amendment to this Agreement, which must be approved by the Baltimore City Board of Estimates. The interim Revenue Service Hour rate will be effective until such time that full operation as described in Section IV B is commenced. The interim Revenue Service Hour rate shall be calculated to take into account both reduced variable costs and the increase in fixed costs per Buses.

B. Cost of Buses

The cost of the Design Line buses is not to exceed \$590,000 each for 21 buses plus the cost of the tax imposed for titling the vehicles in the State of Maryland. The City will contribute **SIX MILLION DOLLARS (\$6,000,000)** towards the purchase of these vehicles. Veolia will contribute the remaining cost towards the purchase of these buses, which the City will repay pursuant to the terms and conditions stated below (see Section VI.G (2) "Amortization Schedule for the Remaining Buses").

In the event that the City does not exercise its option to renew the Agreement, or this Agreement is terminated for any reason or no reason, the City will pay Veolia the unamortized portion of the Deferred Capital Cost and Veolia will convey title to the vehicles to the City pursuant to Section VI (H) below.

If this Agreement is terminated after the City has made the first payment for buses pursuant to Section VI.G and prior to the acceptance of the first 11 buses, Veolia will pay to City, within thirty (30) days after demand by City, an amount equal to (i) Two Million Four Hundred Thousand Dollars (\$2,400,000) minus (ii) the cost of all Buses that have been (A) delivered to the City and which comply with the DesignLine Specifications and this Agreement and (B) titled in the name of the Mayor and City Council of Baltimore or the City's designee. Even if item (ii) is greater than item (i), this provision does not obligate the City to pay any amount to Veolia.

C. Delivery of Buses

The term "Delivery Date" means the date on which the following conditions are all met: all 21 Buses are in Veolia's storage facility in Baltimore; all Buses are in compliance with the Bus Specifications attached as Exhibit F ("DesignLine Specifications") and this Agreement, as mutually determined by the City and Veolia; all Buses are insured as required by this Agreement; and, all Buses are registered and titled in Maryland as required by this Agreement.

D. Commencement of Services

Veolia shall be obligated to begin the circulator transit service on July 1, 2009, or sixty (60) days after the Delivery Date for all 21 Buses, whichever is later, unless otherwise approved by the City.

In the event that the City, at its sole option, directs Veolia to begin the circulator transit service with less than 21 Buses, and the Baltimore City Board of Estimates approves an amendment that states an interim Revenue Service Hour rate, Veolia shall begin the service within sixty (60) days after the delivery of 11 Buses.

E. Start-up Expenses

The City shall pay Veolia an amount not to exceed **THREE HUNDRED NINETY FOUR THOUSAND DOLLARS (\$394,000)** for start-up expenses including, but not limited to:

1. Driver Recruitment;
2. Training and background checks;
3. Storage Facility Improvements.

In addition, the City shall pay Veolia, on a reimbursement basis, an amount not to exceed **FIFTY THOUSAND DOLLARS (\$50,000)** for start-up marketing expenses requested by the City.

F. Method of Payment – Operating Expenses

- 1) Each calendar month VEOLIA will submit documented invoices for services rendered and supplies and equipment used. Monthly invoices are due no later than the fifth (5th) day of each month for the preceding month.
- 2) Start-up Expenses: Veolia will submit documented invoices for all start-up expenses, as described in Section VI.D (“Start-up Expenses”), within thirty (30) days after incurring such expenses. All start-up expenses must be incurred not later than thirty (30) days after the first day on which full operation as described in Section IV B occurs; provided, however, that start-up expenses relating specifically to start-up training shall be paid by the City if they are incurred no later than six (6) months after the first day on which said full operation occurs.
- 3) The City will reimburse each approved invoice within forty-five (45) days of receipt.

G. Method of Payment – Capital Expenses

- 1) Cost of Buses: The City’s Six Million Dollar (\$6,000,000) capital contribution towards the purchase of the buses shall be payable as follows:
 - a. The first payment of Two Million Four Hundred Thousand Dollars (\$2,400,000) shall be paid by the City to Veolia by the later of thirty (30) days after the Effective Date, or fifteen (15) days after the Bus Purchase Agreement is fully signed. As a condition to making such payment, the City shall have the right to require reasonable assurance that this \$2,400,000 payment will be used to pay the OEM, or to reimburse Veolia for its payment to the OEM of, the down payment owed to the OEM under the Bus Purchase Agreement. The Bus Purchase Agreement will be negotiated between Veolia and the OEM after the Effective Date, and it must be satisfactory to the City and Veolia.
 - b. The City shall pay Veolia Three Million Six Hundred Thousand Dollars (\$3,600,000) when all the following conditions are satisfied: at least eleven (11) Buses are in Veolia’s storage facility in Baltimore; all Buses are in compliance with the DesignLine Specifications (Exhibit F) and this Agreement, as mutually determined by the City and Veolia; all such Buses are insured as required by this

Agreement; and all such Buses are registered and titled in Maryland as required by this Agreement.

- 2) Amortization Schedule for the Remaining Buses: Veolia shall finance (i) the remaining cost of the buses, plus (ii) Maryland titling tax on the total fleet cost (together, the "Deferred Capital Cost"). The City will repay Veolia the Deferred Capital Cost based on a 12-year amortization schedule at seven (7) % interest accruing from the Delivery Date.
- a. The City will make monthly amortization payments towards the balance of the Deferred Capital Cost, being financed by Veolia, pursuant to Exhibit D ("Amortization Schedule") which schedule shall be adjusted to reflect the actual Deferred Capital Cost as of the Delivery Date.
 - b. The first monthly amortization payment shall be made on the first day of the second full month following the Delivery Date. The City shall reimburse Veolia for any accrued interest between the Delivery Date and the last day of the month in which said Delivery Date occurs.
 - c. Prepayment: The City may pay Veolia, in whole or in part, the unpaid portion of the Deferred Capital Cost at any time, and from time to time, without any premium or additional charge.

H. Balloon Payment for Buses: In the event that this Agreement expires or terminates for any reason or no reason, the City shall pay Veolia the unamortized portion of the Deferred Capital Cost of the vehicles, pursuant to Exhibit D, ("Amortization Schedule"), plus accrued interest from the date of termination or expiration to the date of payment, within forty-five (45) days of termination or expiration. This provision does not apply to cancellation by Veolia as described in Section XI.

Upon the termination or expiration of this Agreement for any reason and payment by the City as described above, Veolia must deliver each of the Buses to the City in a condition which complies with the standards as described in Exhibit G ("Return Condition of the Buses"). Should Veolia fail to comply with this paragraph, the City may perform the required repairs necessary to bring the Buses into the required condition and Veolia shall reimburse the City for the cost thereof. The City may set off such cost against amounts due to Veolia for services pursuant to Section VI.A.

I. Fuel Costs

Each calendar month VEOLIA shall submit documented invoices for its actual fuel costs (including taxes and delivery). Monthly invoices are due no later than the fifth (5th) day of each month for the preceding month. The City shall reimburse Veolia's actual cost of fuel on a monthly basis within forty-five (45) days of receipt of invoices.

VII. TERM OF CONTRACT

The initial term of this Agreement shall begin upon full execution hereof and end five (5) years from the first day on which a Revenue Service Hour occurs (Original Term). This Agreement may be renewed at annual increases in the rate per Revenue Service Hour not to exceed 7.5 % from the rate charged in the prior year for two (2) additional one (1) year periods at the sole option of the City. Unless otherwise changed in writing, the terms and conditions of the Original Term shall remain unchanged and in full force and effect during the renewal periods. The First Renewal period shall be deemed automatically exercised unless the City provides written notice to Veolia that it does not intend to exercise the renewal term, at least one hundred (120) days prior to the expiration date of the original term of this Agreement. The Second Renewal period shall be exercised in similar fashion. Under no circumstances shall the Agreement be in effect beyond the 2nd Renewal Term.

VIII. CONDITION PRECEDENT

As a condition precedent to the payment by the City for Veolia's performance of services under this Agreement, Veolia will provide the City with copies of its certificate of title to the buses, naming the Mayor and City Council of Baltimore as a secured party, after perfecting the City's security interest with the Maryland Motor Vehicle Administration in accordance with Md. Transp. Art., § 13-203.

IX. TERMINATION FOR CAUSE

If through any cause, Veolia fails to fulfill in a timely and proper manner its obligation under this Agreement, or if Veolia violates any of the terms and conditions of this Agreement, the City shall thereupon have the right to terminate this Agreement, after giving written notice to Veolia, of its intent to terminate the Agreement and specifying the grounds of termination.

Veolia shall have thirty (30) days from receipt of notice of termination to cure the said default. If the default is cured within the stated time, the Agreement shall continue, as if no default had occurred. But, if Veolia has not cured the default within the said thirty (30) days, the Agreement may terminate without further notice.

X. TERMINATION FOR LACK OF FUNDS

In the event that City funds, in whole or in part, are not available to begin or to continue this Agreement at the level of services specified, the City may immediately terminate or amend this Agreement. The City shall not be obligated to pay for any services rendered after Veolia has received written notice of termination pursuant to this section.

XI. CANCELLATION BY VEOLIA

Veolia shall be entitled to cancel this Agreement by written notice delivered to the City within thirty (30) days of the Effective Date in the event that Veolia is unable to negotiate a bus purchase agreement with DesignLine USA LLC containing terms acceptable to both Veolia and the City and in conformance with this Agreement.

XII. NOTICE

All notice required or permitted hereunder to be given by either party to the other shall be in writing and sent via U.S. mail (postage prepaid) to the parties and addresses below:

For City:

Alfred H. Foxx, Director
Department of Transportation
417 E. Fayette Street, Suite 527
Baltimore, Maryland 21202

With copies to:

Barry S. Robinson, Chief
Transit and Marine Services Division
Department of Transportation
417 E. Fayette Street
Baltimore, Maryland 21202

For Veolia:

Michael Griffus, CEO
Veolia Transportation Services, Inc.
720 East Butterfield Road
Suite 300
Lombard, IL 60148

With copies to:

Alan Moldawer, General Counsel
Veolia Transportation Services, Inc.
720 East Butterfield Road
Suite 300
Lombard, IL 60148

and

Mark Heishman
General Manager
2100 Huntingdon Ave
Baltimore MD 21211

XIII. INDEPENDENT CONTRACTOR

Veolia at all times shall be deemed an independent contractor. Veolia shall administer its own payroll and make all necessary payroll deductions and payments to federal, state, and local governments. No contractual relationship shall be established between the City and any employee, subcontractor or supplier of Veolia by any virtue of this Agreement. Veolia represents and warrants that it is duly organized, validly existing and in good standing under the law of the state where organized and of the state where services are to be performed under this agreement. This agreement is solely for the benefit of the City and Veolia.

XIV. INDEMNIFICATION

The Veolia shall indemnify, defend, and hold harmless the City, its elected/appointed officials, departments, employees, agents and volunteers from any and all claims, demands, suits and actions, including reasonable attorney's fees and court costs connected therewith, brought against the City, its elected/appointed officials, employees, agents, and volunteers arising as a result of any direct or indirect, willful, or negligent act or omission of Veolia, its employees, agents, and volunteers,, except for activities caused by the sole negligent act or omission of City, its elected/appointed officials, departments, employees, agents and volunteers, arising out of this Agreement. This indemnification provision shall survive termination of this Agreement.

XV. INSURANCE REQUIREMENTS

The VEOLIA shall procure and maintain during the term of this AGREEMENT the following required insurance coverages and require the

same insurance coverages of its contractors or anyone directly or indirectly employed by any of them:

- a. Commercial Garage Liability Insurance at limits of not less than Five Million Dollars (\$5,000,000) per occurrence for claims arising out of bodily injuries or death, and property damages. In those policies with aggregate limits, a minimum limit of Five Million Dollars (5,000,000) is required. Such insurance shall include contractual liability insurance, umbrella, and excess liability coverages.
- b. Business Automobile Liability at limits of not less than \$5,000,000 per occurrence for all claims arising out of bodily injuries or death and property damages. The insurance shall apply to any owned, non-owned, leased, or hired auto-mobiles used in the performance of this Agreement.
- c. Automobile Physical Damage including Comprehensive and Collision, non-owned, lease or hired automobiles used in performance of this Agreement. The Mayor and City Council of Baltimore is to be named as Loss Payee.
- d. Workers' Compensation coverage as required by the State of Maryland, as well as any similar coverage required for this work by applicable Federal or "Other States" State Law.
- e. The Mayor and City Council of Baltimore, its elected/appointed officials, employees, and agents shall be covered, by endorsement, as additional insureds on applicable policies as respects to liability arising out of activities performed by or on behalf of the VEOLIA in connection with this AGREEMENT.
- f. VEOLIA's insurance shall apply separately to each insured against whom a claim is made and/or lawsuit is brought, except with respect to the limits of the insurer's liability.
- g. To the extent of VEOLIA's negligence, the VEOLIA'S insurance coverage shall be primary insurance as respects the City, its elected/appointed officials, employees, and agents. Any insurance and/or self-insurance maintained by the City, its elected/appointed officials, employees, or agents shall not contribute with VEOLIA's insurance or benefit VEOLIA in any way.
- h. Coverage shall not be suspended, voided, canceled, reduced in coverage or in limits, except by the reduction of the applicable aggregate limit by claims paid, until after forty-five (45) days prior written notice has been given to the CITY. There will be an exception for non-payment of premium, which is ten (10) days notice of cancellation.

- i. Insurance is to be placed with insurers with a Best's rating of no less than A: VII, or, if not rated with Best's, with minimum surpluses the equivalent of Best's surplus size VII and must be licensed/approved to do business in the State of Maryland.
- j. Failure to obtain insurance coverage as required or failure to furnish Certificate(s) of Insurance as required shall be considered an event of default under this Agreement; provided, however, that no act or omission of the CITY shall in any way limit, modify or affect the obligations of VEOLIA under any provision of the AGREEMENT.

XVI. SECURITY AGREEMENT

- A. GRANTING CLAUSE.** (a) In order to secure the performance and observance by Veolia of all of its obligations under this Agreement, including the obligation to deliver the Equipment to the City at such time, and in the condition, as required by this Agreement, and to secure the City's rights to the Equipment to the extent of all amounts paid or payable by the City to Veolia or the OEM in connection with the purchase of the Equipment, Veolia hereby grants to City a security interest in and lien on all of Veolia's right, title and interest in and to all of the following (whether now existing or hereafter created the "Collateral"): (1) all of the Buses purchased by Veolia for use under this Agreement, as more fully described in Exhibit B ("Description of Collateral") together with all related software (embedded therein or otherwise) and general intangibles, and all additions, attachments, accessories and accessions thereto whether or not furnished by the OEM; (2) all general intangibles relating thereto, and any and all substitutions, replacements or exchanges for any such item of Equipment or other collateral, in each such case in which Veolia shall from time to time acquire an interest; (3) all of Veolia's rights and claims against the OEM, including all the OEM's warranties, regarding this Equipment; and (4) any and all insurance and/or other proceeds of the property and other collateral in and against which a security interest is granted hereunder. (b) Veolia will sign such documents as may be necessary to perfect the security interest of the City in the Collateral, and among other things will show on the application for a certificate of title for each Bus that the secured party is "Mayor and City Council of Baltimore". (c) The City and Veolia agree that the purpose of this security interest is to protect the interest of the City in the Equipment against creditors of Veolia, in part by having the fact that the City has an interest in the Equipment made a matter of public record at the Maryland Motor Vehicle Administration. In the event that the City is required to enforce its rights under this Agreement the City may do so by an action for specific performance, or for damages, or for any remedy allowed by the Uniform Commercial Code or otherwise by applicable law, or one or more of the above. This grant of a security interest by Veolia to the City is not intended to evidence Veolia's ownership of the Equipment, notwithstanding that the Buses have been or will be titled in the name of Veolia, which has been done for the mutual convenience of the

parties.

- B. **Prepayment upon Total Loss:** Without limiting any other provision hereof, Veolia shall repair all damage to any item of Equipment from any and all causes, other than a Total Loss, so as to cause it to be in the condition and repair required by this Agreement. A "Total Loss" shall be deemed to have occurred to an item of Equipment upon: (1) the actual or constructive total loss of any item of the Equipment, (2) the loss, disappearance, theft or destruction of any item of the Equipment, or damage to any item of the Equipment that is uneconomical to repair or renders it unfit for normal use, or (3) the condemnation, confiscation, requisition, seizure, forfeiture or other taking of title to or use of any item of the Equipment or the imposition of any Lien thereon by any governmental authority. On the next payment date following a Total Loss, City shall pay to Veolia the amount due on that date plus the Stipulated Loss Value of the item or items of the Equipment with respect to which the Total Loss has occurred (the "Lost Equipment"). Upon making such payment, (i) City's obligation to pay future Amortization Payments shall terminate solely with respect to the items of Lost Equipment so paid for, and (ii) Veolia shall convey to City all of Veolia's right, title and interest in the Lost Equipment, "AS IS WHERE IS", but subject to the requirements of any third party insurance carrier in order to settle an insurance claim. "Stipulated Loss Value" shall mean for each item of Lost Equipment: an amount equal to the unpaid portion of the Deferred Capital Cost of such item (calculated as a pro rata portion of the total unpaid Deferred Capital Cost of all Buses that are subject to this Agreement at such time, as described in Exhibit D), minus all insurance proceeds due and payable with respect to such item of Lost Equipment under the insurance Veolia is required to maintain under this Agreement. Any insurance proceeds that exceed the amount of the unpaid Deferred Capital Cost of the item of Lost Equipment shall belong to and be payable to the City.
- C. Neither the City nor Veolia shall sell, lease, transfer, encumber or otherwise dispose of their interest in the Vehicles, or grant, except as set forth herein, any security interest in such interest.

XVII. REMEDIES: LIQUIDATED DAMAGES

The City shall maintain the right to assess liquidated damages against Veolia, as set forth in Exhibit E ("Liquidated Damages"), based on Veolia's failure to meet the established standards as described in Exhibit E.

XVIII. EMPLOYEE CRIMINAL BACKGROUND CHECK

All Veolia's supervisory, custodial and other employees - including drivers - working under this contract shall pass a Criminal Background Check, to be provided and paid for by the Veolia at its own expense, and at no additional cost to the City. A signed certification from Veolia certifying that the employee has passed the Check will be provided to the using Agency representative before the employee will be permitted to operate a vehicle in revenue service. Until said

certification is provided, the employee will be prohibited from operating a revenue vehicle being contracted for under this solicitation. Failure by the Veolia to provide signed certifications for its employees working under this contract in a timely manner shall be grounds for default and termination of the contract.

XIX. RECORDS

VEOLIA agrees (a) to maintain proper books and records adequate to enable independent certified public accountants to certify the total cost of the AGREEMENT and to certify that VEOLIA has used the funds solely for eligible costs, (b) to retain such books and records and copies of the reports and statement for at least three (3) years from receipt of final disbursement under this AGREEMENT, and (c) to make such books and records available for inspection, auditing/copying, etc. by the CITY and its auditors, agents and representatives at all reasonable times.

XX. AUDITS AND INSPECTIONS

At any time during normal business hours and as often as the CITY may deem necessary, there shall be made available to the CITY for examination, all of VEOLIA's records with respect to all matters covered by this Agreement, and VEOLIA will permit the CITY to audit, examine, and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment, and other data related to all matters covered by this Agreement. If it is determined by the City that City funds were improperly spent by Veolia, then in that event, Veolia shall pay back to the CITY any City funds that were improperly spent on purposes other than those duly authorized under this Agreement.

XXI. ASSIGNMENT

Neither Party shall be permitted to assign its rights or obligations under this Agreement without the prior written consent of both Parties.

XXII. LICENSES AND PERMITS

Veolia shall, without additional expense or obligation to the City, be responsible for obtaining any and all necessary licenses, permits, and approvals necessary for complying with any federal, state, county, municipal or other law, code or regulation applicable to the performance of the services to be provided under this Agreement.

XXIII. COMPLIANCE WITH LAWS

Veolia shall perform all services required by this Agreement in accordance with all applicable federal, state and local laws and regulations. Veolia shall use only

licensed personnel to perform work required by law or regulation to be performed by such personnel.

XXIV. APPLICABLE LAW

This Agreement is made in Maryland and Maryland law shall govern its interpretation, performance and enforcement. The parties agree that any actions brought hereunder shall be brought in a court of competent jurisdiction in Baltimore City.

XXV. INTERPRETATIONS

In the event of any question regarding the meaning of any of the provisions of this Agreement, the interpretation placed thereon by the City shall be final and binding on the parties hereto, provided that any such interpretation shall not be unreasonable.

XXVI. NO INTERPRETATION AGAINST DRAFTER

This Agreement is the product of negotiations between the parties hereto, and they are either represented by counsel or have had the opportunity to be represented by counsel and any rules of construction related to interpretation against the drafter of an agreement shall not apply to this Agreement and are expressly waived.

XXVII. NON-DISCRIMINATION

Veolia shall not discriminate on the basis of race, gender, religion, national origin, ethnicity, sexual orientation, gender identity or expression, age, or disability in the solicitation, selection, hiring, or treatment of subcontractors, vendors, suppliers, or commercial customers. Veolia shall provide equal opportunity for subcontractors to participate in all of its public sector and private sector subcontracting opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that has occurred or is occurring in the marketplace, such as those specified in Article 5, Subtitle 28 of the Baltimore City Code, as amended from time to time. Veolia understands and agrees that violation of this clause is a material breach of the contract and may result in contract termination, debarment, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party.

XXVIII. DISCLOSURE

Upon the City's request, and only after filing a complaint against Contractor pursuant to Article 5, Subtitle 29, of the Baltimore City Code, as amended from time to time, Contractor agrees to provide the City within 60 calendar days, a

truthful and complete list of the names of all subcontractors, vendors, and suppliers that Contractor has used in the past 4 years on any of its contracts that were undertaken with the Baltimore City Market Area as defined in Article 5, §28-1(d) of the Baltimore City Code, as amended from time to time, including the total dollar amount paid by Contractor for each subcontract or supply contract. Contractor agrees to fully cooperate in any investigation conducted by the City pursuant to the City's Commercial Non-Discrimination Policy, as contained in Article 5, Subtitle 29, of the Baltimore City Code as amended from time to time. Contractor understands and agrees that violation of this clause is a material breach of the contract and may result in contract termination, debarment, and other sanctions.

XXIX. NO WAIVER

No failure by the City to exercise and no delay in exercising any right, power or privilege under this AGREEMENT shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof any other right, power or privilege.

XXX. MULTIPLE COPIES

Agreement shall be executed in multiple copies and each such copy shall be deemed an original.

XXXI. RECITALS

The Recitals shall be incorporated herein and be made a part hereof.

XXXII. DISPUTES

Any dispute concerning a question of fact or law arising under or related to this Agreement that is not disposed of by agreement shall be submitted by Veolia in writing to the City. Thereafter, the Parties shall have forty-five (45) days to reach an agreed resolution of the dispute. In the event no agreement is reached, the decision of the City shall be the final decision, unless, within forty-five (45) days the matter is referred to arbitration. Either party may submit the matter to arbitration by doing so in writing within the forty-five (45) day period above specified. An arbitrator will be selected by alternate strikes of a list of five arbitrators supplied by the local office of the American Arbitration Association. The first strike shall be determined by lot. The parties shall alternately strike proposed arbitrators until only one arbitrator remains. This person shall hear the dispute. The decision of the arbitrator shall be final and binding and the cost of the arbitration shall be borne by the losing party. Notwithstanding any disagreement, Veolia shall proceed during the pendency of any appeal with the services in accordance with the City's decision.

XXXIII. FORCE MAJEURE

Neither party assumes any liability for failure to fulfill the terms and conditions of this Agreement caused by events beyond the reasonable control of such party. Such events may include, but are not limited to the following: natural disaster, acts of the government in either its sovereign or contracted capacity, a failure or shortage of fuel, water, fuel oil or other utility or services, strikes, riots, fires, floods, epidemics, war, insurrection or other national or local emergency, freight embargo, impasse of routes due to construction, and unusually severe weather but in every case the failure to perform must be beyond the control and without the fault or negligence of either party.

XXXIV. ENTIRE AGREEMENT/MODIFICATIONS

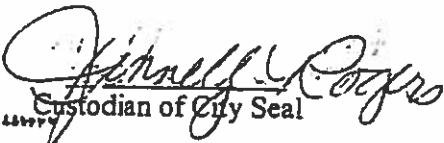
This Agreement including all attachments and exhibits hereto contains the entire agreement between the parties, there are no other promises, conditions, or terms than those expressly set forth in this Agreement and any agreement hereafter made shall be ineffective to modify or terminate this Agreement or constitute a waiver of any of the provisions hereof unless such agreement is in writing and signed by the party against whom enforcement of the modification, termination or waiver is sought.

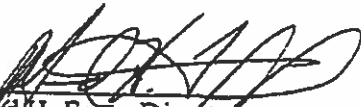
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IN WITNESS WHEREOF, the parties hereto have executed this Agreement intending it to be under seal, by their duly authorized officers and/or officials the day and year first above written.

WITNESS:

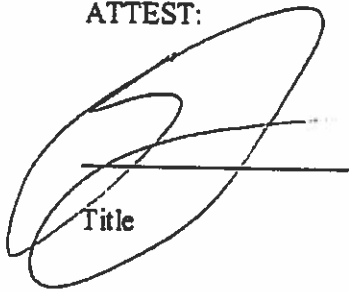
MAYOR AND CITY COUNCIL OF
BALTIMORE

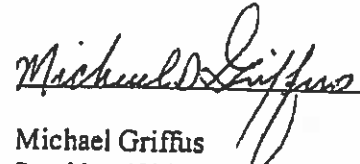

Custodian of City Seal

By: 
Alfred H. Fox, Director
Department of Transportation


VEOLIA TRANSPORTATION
SERVICES, INC.

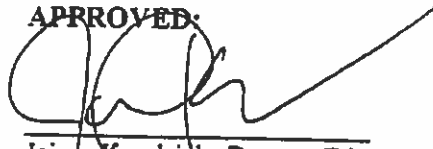
ATTEST:


Title

SEAL:  (SEAL)
Michael Griffus
President/Chief Operating Officer

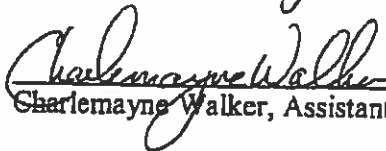
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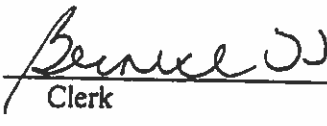

Andrew Kleine
Department of Finance

APPROVED:

Jaime Kendrick, Deputy Director
Department of Transportation

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY THIS
5th DAY OF February 2009:

APPROVED BY THE BOARD OF
ESTIMATES:


Charlemayne Walker, Assistant Solicitor

 FEB 11 2009
Clerk Date

Being Page 23 of a 23 page Agreement by and between the Mayor and City Council of Baltimore and Veolia Transportation Services, Inc.