DATE: March 31, 2006

SUBJECT: SmarTrip Operations Funding Agreement

C. M. RECOMMENDATION:
Authorize the County Manager to sign the attached SmarTrip Operations Funding Agreement between The County Board and Washington Metropolitan Area Transit Authority (WMATA), subject to approval of the agreement as to form and sufficiency by the County Attorney.

ISSUES: None

SUMMARY: The Washington Metro Area Transit Authority, in consultation and coordination with Montgomery, Alexandria, Arlington, Prince William, Fairfax City, Fairfax County, and Loudon County have joined together to create a seamless regional smart card system operating off of the SmarTrip smartcard and agree to share the operating costs of establishing a Regional SmarTrip system, beginning with each Participating Agency’s election to utilize SmarTrip equipment and with each Agency solely responsible for its respective share of the operating costs of the System, subject to annual appropriations by its respective local government.

BACKGROUND: The Washington Metropolitan Region’s transit system is owned and operated by a number of agencies and jurisdictions. Many users of the WMATA system -- Metrorail and Metrobus -- enjoy using SmarTrip cards. Transit users would find it more convenient if they could pay their fares on Arlington Transit (ART) using SmarTrip card as well. A regional system requires equipment and software to accept SmarTrip cards, and a system for sharing the revenue when people make a trip using more than one carrier, and don’t pay separate fares.

DISCUSSION: WMATA, regional agencies and jurisdictions have been working together to design a Regional SmarTrip Program including computer hardware and software for a common SmarTrip chip for fare collection. Using a SmarTrip card on any system of the participating agencies will result in electronic cash payment from the card as well as verification of pass or right to ride on that system. The Program also includes the creation and operation of a Regional Customer Service Center with those operating costs shared by WMATA and the participating agencies. The Regional Customer Service Center (RCSC) will be the clearing house for all

County Manager: ____________
County Attorney: ____________
Staff: Kelley MacKinnon, Department of Environmental Services
transactions. The regional SmarTrip system has been in development for over five years. This agreement provides permission for Arlington County’s ART system to participate in the Regional SmarTrip System, achieve an equitable share in the fare receipts, and pay an appropriate share of the operating costs of the RCSC. SmarTrip fareboxes as well as all the necessary equipment are on order for use on the ART System. The hardware system, (i.e. fareboxes, vaults) are being funded in part with a state grant through Northern Virginia Transportation Commission. Fareboxes over and above the original agreed upon number are being purchased on a master lease. SmarTrip cards are available at the Commuter Stores and Mobile Commuter Stores. The Regional Customer Service Center will be a separate legal entity that has a contract with Washington Metro Area Transit Authority to operate.

FISCAL IMPACT: Operating costs will be based on the percentage of ridership per transit system partner. Currently, ART ridership is approximately .02% of the total of all agencies. It is expected that the costs associated with the operation of the Regional Customer Service Center will be deducted from fare revenue with the remainder sent to Arlington County. Based on estimates for SmarTrip card use, the cost to the County based on .02% of the total ridership in FY 2004 would have been approximately $315.00. Currently, Arlington County does not receive any revenue from riders presenting bus transfers or flash passes that are from other transit systems, although these forms are honored by ART for travel. With the implementation of SmarTrip, Arlington will receive its share of revenue from riders using SmarTrip to transfer to ART from another mass transit system. Therefore, the operating cost for the Regional Customer Service Center should not result in a net loss of revenue, even as SmarTrip use increases.
SmarTrip® OPERATIONS
FUNDING AGREEMENT

Between

The Board of ARLINGTON COUNTY, Virginia

And

Washington Metropolitan Area Transit Authority

For

The Operation of the Regional SmarTrip® System
This SmarTrip® OPERATIONS FUNDING AGREEMENT ("Agreement"), is made and entered into this ______ day of ____________ by and between The County Board of Arlington, Virginia, "The Agency" and the WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY ("WMATA"), an interstate compact agency and instrumentality of the District of Columbia, the Commonwealth of Virginia and the State of Maryland, created with the consent of the United States Congress and

PROCEEDS UPON THE FOLLOWING MUTUAL UNDERSTANDINGS AMONG THE PARTIES HERETO:

RECITALS:

A. The WMATA was created through Title III of the Washington Metropolitan Area Transit Regulation Compact formed by and among the State of Maryland, the Commonwealth of Virginia and the District of Columbia, authorized and approved by the United States Congress, for the purpose, among other activities, of planning, developing, financing and causing to be operated improved transit services in the Washington Metropolitan Area Transit Zone, as a part of a balanced regional system of transportation, which includes Metrorail; and

B. The parties to this Agreement and to other similar agreements are joining together to create a seamless regional smart card system operating off of the SmarTrip® smart card; and

C. The parties have agreed to share the operating costs of establishing a Regional SmarTrip® System, beginning when each Participating Agency elects to utilize SmarTrip® equipment; and

D. Each party will be solely responsible for its respective share of the operating costs of the Regional SmarTrip® System under this Agreement, as further specified in this Agreement, and for taking all necessary actions at the state or jurisdictional unit level to assist WMATA in developing the budget and securing the funding for the operation of the Regional SmarTrip® System. Each Participating Agency is only responsible for its own operating cost share, subject to annual appropriations by its respective state and/or local governments, and in no circumstance will one Participating Agency be responsible for the operating cost shares of the other Participating Agency; and,

E. The Participating Agencies, subject to the annual budgetary appropriation of their respective legislative bodies, to the full extent allowed by law, commit to provide the identified individual operating cost share, on an advance quarterly payment basis, to fund the Regional SmarTrip® System; and

F. The parties to this Agreement will be solely responsible for maintaining agency-operated SmarTrip® related equipment in a manner consistent with
Participating Agency and inter-agency operations, will transfer and accept data necessary to support such operations, will report any concerns or issues that may affect regional operations as set forth in this agreement, and will transfer or accept revenues based on the revenue allocation process identified in this Agreement; and

G. The parties to this Agreement desire to enter into this Agreement to define and provide the manner in which the parties will support the Regional SmarTrip® System, and affirm that all operating costs for the Regional SmarTrip® System will be borne by the Participating Agencies, in accordance with the provisions of this Agreement.

NOW THEREFORE, based upon the foregoing understandings and in consideration of the covenants contained herein, the parties do covenant and agree as follows:

ARTICLE 1 -- DEFINITIONS AND INTERPRETATIONS

Section 1.01: Definitions. The definitions and the recitals set forth above are reaffirmed and incorporated herein by reference. The following are definitions of certain terms used in this Agreement:

A. "Agreement" means this funding agreement for the Regional SmarTrip® System between and among all Participating Agencies as defined below and WMATA.

B. "Projected Cash Flow and Obligation Profile" ("Cash Flow") means a separate yearly cash flow projection for the Regional SmarTrip® System, which shows on a yearly basis the quarterly amounts of money for which each Participating Agency is responsible for that year, which current Cash Flow is attached hereto as Exhibit B and incorporated in this Agreement as if fully set forth herein. The Cash Flow, Exhibit B, will be updated yearly by WMATA showing individual Participating Agency’s projected quarterly payments (if the Participating Agency has advanced its share, then that exhibit will show the projected payments from the moneys advanced by that Participating Agency) and electronically sent to each Participating Agency prior to the commencement of the next fiscal year (July 1 – June 30), but in no event later than April 1, and shall act as an invoice for each Participating Agency’s quarterly payment (unless the Participating Agency’s share was previously advanced), which shall be payable in advance of that up coming quarter by each Participating Agency.

C. "Financial Records" are defined as any and all original documents which are used under OMB Circulars A-87 and A-133, as those circulars may be amended from time to time (collectively “federal guidelines”), to support federal grant costs. This definition includes all federal guideline documents submitted by WMATA staff, consultants and contractors working on the Regional SmarTrip® System.
D. "Participating Agency" shall refer to any signatory to this or similar Agreements who provides funding for the operating costs of the Regional SmarTrip® System and shall include WMATA.

E. "Transaction" is defined as the payment of a fare by SmarTrip® card on either a rail mass transit or bus service for a single trip on the train or bus, and shall include both electronic cash payment from the card as well as verification of a pass or right to ride. Transfers requiring the patron to exit the vehicle for which the fare was paid constitute a separate transaction. For example, a trip on Metrorail with a transfer to a Metrobus constitutes two transactions. Deduction of funds from the SmarTrip® card at parking areas for parking fee payment and/or other purposes that may be contemplated shall also be considered transactions for the purposes of this agreement. The addition of funds to a SmarTrip® card either at a vending machine, point-of-sale device or through an automatic transfer of funds does not constitute a Transaction for purposes of this Agreement.

F. "Regional SmarTrip® System" is defined as the systems of computer hardware and software necessary to allow the use of a common SmarTrip® chip for fare collection and other purposes, utilizing Participating Agency-owned SmarTrip® equipment.

G. "Operating Costs" are defined as the sum of the costs enumerated in this subsection, all of which combined shall equal the expense portion of the annual Operating Budget for the Regional SmarTrip® System. Expenses will include the cost to administer, operate and maintain the Regional Customer Service Center contract and associated regionally-shared elements, but not individual agency fare collection systems.

1. Operating costs of the contract for the operation of the Regional Customer Service Center, including both the fixed monthly cost and the individual transaction charge.
2. Operating costs of the contract for management of the Point of Sale (POS) device network, including both the fixed monthly cost and a variable cost based on the number of POS devices.
3. A specific overhead rate, to include WMATA costs to indirectly support Project Management of the Regional SmarTrip® System.
4. WMATA Regional SmarTrip® System dedicated project management staff costs.
5. The cost of software licenses needed for the Regional SmarTrip® System.
6. The cost of maintenance contracts on the hardware and software used in the Regional SmarTrip® System.
7. Fees for the transfer of funds under the Automated Clearing House or similar financial transfer systems.
8. Audit Fees.
9. Costs associated with the maintenance and operation of a common SmartBenefits transaction system (the WMATA program for electronic distribution of transit benefits), but not those costs associated with SmartBenefits marketing or revenue collection.
10. A reasonable amount to fund a reserve for the purchase of SmarTrip® cards which are not specific to a given jurisdiction.
11. Costs associated with fraud or abuse that are not related to an individual agency’s failure to properly support agreed upon regional operating procedures, such as the timely upload or download of data or not related to credit/debit operations.
12. Such other costs as are agreed to by the Participating Agencies and which contribute to the operation and/or growth of the Regional SmarTrip® System.

H. “Participating Agencies or Agency” are defined as all signatories to this agreement including operating and funding Participating Agencies.

I. “Expected Revenues” are defined as those revenues received by the Regional Customer Service Center but excluding all passenger revenues.

J. “Automated Clearing House (ACH)” is a secure payment transfer system that connects all U.S. financial institutions. For the Regional Customer Service Center, ACH will be the means by which funds are transferred from and to Participating Agencies to accommodate regional settlement.

K. “Hot Card” is a card that needs to be removed from the SmarTrip® system for some reason (e.g. reported lost or stolen, involved in some type of fraudulent activity, etc.). The Hot Card List will be the mechanism to consolidate and deliver the serial numbers of Hot Cards to fare devices that will subsequently be removed from the system upon next use. When the card is used, the system will mark it as not valid.

L. “Clearing Report” is an end-of-month report generated by the RCSC that will report the financial position of each Participating Agency. The Clearing Report will be disseminated to the Participating Agencies for review and, after approval, will be used as the basis for end of month settlement.

Section 1.02: Interpretations. For the purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

A. All references in this Agreement to designated Articles, Sections and other subdivisions are to the designated Articles, Sections and other subdivisions of this Agreement as originally executed. The words “herein,” “hereof,” “hereunder,” “herewith” and other words of similar import refer to this
Agreement as a whole and not to any particular Article, Section or other subdivision hereof.

B. The terms defined in this Article have the meanings assigned to them in this Article and include the plural as well as the singular.

C. The headings and captions used in this Agreement are for convenience of reference only and shall not define, limit or describe any of the provisions hereof or the scope or intent hereof.

**ARTICLE 2 -- RESPONSIBILITIES AND PROCUREMENT PROCESS**

**Section 2.01: The Participating Agencies' Responsibilities.**

**A. WMATA Responsibilities.** WMATA will publicize, award and administer the procurement aspects of the Regional SmarTrip® System, and will exercise technical control and management oversight of that procurement during its contract term. WMATA will retain all Financial Records, as defined in Section 1.01(C), for the Regional SmarTrip® System for three (3) years after completion and/or termination of this Agreement, as defined in Section 8.01 below, unless there is an outstanding written financial or audit question or litigation which has not been resolved. In that instance, the Financial Records will be retained by WMATA until there is a resolution of the financial or audit question(s). Subject to approval of the appropriate budget and the availability of funds, WMATA will fund its proportionate share of its costs of the Regional SmarTrip® System as set forth below. All Participating Agencies will verify the clearing report based on the best available transaction data received from the Regional Customer Service Center. WMATA will receive or disburse funds per the clearing report from the Regional Customer Service Center and upload and download necessary operational information, such as the Hot Card List, that is required to support regional operations.

**B. Participating Agency Commitment and Responsibilities.** The Participating Agency hereby commits (i) to initiate the necessary annual budget and appropriation actions, (ii) subject to annual budgetary appropriation by the legislative body, to pay WMATA in the form of advance quarterly funding payments during the fiscal year pursuant to annual fiscal year funding agreements, its proportionate share of the operating costs of the Regional SmarTrip® System, and (iii) operate its transit system in a manner which complies with the Letter of Intent between the parties and supports the Regional SmarTrip® System. Subject to budgetary appropriations and with assurances to WMATA that all best efforts will be undertaken by the Participating Agency executive branch to secure those appropriations, the Participating Agency shall be solely responsible for providing its share of the funds. In making these commitments, the Participating Agency acknowledges
that WMATA has no independent funding apart from the funding to be provided pursuant to this Agreement. The Participating Agency commits to review the clearing report provided by the Regional Customer Service Center, to receive or disburse funds per the clearing report and to upload and download necessary operational information, such as the Hot Card List, that are required to support regional operations.

Section 2.02: Process.

A. **Regional SmarTrip® System.** WMATA, using staff, consultants and contractors, shall undertake all required work associated with the operation of the Regional SmarTrip® System, as set forth in Section 1.01(B) and Section 2.01, and in accordance with WMATA procurement practices.

Section 2.03: Funding.

A. **SmarTrip® Operating Cost Responsibilities.** As hereinafter limited, the Participating Agencies shall be responsible for their respective allocated shares of all direct and indirect costs, identified in the SmarTrip® Operating Budget, Exhibit A, as defined in Section 1.01(G), subject to annual appropriations.

The Participating Agency will provide to WMATA its share of the annual operating budget, in advance, by quarterly payments based upon WMATA’s (a) anticipated expenditures, (b) commitments, and (c) termination costs for the upcoming quarter as shown in Exhibit B. The Participating Agency will confirm in writing to WMATA, on or before each May 31 during the Term of this Agreement, that the necessary annual budgetary appropriations have been made for the next fiscal year.

B. **Funds Advancement.** WMATA will not incur costs or obligations for the SmarTrip® Operating Budget unless adequate funds are available, and each Participating Agency has obligated the necessary funds and has provided and advanced sufficient funds for WMATA’s expenditures and commitments for the coming quarter.

C. **Payment Procedures.**

1. **Participating Agency** shall pay to WMATA in the form of advance quarterly funding payments due on the first day of July, October, January, and April during the fiscal year that Participating Agency’s share of the Operating Costs. The quarterly billing shall, at a minimum, cover WMATA’s expected expenses for the following quarter. Late payments shall be assessed an interest fee measured by WMATA’s overnight earnings amount. Such amount shall, at a minimum, cover the
cost of any funding used to cover the Participating Agency’s share of Operating Costs which were paid late.

2. If the effective date for this Agreement is during a given quarter and Operating Costs will be incurred prior to the next payment date set forth in Section 2.03.C.1, then a pro rata share of the first quarter’s scheduled payment shall be made to WMATA within fifteen (15) business days after invoicing for that amount by WMATA.

Section 2.04: SmarTrip® Operating Budget and Schedule.

A. SmarTrip® Operating Budget and Schedule Responsibilities. WMATA has developed an estimated budget (Exhibit A) and schedule (Exhibit B) for the first annual overall SmarTrip® Operating Budget, which is concurred in by the Participating Agencies through each Participating Agency’s execution of this Agreement. This budget and succeeding budgets shall contain a reasonable contingency for unexpected expenses. Exhibit B will be updated at least annually. WMATA and Participating Agencies will prepare a draft budget for the upcoming fiscal year. After review by the Board of Directors of WMATA, the proposed annual budget shall be distributed to all Participating Agencies for their review and approval no later then April 1. Final approval of each year’s proposed Operating Budget shall be received from all Participating Agencies no later than May 31 prior to the next fiscal year. Any revision to Exhibit B during the fiscal year shall be made only after agreement of all Participating Agencies. The revised Exhibit B shall then form the basis for the quarterly payments. Participating Agencies may request additional services through WMATA as the contracting agency which can be included in Exhibit B and approval shall not be unreasonably withheld under existing WMATA policies so long as there are no significant impacts on the Regional SmarTrip® System, other Participating Agencies or the SmarTrip® card.

B. Yearly Budget Review and Audit. As a part of its budget responsibilities WMATA shall provide to all Participating Agencies a mid-year budget review of costs incurred to date and a forecast of expenses for the remainder of the given fiscal year. The mid-year review will cover the actual costs incurred for the first part of the fiscal year and, based on that review, a forecast of the expense allocations for the second part of the fiscal year. This mid-year review may result in an increased budget amount for which Participating Agencies will make their best efforts to fund. At the close of the fiscal year, WMATA will audit the expenses and provide the Participating Agencies with a reconciliation of the forecasted expenses with the actual expenses, as well as a reconciliation of forecasted Participating Agency expense shares with actual shares based on the allocation process identified in this Agreement, for review. All Participating Agencies shall honor any adjustments to the year’s expense allocation resulting from such audit. Participating Agency payments or credits
resulting from audit adjustments shall be made with the first quarter’s operating budget payment of the subsequent fiscal year following the audit.

C. **Post-Agreement Termination.** During any stage of the SmarTrip® Operating Budget, if any Participating Agency for any reason: (i) fails to appropriate the necessary funding for a fiscal year and/or fails to notify WMATA, pursuant to Section 2.03(A), that the necessary appropriation has been made for the fiscal year; (ii) fails to provide timely advance quarterly funding for WMATA’s costs, and/or if the funds deposited with WMATA are forecasted as not being sufficient to fund the Regional SmarTrip® System, including projected cost overruns; and/or (iii) decides to withdraw from the Regional SmarTrip® System and agreement is not reached by the remaining Participating Agencies on funding the ensuing regional costs; WMATA will give all signatories to this Agreement written notification that it plans to terminate the Regional SmarTrip® System (“Termination Trigger Notification”) at a stated date. This section is not subject to the dispute resolution steps of Article 5 below. The “Termination Date” in the Termination Trigger Notification will be determined by WMATA based upon any of the following factors:

1. WMATA’s determination that one or more Participating Agency’s stated appropriations or advance funding deposits are insufficient to fund each Participating Agency’s share of the procurement, including cost overruns, OR

2. WMATA’s finding that one or more Participating Agency has not timely advanced its quarterly payment, in accord with the Cash Flow (Exhibit B) for its share of the Operating Budget, OR

3. The funds deposited with WMATA are forecasted by WMATA not to be sufficient to fund the Regional SmarTrip® System and the Participating Agencies are not able to reach agreement on the additional funds and contribution schedule necessary to meet the regional costs.

The Termination Trigger Notification shall be provided, if possible, to all signatories to this Agreement at least forty-five (45) days prior to the Termination Date, provided, however, that in the event termination is triggered by a failure to certify the appropriation of funds by May 31, only twenty (20) days notice will be provided. Within that period, all signatories and WMATA shall meet and confer to resolve the funding shortfall. If any Participating Agency has not remedied the inadequacy or failure identified in the notice and no resolution has been identified, WMATA will issue a Termination for Convenience and take those steps necessary to stop work, terminate, and close out the Regional SmarTrip® System on or after the Termination Date.
The costs of a Termination for Convenience occurring due to a failure of a Participating Agency to meet any of its financial obligations or due to a Participating Agency's withdrawal prior to the close of the fiscal year that are not agreed to by the other Participating Agencies, shall be paid by the Agency causing the need for the Termination for Convenience, along with any other such costs as may be imposed by WMATA, in consultation with the other remaining Participating Agencies. Punitive costs, by whatever name, shall not be imposed. If any part of the Regional SmarTrip® System is terminated pursuant to this section, WMATA shall have no further responsibility to any signatory to continue the Regional SmarTrip® System. The provisions of Section 2.01(B) of this Agreement, relating to each Participating Agency's responsibilities, shall survive the termination of this program and this Agreement.

Except as provided in the paragraph immediately above, all Participating Agencies agree to share Termination for Convenience costs and any other costs on a pro rata basis based on their respective share of the Operating Budget for that fiscal year, and to make payment of their share of those costs as soon as possible.

Section 2.05: Formula for Allocating Operating Budget Among Participating Agencies. Each year, WMATA shall develop a budget for Operating Costs, as defined in Section 1.01(G), for the upcoming fiscal year, based on actual operating cost experience and any anticipated changes in SmarTrip® market penetration among Participating Agencies and/or any anticipated changes in membership of Participating Agencies.

Operating costs as defined in section 1.01(G), with the exception of costs for management of the POS network, shall be allocated among Participating Agencies based on the projected number of SmarTrip® transactions, as defined in Section 1.01(E). These Operating Costs will be allocated to each Participating Agency based on the number of transactions projected for that Participating Agency for the upcoming fiscal year proportional to the total number of transactions among all Participating Agencies projected for the upcoming fiscal year.

\[
\text{Operating Costs} \times \frac{\text{Agency's Number of Transactions}}{\text{Number of Transactions System-wide}} = \text{Share of Costs}
\]

Operating costs for management of the Point of Sale (POS) network by the RCSC shall be allocated among Participating Agencies based on Participating Agency ownership of the POS devices.

\[
\text{POS Operating Costs} \times \frac{\text{Agency's Number of POS Devices}}{\text{Number of POS Devices System-wide}} = \text{Share of POS Costs}
\]

The Operating Cost Budget developed from the above calculations shall be used to prepare the annual Cash Flow (Exhibit B), which shall be distributed to all Participating Agencies as set forth in Section 2.04(A).
Section 2.06: Other Agreements. Nothing in this Agreement shall be construed to modify, diminish or supersede any existing rights, agreements or arrangements between WMATA and Participating Agency on other matters. However, any future federal grant agreement entered into by WMATA and the U.S.DOT/FTA for any part of the SmarTrip Operating Costs ("Future Grant"), which includes the FTA Master Agreement terms, shall govern the actions of WMATA with respect to WMATA’s rights, duties, and obligations covered by the SmarTrip Operating Funding Agreement. The Participating Agency agrees that performance by WMATA of any action or the withholding of any action that is required by the terms of any such grant or the FTA Master Agreement shall not constitute a breach of this Agreement. The Participation Agency further agrees to provide WMATA with any information and take any action requested by WMATA as part of WMATA’s compliance with the terms of any such federal grant or the FTA Master Agreement, provided that the Participating Agency is not legally prohibited from taking such action. The parties agree that in no case will this Agreement be interpreted in such a fashion as to place WMATA between conflicting interpretations of the Agreement and any Future Grant. Any required conforming interpretation shall be binding on all parties.

ARTICLE 3 - CLEARING OF TRANSACTIONS

Section 3.01: Clearing and Settlement of Transactions. All transactions will be cleared (reconciliation of data) among the Participating Agencies on a daily basis with settlement (transfer of funds) on no less often than a monthly basis.

Section 3.02: Settlement Schedule. Within five (5) business days after the close of a month the Regional Customer Service Center shall provide a report to all Participating Agencies listing the value added at the various Participating Agencies and the Regional Customer Service Center, including through cash, paper fare media trade-in, and credit/debit loads on smart cards at Participating Agency fare collection devices, loads on smart cards at Participating Agency owned point-of-sale (POS) devices, credit/debit autoloads at Participating Agency fare collection devices, SmartBenefits loads at Participating Agency fare collection devices, and loads at Point of Issue (POI) devices for the preceding month. The Regional Customer Service Center shall also provide each Participating Agency with a report on smart card value used or pass purchases at each Participating Agency. Revenue losses associated with customer features, such as balance protection, and any losses associated with fraud or abuse will also be provided. Participating Agencies shall have five (5) business days from the receipt of the report to review the report and comment. Any disputes to the report shall be handled under Article 5. However, the funds shall be distributed as in the Regional Customer Service Center report. The Regional Customer Service Center shall prepare a final report and determine the amounts due to or from each Participating Agency based on the following:
1. The funds collected for credit/debit autoloads administered by the Regional Customer Service Center shall be transferred to the Participating Agency that owns the SmarTrip® fare device at which the autoload occurred. Funds will be transferred to Participating Agencies during the course of the month and each Participating Agency will be responsible for accounting for such funds.

2. The funds collected for cash, paper fare media trade-in (i.e., Metrocheck), and credit/debit loads occurring at a Participating Agency fare device shall be reported as revenue received by that Participating Agency, and each Participating Agency will be responsible for accounting for such funds.

3. Funds for the value of SmartBenefits autoloads shall be transferred to the Participating Agency that owns the SmarTrip® fare device at which the autoload occurred from those Participating Agencies that collect funds from employers as part of the SmartBenefits program as part of the monthly settlement process.

4. The funds collected for value loaded at Participating Agency owned POS device shall be held by the Participating Agency owner and each Participating Agency will be responsible for accounting for such funds.

5. WMATA, as the contracting agency for the RCSC, shall receive the funds collected from sales of any value loaded at a Point of Issue (POI) operated by the RCSC.

The sum of items 1-5 shall constitute total value loaded at each Participating Agency. The Regional Customer Service Center shall also report value deducted at each Participating Agency for payment or pass purchase.

Participating Agencies with a deficiency between value loaded and value deducted for payment or pass purchase shall be due funds from other Participating Agencies. Participating Agencies with a surplus of funds loaded compared to value deducted shall owe funds. Participating Agencies with a surplus shall transfer funds equal to the total regional deficiency to a clearing account based on their proportional share of the total surplus. Participating Agencies with a deficit shall receive funds from the clearing account based on the reported deficiency at each Participating Agency. In any one month, should the total regional surplus net of previous disbursements of funds be insufficient to fund the total regional deficit, the cumulative surplus for the prior quarter at each Participating Agency will be utilized based on the proportional shares established for that month. Should funds within the prior quarter net of previous disbursements be insufficient for regional settlement, the cumulative surplus for prior quarters net of previous disbursements will be utilized limited to the prior twelve (12) calendar months.

The Regional Customer Service Center shall give all Participating Agencies a copy of the approved report at least one (1) business day prior to generating the ACH transaction record needed to implement the reconciliation of funds for the given month. Reasonable commercial efforts shall be used to transfer the funds due to or from each Participating Agency by means of an Automated Clearinghouse.
transaction. In no case will interest be paid to any Participating Agency resulting from the late payment of cleared funds.

Section 3.03: Authorization of Customer-Initiated ACH Transactions. To facilitate the speedy transfer of funds as described in Section 3.02, each Participating Agency shall designate an account to hold its SmarTrip\textsuperscript{®} revenues and shall authorize ACH deposits into and withdrawals from that designated account. Participating Agencies must ensure that necessary funds are available in the settlement account for the ACH transaction. Should insufficient funds be available for settlement due to a Participating Agency’s shortfall in its account, that Participating Agency shall take all reasonable actions to provide the necessary funds. The Regional Customer Service Center shall provide to WMATA a report on the settlement process and any deficiencies. If any identified deficiencies are not corrected within a five (5) day period subsequent to the date established for the ACH transaction, WMATA shall take all necessary actions to issue a Termination Trigger Notification to all Participant Agencies following the process identified in Section 2.04.

Section 3.04: Ownership of “Float”. The investment earnings on funds received (commonly known as “float”) by Participating Agencies shall belong solely to the Participating Agency holding any uncommitted funds. The Regional Customer Service Center shall provide a monthly cumulative report on accumulated surpluses at each Participating Agency. Accounting of surpluses at the end of the clearing process and subsequently shall be the sole responsibility of each Participating Agency holding such funds.

Section 3.05 Use of Credit and Debit Capabilities. Any Participating Agency wishing to make use of the credit and debit capabilities of the Regional System through the ownership of a credit/debit enabled point-of-sale device or other credit/debit devices or processes must execute the Credit/Debit Authorization Agreement with WMATA. The use of a WMATA or Maryland Transit Administration owned device is not covered by the requirements of this section.

Section 3.06 Loss from Fraud or Abuse. Revenue losses associated with balance protection and any fraud or abuse not directly attributable to the failure of any one Participating Agency to properly follow established operating procedures shall be shared regionally based on value deducted at each Participating Agency. Any losses associated with a Participating Agency’s management or operation of credit/debit capability shall be that Participating Agency’s sole responsibility. Any loss associated with a Participating Agency’s failure to properly follow established operating procedures shall also be that Participating Agency’s sole responsibility.

ARTICLE 4 - RESERVE ACCOUNTS

Section 4.01: SmarTrip\textsuperscript{®} Card Purchase Reserve. There shall be created as an account of the Washington Metropolitan Area Transit Authority or a third party a
reserve for the purchase of SmarTrip® cards. This reserve shall be used to fund the purchase of SmarTrip® cards which are not specifically designed for a given Participating Agency. Each Participating Agency shall pay into the reserve as necessary to fund future card purchases, as part of each quarterly payment as determined in the Regional SmarTrip® Program Operating Budget. Proceeds from card sales will be returned to the reserve account to help fund future card purchases. The purchase of SmarTrip® cards which are specifically designed for a given Participating Agency are the responsibility of that Participating Agency and shall not be funded from this reserve.

ARTICLE 5 -- DISPUTES

Section 5.01: Dispute Resolution. Any disputes between Participating Agencies, a Participating Agency and WMATA, or a Participating Agency and the RCSC arising out of this Agreement may be disposed of by the parties by written agreement and/or amendment of this Agreement. If the parties cannot resolve the dispute, then the party seeking a resolution shall provide written notice of the nature of the dispute and the issue(s) to the other party. The other party may respond within thirty (30) days. If the dispute is not resolved within thirty (30) days following the response, the dispute will be resolved in accordance with Section 5.02.

Section 5.02: ADR and Court Jurisdiction.

A. Alternative Dispute Resolution ("ADR"). The parties agree to make their best good faith efforts to resolve any disputes which relate to or arise under this Agreement. Absent resolution, the parties agree to pursue any type of alternative dispute resolution procedure which appears to have a likelihood of successfully resolving any dispute. Either party may propose and the parties may agree to any type of dispute resolution procedure including but not limited to mediation, arbitration, mini trial, etc.

B. Court Jurisdiction. In the event the parties do not jointly elect to use the procedure set forth in Section 5.02(A), any party may commence a civil action for resolution of the dispute in a court of competent jurisdiction.

ARTICLE 6 -- NOTICES

Section 6.01: Written Notice. All notices hereunder shall be in writing and shall be deemed to have been sufficiently given or served for all purposes when presented personally, or sent by a courier service or a national overnight delivery service, as the U.S. Overnight Express Mail, to any party hereunder as follows:
If to the Agency:
Department of Environmental Services
Division of Transportation
Arlington County, Virginia
2100 Clarendon Blvd., Suite 900
Arlington, VA. 22201

With a second copy to:

County Attorney's Office
Arlington County, Virginia
2100 Clarendon Blvd., SUITE 403
Arlington, Va. 22201

If to WMATA:

Chief Executive Officer
Washington Metropolitan Area Transit Authority
Jackson Graham Building
600 Fifth Street, N.W.
Washington, D.C. 20001

With a second copy to:

General Counsel
Washington Metropolitan Area Transit Authority
Jackson Graham Building, Second Floor
600 Fifth Street, N.W.
Washington, D.C. 20001
ARTICLE 7 -- AMENDMENT(S)

Section 7.01: Amendment(s). This Agreement may be amended in writing by the parties. Such amendments will be valid upon execution by both parties.

ARTICLE 8 -- TERM

Section 8.01. The term of this Agreement shall begin on the date of the execution of this Agreement and shall have an initial duration to the expiration date of June 30, 2008 and shall automatically be renewed for successive additional five (5) year periods unless a majority of the Participating Agencies having similar Agreements with WMATA give written notice that they do not wish to renew their participation ninety (90) calendar days prior to the expiration of the respective Agreements. If this Agreement is not renewed, the Participating Agencies shall use the ninety (90) calendar day period prior to the expiration of the Agreement for the orderly termination of the SmarTrip® system.

ARTICLE 9 -- CIVIL RIGHTS AND NONDISCRIMINATION

Section 9.01. The parties to this Agreement recognize and agree that WMATA, as the grantee of numerous present federal transit grants, will adhere to those federal laws, regulations, executive orders or guidelines regarding civil rights and nondiscrimination strictures. Those applicable federal civil rights statutes and implementing regulations include, but are not necessarily limited to, the following:

A. **Nondiscrimination in Federal Transit Programs.** WMATA agrees to comply, and assures compliance by each third party contractor at any tier and each subrecipient at any tier under the Project, with the provisions of 49 U.S.C. § 5332, which prohibits discrimination on the basis of race, color, creed, national origin, sex or age, and prohibits discrimination in employment or business opportunity.

B. **Nondiscrimination -- Title VI of the Civil Rights Act.** WMATA agrees to comply and assures compliance by each third party contractor at any tier and each subrecipient at any tier under the Project, with all requirements prohibiting discrimination on the basis of race, color or national origin of Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d, and U.S. DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation -- Effectuation of Title VI of the Civil Rights Act," 49 C.F.R. Part 21 and any implementing requirements FTA may issue.

C. **Equal Employment Opportunity.** WMATA agrees to comply, and assures the compliance by each third party contractor at any tier and each subrecipient at any tier, with all requirements of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, and 49 U.S.C. § 5332 and any implementing
requirements FTA may issue. Those equal employment opportunity (EEO) requirements include, but are not limited to, the following:

(1) General Requirements.

(a) WMATA agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, sex, disability, age or national origin. WMATA agrees to take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, creed, sex, disability, age or national origin. Such action shall include, but not be limited to, employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. WMATA also agrees to comply with any implementing requirements FTA may issue.

(b) If WMATA is required to submit and obtain Federal Government approval of its EEO program that EEO program approved by the Federal Government is incorporated by reference.


D. Disadvantaged Business Enterprise. WMATA agrees to take the following measures to facilitate participation by disadvantaged business enterprises (DBE) in the Project:


(2) WMATA agrees that it shall not discriminate on the basis of race, color, national origin or sex in the award and performance of any third party contract, or sub-agreement supported with Federal assistance derived from the U.S. DOT or in the administration of its DBE program or the requirements of 49 C.F.R. Part 26. WMATA agrees to take all necessary and reasonable steps
under 49 C.F.R. Part 26 to ensure nondiscrimination in the award and administration of all third party contracts and sub-agreements supported with Federal assistance derived from the U.S. DOT.

E. **Nondiscrimination on the Basis of Sex.** To the extent applicable, WMATA agrees to comply with Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. §§ 1680 et seq., which prohibit discrimination on the basis of sex, and any subsequent Federal requirements.

F. **Nondiscrimination on the Basis of Age.** WMATA agrees to comply with the applicable requirements of the Age Discrimination Act of 1975, as amended, 42 U.S.C. §§ 6101 et seq., and implementing regulations, which prohibit discrimination on the basis of age.

G. **Access Requirements for Persons with Disabilities.** WMATA agrees to comply with the requirements of 49 U.S.C. § 5301(d) which expresses the Federal policy that the elderly and persons with disabilities have the same right as other persons to use mass transportation service and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement those policies. WMATA also agrees to comply with all applicable requirements of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibit discrimination on the basis of handicap, and with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 et seq., which requires the provision of accessible facilities and services, and with the following Federal regulations, including any amendments thereto:

(1) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37;

(2) U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. Part 27;


(8) U.S. Federal Communications Commission regulations, “Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled,” 47 C.F.R. Part 64, Subpart F; and

(9) FTA regulations, “Transportation for Elderly and Handicapped Persons,” 49 C.F.R. Part 609; and

(10) Any implementing requirements FTA may issue.


ARTICLE 10 -- ANTI-DRUG AND ALCOHOL POLICY

Section 10.01. The parties to this Agreement recognize and agree that WMATA, as the grantee to numerous transit federal grants, will adhere to those federal laws, regulations, executive orders or guideline strictures regarding anti-drug and alcohol policy in transit work and operations, which include, but is not limited to, the following: “Drug-Free Workplace Act (DFWA) of 1988,” 49 USC Sections 702 et seq.; “Requirements for a Drug-Free Workplace (Grants),” 49 C.F.R. Part 29; “Prevention of Prohibited Drug Use in Transit Operations,” 49 C.F.R. Part 653; and “Prevention of Alcohol Misuse in Transit Operations,” 49 C.F.R. Part 654.

ARTICLE 11 -- CERTIFICATION OF WMATA

Section 11.01. WMATA makes the following representations as of the date of the execution of this Agreement as a basis for the undertakings on the part of the other Participating Agencies:

A. WMATA has full power and authority to enter into the transactions contemplated by this Agreement and to carry out its obligations hereunder;
B. WMATA by proper corporate action has duly authorized the execution and delivery of this Agreement;

C. When executed and delivered by the Participating Agency and by WMATA, this Agreement will constitute the legal, valid and binding obligation of WMATA enforceable in accordance with its terms, except as such enforceability may be limited by annual appropriations, bankruptcy, reorganization, insolvency, moratorium or other laws affecting the enforcement of creditors’ rights generally.

D. No director, officer or employee of WMATA who exercises or has exercised any functions or responsibilities over any Procurement Contract shall have or obtain a personal or financial interest or benefit from any activity in connection with any such Procurement Contract or have an interest in any contract, subcontract or agreement with respect therewith during the term of this Agreement.

ARTICLE 12 -- CERTIFICATION OF PARTICIPATING AGENCY

Section 12.01. Participating Agency makes the following representations for its Participating Agency, and only for its Participating Agency, as of the date of the execution of this Agreement as a basis for the undertakings on the part of WMATA:

A. Participating Agency has all necessary power and authority to enter into the transactions contemplated by this Agreement and to carry out its individual obligations hereunder;

B. Participating Agency has duly authorized the execution and delivery of this Agreement;

C. When executed and delivered by the Participating Agency and by WMATA, this Agreement will constitute the legal, valid and binding obligation of the individual Participating Agency enforceable in accordance with its terms, except as such enforceability may be limited by annual appropriations, bankruptcy, reorganization, insolvency, moratorium or other laws affecting the enforcement of creditors’ rights generally;

D. No officer or employee of the Participating Agency who exercises or has exercised any functions or responsibilities over any procurement contract shall have or obtain a personal or financial interest or benefit from any activity in connection with any such procurement contract or have an interest in any contract, subcontract or agreement with respect therewith during the term of this Agreement.
ARTICLE 13 - GOVERNING LAW

Section 13.01: General Rules. The applicable law to be used in disputes covered by this Operating Agreement shall be in accordance with the principles set forth in this section. For disputes between Participating Agencies, all of which are within the same state, the law of that state (or the District of Columbia, as appropriate) shall be used. For region-wide contractual issues, the law of the place of the contract’s execution shall be used unless otherwise specified in the contract at issue. Each state’s conflict of laws rules shall be applicable since those laws are part of the state’s laws.

Section 13.02: Effect of WMATA Compact. All matters involving WMATA shall be governed by the terms of the WMATA Compact.

ARTICLE 14 - COUNTERPARTS

Section 14.01. This Agreement may be executed in two (2) identical counterparts, each of which shall constitute an original and all of which shall constitute, collectively, one Agreement. The counterpart with the most recent date shall determine the date of entry of this Agreement by the parties given on page one.

ARTICLE 15 – ORDER OF PRECEDENCE

Section 15.01. Should there be any conflict in the terms of this Operations Funding Agreement and the Letter of Intent, the terms of the Operations Funding Agreement shall control.
ARLINGTON COUNTY, Virginia

Attest:

County Board of Arlington, Virginia By: ____________________________ [Seal]

Witness

Dated:

Approved as to Form and Legal Sufficiency:

BY:

______________________________
County Attorney

Dated:

[signatures continued on following page]
WASHINGTON METROPOLITAN AREA
TRANSIT AUTHORITY

Attest:

__________________________________________  By: ____________________________ [Seal]

Secretary/Chief of Staff        Chief Executive Officer

Dated: ____________________________

Approved as to Form and Legal Sufficiency:

BY:

Office of General Counsel
### Exhibit A: Estimated Regional SmarTrip® Operating Budget

#### Estimated RCSC Operating Cost Allocation (Years 2-5)

*Plus transitional costs for ACS Customer Service for Year 1 and first half of Year 2 (if necessary)*

<table>
<thead>
<tr>
<th>Operating Costs ($) (Millions)</th>
<th>Annual Enduser (Riders)</th>
<th>Regional Share of Relationship</th>
<th>Year 1 Total</th>
<th>Year 2 Total</th>
<th>Year 3 Total</th>
<th>Year 4 Total</th>
<th>Year 5 Total</th>
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<td>(Millions)</td>
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<tr>
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</table>

#### Assumptions:

1. The following comprise RCSC operating costs as follows:
   - RCSC (ERG) Operating Costs (Total): $12,701,094
   - Overhead (10%): $1,270,109
   - Project Management (5%): $625,054
   - Annual Audit of the RCSC System (Total): $400,000
   - IT Support for the RCSC (Total): $194,000
   - ACS Customer Service Transition: $2,000,000

2. All amounts reflect estimates, based on smart card market penetration assumptions. Actual costs may vary.
3. Assumes the use of ACS for Customer Service in its first year.
4. Operators begin to enable their SmartTrip systems beginning July 2003. Year 1 costs will not be incurred if the SmartTrip system is not activated in 2003.
5. Final figures for ridership obtained from National Transit Database, Web Site verification, and telephone requests.
### Exhibit B  Estimated FY04 Quarterly Cash Flow Schedule

<table>
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<tr>
<th>Regional Operators</th>
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<th>2nd</th>
<th>3rd</th>
<th>4th</th>
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<td>$1,066,435</td>
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<td>$2,822,333</td>
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**Assumptions:**

1. Operating Costs for First and Second quarters denote an estimate for the use of ACS for customer service and is distributed based on estimated regional SmarTrip transactions (linked to Exhibit A, based on ridership and SmarTrip penetration). This cost is estimated using current ACS costs.
2. RCSC operations are scheduled to begin in January 2004 (3rd Qtr/FY04) based on a March 1, 2003 NTP. ACS continues operation for six month transition period (Third and Fourth Quarters).
3. For purposes of this analysis, all operators assumed to begin SmarTrip operations in the first quarter FY2004.
4. SmarTrip Penetration for all operators for FY04 is estimated at 15% (1st Qtr. & 2nd Qtr.) and 30% (3rd Qtr. & 4th Qtr.) with the exception of WMATA where penetration on Metrorail is estimated at 33% (1st Qtr. & 2nd Qtr.) and 66% (3rd Qtr. & 4th Qtr.).
5. Estimate also includes cost for annual RCSC system audit and Data Network Concentrator support.
6. All costs represent fixed costs and are independent of other operator participation.
Mr. Murray C. Bond  
Director, Office of SmarTrip\textsuperscript{®} Operations  
WMATA  
600 Fifth Street, N.W.  
Washington, D.C. 20001  

RE: Participation in Regional SmarTrip\textsuperscript{®} System  

Dear Mr. Bond:  

This letter is written to indicate that Arlington County intends to participate in the Regional SmarTrip\textsuperscript{®} System (for which we will be known in the remainder of this letter as a "Participating Agency"). We understand and agree that this participation is expected to be on the terms listed below as well as under the terms of the SmarTrip\textsuperscript{®} Capital Funding Agreement (for Maryland Transit Authority only) and the SmarTrip\textsuperscript{®} Operations Funding Agreement to be executed concurrent with this document.  

I. PRINCIPLES  

The objective of the Regional SmarTrip\textsuperscript{®} System is to establish a more seamless method of fare collection across participating agencies to enable more convenient inter-agency transfers, as well as to provide the benefits of smart card technology across participating agencies and to transit agency customers.  

The Washington Metropolitan Area Transit Authority (WMATA), as the contract manager for the Regional Customer Service Center (RCSC) provider, (a separate legal entity contracted by Washington Metropolitan Transit Authority to serve as the clearing house for SmarTrip) will provide oversight of the Regional Customer Service Center provider, will take a leading role in coordinating participation in the Regional SmarTrip\textsuperscript{®} System, and will work with the other Participating Agencies in program monitoring, development, growth and reporting. Participating Agencies will support the regional program through the commitment of approved funding, participation in program development and review and coordination of procedures to achieve the objective of developing a more seamless, customer-friendly fare collection system capable of increasing ridership and revenue.
II. REGIONAL SMARTRIP® FUNCTIONS

WMATA, in consultation and coordination with all Participating Agencies, will perform the following functions:

A. Regional Customer Service Center (RCSC) Contract Oversight:
WMATA, as the contracting agency for the RCSC, will perform contract oversight of the RCSC in terms of performance of the system. WMATA and the other Participating Agencies will develop a draft budget for the RCSC and each participant’s share of that annual budget. As part of the overall review of the annual WMATA budget, this draft RCSC budget will be reviewed by the WMATA Board of Directors and then will be forwarded to the other Participating Agencies in the time and manner set forth in the Operations Funding Agreement for review and comment. WMATA and the other Participating Agencies may seek additional services from the RCSC contractor so long as these requests are: 1. coordinated and directed through WMATA; 2. have no impact on other Participating Agencies or the Regional SmarTrip® System; and 3. are funded solely by the requesting agency under existing WMATA reimbursable program policy established by the WMATA Board of Directors in Resolution No. 99-67, and as that Resolution may be amended or superceded in the future and according to the payment schedule specified in Section VI. Each Participating Agency must approve its share of the budget before the budget becomes effective. WMATA shall be responsible for conducting an annual audit by WMATA’s external auditor of the RCSC and financial processes, including SmarTrip® transactions at Participating Agencies. Copies of the audits will be made available to the Participating Agencies upon completion for review. WMATA and the other Participating Agencies will also investigate and evaluate potential revenue sources to help defray the costs associated with the RCSC and the overall Regional SmarTrip® System. Arlington County’s current representative is the Transit Program Manager.

B. Financial Clearing: WMATA and the other Participating Agencies shall develop financial clearing procedures, to be used by the RCSC in conducting financial clearing among all Participating Agencies. WMATA, as the RCSC contracting agency, will develop and implement the financial clearing process in coordination with the RCSC contractor. The financial clearing process shall be scheduled to occur no less than once per month. WMATA and the other Participating Agencies will be responsible for developing processes to administer any exceptions to standard procedures, such as data irregularities, which processes shall be implemented by the RCSC contractor. WMATA and the other Participating Agencies will be responsible for developing and ensuring remedies in coordination with the RCSC contractor. Currently,
Arlington County’s current committee representative is the Transit Program Manager.

C. **Customer Service:** WMATA and the other Participating Agencies will establish and monitor customer service procedures for the RCSC. WMATA, as the RCSC contracting agency, will monitor and regularly report on RCSC and SmarTrip® performance and utilization across Participating Agencies. Arlington County’s current committee representative is the Project Manager for ART.

D. **SmarTrip® Card Graphics:** WMATA and the other Participating Agencies will be responsible for developing card graphic standards and will be responsible for ensuring that card graphics standards are adhered to, including the use of the SmarTrip® logo on all cards and the inclusion of a notice that SmarTrip® is a registered trademark of WMATA. Arlington County’s current committee representative is the Transit Marketing Manager.

E. **Operating Procedures:** WMATA and the other Participating Agencies will be responsible for developing and administering operating procedures that provide guidelines for procedures used in operating the Regional SmarTrip® System. All Participating Agencies will monitor and report on SmarTrip® compatible equipment issues. Arlington County’s current representative is the Project Manager for ART.

F. **Technology Reinvestments:** WMATA and the Participating Agencies will coordinate technology reinvestments that impact the Regional SmarTrip® System to ensure continued regional compatibility. WMATA and the Participating Agencies will also strive to provide agencies with the flexibility to develop or demonstrate new programs. WMATA, as contracting agency for the RCSC, will coordinate use of the SmarTrip® card capabilities with the Participating Agencies, with the goal of maintaining or enhancing card performance while providing Participating Agencies with opportunities to explore joint or unique projects and programs. Reinvestment expenditures shared among the Participating Agencies will be subject to the approval of the Participating Agencies. Arlington County’s current representative is the Project Manager for ART.

G. **Card Security:** WMATA, as contracting agency for the RCSC, and in coordination with the other Participating Agencies and the RCSC contractor, will report on card-based security issues. WMATA and the Participating Agencies will develop guidelines regarding the integrity of the Regional SmarTrip® System. Arlington County’s current representative is the Project Manager for ART.
H. Data Privacy: WMATA and the other Participating Agencies will develop regional guidelines regarding data privacy that meet federal, state and local legal requirements. Consistent with meeting data privacy legal requirements and within the approved budget, WMATA and the other Participating Agencies shall provide maximum data security for SmarTrip® card holders and the Participating Agencies. Arlington County’s current representative is the Project Manager for ART.

I. Membership/Participation: WMATA and the other Participating Agencies will be responsible for developing guidelines for membership/participation in the Regional SmarTrip® System taking into consideration such things as financial obligations, timing and associated factors. Participating Agencies will determine when their participation in the Regional SmarTrip® System commences. Arlington County’s current representative is the Project Manager for ART.

J. Marketing/Public Relations: WMATA and the other Participating Agencies will work to coordinate marketing and public relations efforts related to the Regional SmarTrip® System that each agency may pursue with the goal of maximizing customer use of SmarTrip® through consistency of materials, customer education and public outreach efforts. Arlington County’s current representative is the Transit Marketing Manager.

K. Partner Agreements: WMATA and the other Participating Agencies will coordinate partnership agreements with other organizations involving the SmarTrip® card or system, and work to ensure that any partnership agreements are consistent with program objectives. Applications or new products involving the use of the SmarTrip® card, chip and related copyrighted or trademarked materials shall be approved by WMATA before use. Approval of any use that does not impact WMATA or affect the integrity or financial viability of the Regional SmarTrip® System shall not be unreasonably withheld. Arlington County’s current representative is the Project Manager for ART.

L. Dispute Resolution: WMATA and the other Participating Agencies will develop guidelines regarding the settlement and resolution of disputes between the Participating Agencies that may arise regarding the Regional SmarTrip® System and may assist in dispute resolution. Arlington County’s current representative is the Project Manager for ART.

M. Reporting: WMATA will report on a monthly basis to all Participating Agencies regarding the work performed during the preceding month as well as on other matters of interest to the Participating Agencies. The content of the reports will be developed in consultation with the Participating Agencies. WMATA shall report on a timely basis to participants all major events and situations regarding the RCSC contract when they occur.
II. RIGHTS EXCLUSIVE TO WMATA AND PARTICIPATING AGENCIES

WMATA and the other Participating Agencies will retain all existing rights and responsibilities in regards to local decision-making, to include but not be limited to:

A. Establishment of local fare tariffs (structure and pricing),
B. Review and approval of the individual agency’s annual financial commitments to the Regional SmarTrip® System,
C. Discretion to participate in whole or part in any proposed regional tariff for the SmarTrip® card,
D. Decision to apply for or withdraw from the Regional SmarTrip® System subject to conditions to be established by WMATA, in consultation with the other Participating Agencies,
E. Participation in inter-agency fare arrangements or discounts,
F. Development of new and beneficial partnering agreements (any partnering arrangements involving the use of SmarTrip® and related copyrighted or trademarked materials shall be in conformance with guidelines established by WMATA),
G. Developing customized or specialized SmarTrip® cards within guidelines established by WMATA and the other Participating Agencies, and third-party use of the SmarTrip® chip within guidelines established by WMATA, and
H. Developing intellectual property related to the Regional SmarTrip® System, but allowing other Participating Agencies to use the intellectual property in connection with the Regional SmarTrip® System subject to reasonable terms and conditions applied to all participants uniformly.

Any function not expressly designated as a responsibility of WMATA within this Letter of Intent remains the function and responsibility of each Participating Agency.

III. WMATA AND OTHER PARTICIPATING AGENCY ROLES AND RESPONSIBILITIES

WMATA and the other Participating Agencies consenting to this Letter of Intent agree to abide by the following principles:

A. Maintaining SmarTrip® compatible equipment and associated software in good working condition to support the requirements of a regionally integrated system and customer service,
B. Supporting requirements of and complying with any licensing agreements that are necessary to support the operation of a regionally integrated system,
C. Protecting the rights of each Participating Agency and contractor, to the extent permitted by law,

D. Complying with regionally approved operating procedures necessary to support a regionally integrated system, including, but not limited to, the upload and download of data to support card management and financial requirements,

E. Taking necessary actions to reduce fraud or abuse,

F. Sharing in approved costs of the Regional SmarTrip® System through approved allocation methods, including the costs of the RCSC and point-of-sale network, and any fraud or risk associated with the regional system, as set forth in the Operations Funding Agreement, and

G. Transferring funds as specified under regional financial clearing requirements.

IV. PARTICIPATING AGENCY CONSULTATION

WMATA will convene regular meetings of the Participating Agencies to discuss operating procedures and to develop the proposed annual operating budget for the RCSC. The frequency of such meetings will be established by consensus of the Participating Agencies. Arlington County's current representative is Project Manager for ART.

V. FUNDING

All Participating Agencies, to the extent permitted by applicable statutes, are required to use their best efforts to annually appropriate their share of the RCSC and point-of-sale network costs, costs associated with any fraud or abuse, costs associated with any risk or loss related to the Regional SmarTrip® System, their share of any Termination for Convenience costs incurred by WMATA for any contract or other item, and future non-agency specific costs which may be required to support operation of the Regional SmarTrip® System or regionally approved procedures related to operation of the Regional SmarTrip® System. WMATA and the Participating Agencies will develop a formula to allocate annual costs to participants and an annual budget. Due to the contractual responsibility of WMATA as the contracting agency, the budget will be reviewed by the WMATA Board of Directors prior to distribution to the Participating Agencies. All Participating Agencies must have approved the budget and appropriated their shares of the annual budget before the budget becomes effective. An agency’s failure to appropriate may result in loss of privileges within the Regional SmarTrip® System, may require the other participants to consider revised funding shares of the proposed budget and/or revisions to the proposed budget expenditures or may result in the incurrence of Termination for Convenience costs for any contract or other cost item. Failure to have an effective budget at the time
that the previous budget lapses will result in WMATA issuing a Termination for Convenience for all contracts and other items upon the expiration of the previously approved budget. The process for determining the costs resulting from a Termination for Convenience will be as set forth in the Operating Funding Agreement.

VI. BILLING

Participating Agencies, once the system is fully operational as it pertains to the Participating Agency, will be billed by WMATA for their approved share of the costs of the RCSC and other approved SmarTrip®-related costs. Subject to its annual appropriations and full operations of system, each other Participating Agency shall pay to WMATA in the form of advance quarterly funding payments due on the first day of July, October, January, and April during the fiscal year that agency’s share of the costs of the RCSC and any other costs specified by WMATA as included in the approved budget reviewed by the Participating Agencies. The quarterly billing shall, at a minimum, cover expected expenses for this program for the following quarter. Where there is an invoice received by WMATA, as the contracting agency for the RCSC, which will exceed the estimated cost for the given calendar quarter, Arlington County agrees to use their best efforts to have the Participating Agency’s share of that overrun provided to WMATA as quickly as possible. Arlington County will forward the funds within thirty (30) calendar days after the funds are requested or be treated as a late payment for purposes of the next sentence. Late payments shall be assessed an interest fee measured by WMATA’s overnight interest earnings amount and shall, at a minimum, cover the cost of any funding used to cover the agency’s share of expenses which were paid late. WMATA will not be required to advance funds on behalf of any other Participating Agency for any expenditure for the Regional SmarTrip® System. WMATA will be responsible for coordinating an audit of actual costs and Participating Agencies’ respective share of costs, and including, as necessary, an audit adjustment to each Participating Agency’s bill in subsequent fiscal years.

VII. AMENDMENTS

Either WMATA or Arlington County may propose an amendment to this Letter of Intent at any time. Any such amendment shall become effective upon WMATA’s receipt of a copy of the amendment executed by all Participating Agencies. Any amendments to this Letter of Intent must be approved by the WMATA Board of Directors.

VIII. CHANGES IN PARTICIPATING AGENCY MEMBERSHIP

Any Participating Agency or signatory to this agreement may withdraw from this agreement upon ninety (90) days advance written notice, after meeting
any terms and conditions for the withdrawal as determined by WMATA in consultation with the other Participating Agencies, including all financial and operational obligations and other obligations incident to the Participating Agency’s withdrawal, including Termination for Convenience costs if applicable and as determined and assigned per the process specified in the Operations Funding Agreement. Punitive costs, by whatever name, shall not be imposed. If WMATA gives written notice of its intent to withdraw as provided in this section VIII, then all Participating Agencies shall use reasonable efforts to reach a mutually acceptable agreement on the disposition of the Regional SmarTrip® System.

Any agency wishing to become a Participating Agency in the Regional SmarTrip® System may join after meeting all terms and conditions for such membership as determined by WMATA and the other Participating Agencies. These terms and conditions shall, at a minimum, include the cost of any software or hardware purchases, modifications, or other changes necessary to fully integrate the entering agency into the Regional SmarTrip® System.

IX. DURATION OF LETTER OF INTENT

This Letter of Intent shall be in effect through June 30, 2008 and shall automatically be renewed for an additional five (5) year period unless a simple majority of the Participating Agencies gives written notice to WMATA that they do not wish to renew their participation on or before April 1, 2008. If this Letter of Intent is not renewed, the Participating Agencies shall use the ninety (90) calendar day period prior to the expiration of the respective Letters of Intent for the orderly termination of the Regional SmarTrip® System. Nothing in this section shall prohibit WMATA from using the name SmarTrip® or the concept after the expiration of this Letter of Intent.

X. ASSIGNMENTS

No Participating Agency shall have the power to assign either their rights or obligations under this Letter of Intent, provided however, that any reorganization of a Participating Agency shall automatically transfer the former Participating Agency’s rights and obligations (including any financial obligations incident to the consolidation of the Participating Agencies) to the new agency succeeding to the transportation functions of the former agency.
XI. IMMUNITIES

Nothing contained in this Letter of Intent shall diminish or waive, in whole or in part, any immunity, in contract or tort, enjoyed by any Participating Agency.

XII. CONFLICT OF LAWS

The applicable law to be used in disputes covered by this Letter of Intent shall be in accordance with the principles set forth in this section. For disputes between agencies, all of which are within the same state, the law of that state (or the District of Columbia, as appropriate) shall be used. For region-wide contractual issues, the law of the place of the contract’s execution shall be used unless otherwise specified in the contract at issue. For disputes between patrons and one or more of the Participating Agencies, which are located within the same state as the patron, that state’s law shall be used. For disputes between a patron and one or more Participating Agencies, the law of the state in which the event giving rise to the dispute occurs shall be used. The term “event giving rise to the dispute occurs” shall be interpreted as the location where the patron has taken the action to start the event. For example, a patron adds money to a SmarTrip® card in Maryland which later causes a dispute with the Fairfax County Connector. The law applied will be that of Maryland, so long as the patron is a resident of any jurisdiction other than Virginia. A patron’s dispute with the RCSC shall be treated as a dispute with a Participating Agency located in the same state as the RCSC. Should the RCSC be located in a state other than the District of Columbia, Maryland, or Virginia, then District of Columbia law shall apply. Each state’s conflict of laws rules shall be applicable since those laws are part of the state’s laws.

XIII. ORDER OF PRECEDENCE

Should there be any conflict in the terms of this Letter of Intent and the Operations Funding Agreement, the terms of the Operations Funding Agreement shall control.

Sincerely,

Office of the County Manager
Arlington County

Regional SmarTrip® System Letter of Intent

March 31, 2006