

COST ALLOCATION AGREEMENT

THIS AGREEMENT, made this 1st day of October 1999 by and between the TRANSPORTATION DISTRICT COMMISSION OF HAMPTON ROADS ("Commission"), and the City of Chesapeake, the City of Hampton, the City of Newport News, the City of Norfolk, the City of Portsmouth, the City of Suffolk and the City of Virginia Beach ("Participating Cities").

RECITALS:

The Commission was created on September 20, 1999 by adoption of proper ordinances by the Participating Cities in accordance with provisions of Chapter 45, Title 15.2 of the Code of Virginia, Transportation District Act of 1964, as amended;

The Transportation District Act of 1964 provides a cooperative process to assure that transportation plans and programs will be coordinated with regional and local development plans and meet the needs and have the support of all the local governments in the Transportation District;

The Commission has been established as the regional instrumentality to plan, develop, finance, and provide for the operation of improved transit facilities and service for the Transportation District of Hampton Roads;

Providing, improving and expanding public transportation service to meet the needs of the Participating Cities on an equitable basis within the limits of available resources present complex problems of a continuing nature;

The Commission has adopted a Transportation Plan in the manner provided by Section 15.2-4515(A) and 15.2-4528(A)(4) of the Transportation District Act;

Section 15.2-4515(E) of the Transportation District Act provides that there will be a determination of the equitable allocation among the Participating Cities of the costs incurred by the Commission in providing transportation facilities and services;

The Commission and Participating Cities are authorized to enter into agreement whereby the Commission will provide, or cause to be provided, transportation facilities and services to the Participating Cities;

The agreement between the Commission and the Participating Cities must specify the annual maximum obligation of any city for payments to meet the expenses and obligations of the Commission; and

This Agreement establishes between the Commission and the Participating Cities, pursuant to the enabling legislation, the principles and detailed cost allocation procedures to be used for distribution of the capital and operating costs of acquiring, consolidating, rehabilitating, operating and expanding transportation facilities and services for the regional public transportation system.

NOW, THEREFORE, in consideration of the mutual promises, the parties agree as follows:

ARTICLE I

DEFINITIONS

For the purposes of this Agreement, certain words and phrases are defined as follows:

COMMISSION

The Transportation District Commission of Hampton Roads.

DIVISION

There will be two Divisions for the allocation of operating revenues and costs -- the Southside Division consisting of the cities of Chesapeake, Norfolk, Portsmouth, Suffolk, Virginia Beach and other cities or counties on the Southside which may become members of the Transportation District of Hampton Roads; and the Peninsula Division consisting of the cities of Hampton, Newport News and other cities or counties on the Virginia Peninsula which may become a member of the Transportation District of Hampton Roads.

CITY - PARTICIPATING CITY

The cities of Chesapeake, Hampton, Newport News, Norfolk, Portsmouth, Suffolk and Virginia Beach; and any other city or county which may subsequently become a member of the Transportation District of Hampton Roads. Term refers to the cities and/or counties individually or collectively.

COSTS

Administrative Costs. Administrative costs are those costs associated with the personnel who directly support the Commission, including (i) their wages and fringe benefits, (ii) a proportion of the of the expenses related to their positions, (iii) travel related to Commission matters, (iv) legal and audit professional services directly related to the support of the Commission and (v) any other general expense which the Commission directs to be included as an administrative cost. Personnel should include the Executive Director, Secretary, and Treasurer of the Commission and any other position so designated by the Commission.

Capital Costs. Capital costs are all costs associated with (i) the acquisition of items such as real estate, facilities, vehicles and equipment above a stated value with a life of over one year, (ii) major planning and engineering studies which may result in large capital expenditures, construction of new facilities or improvements of existing facilities and (iii) any other items which qualify for federal and/or state financial capital assistance.

Operating Costs. Operating costs are those costs associated with performance of transportation service, including (i) direct costs which are identified with a particular transportation mode such as operator wages and. benefits, fuel and maintenance materials, insurance, direct supervision wages and benefits, and material directly related to the mode, scheduling and marketing costs supporting the mode, (ii) costs of services shared by multiple modes such as maintenance employee wages and fringes, facility upkeep, utilities, insurance, marketing, communications; accounting and training and (iii) other incidental costs related to the performance of transportation service which do not fall into the categories of administrative or capital costs.

REVENUES

Passenger Revenue. Passenger Revenue is any money received directly or indirectly as a fare for the transportation of a person or persons on regularly scheduled services provided by the Commission.

Charter -Revenue. Charter Revenue is money received for the purpose of providing transportation services to the purchaser for the purchaser's exclusive use and at the purchaser's direction.

Contract Revenue. Contract Revenue is money received from a purchaser providing transportation services on a regular basis which may also be shared by persons other than the purchaser and is scheduled and routed by the provider.

Auxiliary Revenues. Auxiliary Revenues are monies received for use of Commission property to advertise. The property may be vehicles, transit shelters, brochures, time tables or other such transportation property. The sale of waste and scrap is also considered an auxiliary revenue.

Commission Generated Revenues. Commission Generated Revenues are monies received from the sale of fully depreciated assets, and investment and interest income on retained earnings.

Non-Transportation Revenues. Non-Transportation Revenues are those monies received which do- not relate directly to providing transportation services. Sale of maintenance services, lease of transportation properties, investment and interest incomes, discounts taken, and any other monies received which are not covered by the definitions provided in this document, are non-transportation revenues.

PUBLIC SUPPORT FUNDS

Federal Funds. Federal funds are those funds provided for capital, operating or administrative assistance which originate from appropriations of the federal government and are provided to the Commission for support of Commission transportation programs.

State Funds. State funds are those funds provided to the Commission for capital, operating or administrative assistance by the state government for support of Commission transportation programs.

Local Funds. Local funds are those funds provided to the Commission for capital, operating or administrative assistance by local governments, other local entities and/or from a dedicated local tax source for support of Commission transportation programs.

OTHER

In Service Hours. In Service Hours are the total number of hours that revenue vehicles are operated in revenue service, excluding hours traveling to and from storage facilities and during other dead-head travel.

In Service Miles. In Service Miles are the total number of passenger vehicle miles operated while in revenue service, excluding miles traveling to and from storage facilities and during other dead-head travel.

ARTICLE II

TERM OF AGREEMENT

The term of this Agreement will be from July 1, 1999 to June 30, 2000. Thereafter, this Agreement will automatically renew and extend itself for additional terms of one (1) year extending from July 1 through June 30 on the same terms and conditions without the need to execute any other instrument or document. However, any party seeking to modify, amend or terminate this Agreement may cause the Agreement to terminate at the end of a renewal period by giving written notice of intent to terminate to each of the other parties on or before January 1 of the year in which the Agreement is to terminate. The written notice must be given by certified mail, return receipt requested, to the City Manager of the participating city or cities or to the Executive Director of the Commission as the case may be.

ARTICLE III

PRINCIPLES TO GUIDE DEVELOPMENT OF COST ALLOCATION FORMULAS

A. The public transportation system of the Transportation District of Hampton Roads, will be a metropolitan system and its operation is intended to benefit every jurisdiction which it serves.

B. The method of allocating expenses and revenues is intended to be on an equitable basis and is intended to encourage the most effective and efficient operation of the regional transportation system.

C. All material revision -of services must have prior approval of the Commission. All revisions will be-reported to the Commission at its next scheduled meeting.

D. It is intended that local costs for capital expenditures will be proportional, based on In Service Hours, for each Participating City, except that capital projects which benefit one Participating City exclusively will be funded 100% of local costs by the Participating City benefiting. This is to be determined by the Commission when the project is budgeted.

E. The application of federal, state and local resources to the cost allocation formula will be made in a manner consistent with this Agreement.

F. The method of allocating costs and revenues will be based on service provided and revenues generated in each individual city.

G. The Commission will not impose any transportation service in or on any City for which such City must pay any cost unless a member of the Commission representing such City has voted affirmatively to accept such service.

ARTICLE IV

PROVISION OF PUBLIC TRANSPORTATION SERVICES

A. The Commission will own and operate the consolidated regional public transportation system within and between the Participating Cities.

B. The Commission recognizes the service provided by local contract carriers and other transportation companies and will attempt to foster continuation and improvement of services provided by these private companies.

C. Each year, as part of the budgeting process, the Commission will propose a public transportation service program ("TSP") for the region. The TSP will contain a description of service such as 'route name, hours of service to be provided, estimated cost, estimated revenue and estimated city share of the cost of service. The TSP will identify the service program of each Participating City and its contribution based on estimated costs and revenues.

D. Each Participating City will review its portion of the TSP and recommend revisions where appropriate. After each Participating City has approved funding of its portion of the TSP, the Commission will approve and publish the TSP as the Transportation Service Program of Hampton Roads.

E. Each Participating City will determine the type, amount and location of public transportation services for which it provides funds within its borders. Each Participating City, by approving its portion of the TSP, agrees to pay monthly in advance its portion of the administrative, capital and net operating costs of the Commission's approved TSP.

F. Each Participating City will have final determination on the type, amount, and location of public transportation service provided within its borders. Nothing in this Agreement will be construed as a requirement that a Participating City must provide public transportation services.

G. The Commission will provide the transit service contained in the TSP as approved by each Participating City and each city will finance its share of net capital and operating costs incurred by the Commission in providing transportation services contained in the approved TSP.

H. Additions, deletions, or revisions to the TSP may be proposed at any time by a Participating City by letter from the City Manager or his designated representative to the Executive Director of the Commission. Changes may also be proposed at any time by the Commission by letter from the Executive Director or his designated representative to the City Manager of a Participating City. If the change is to be implemented during the year of the previously approved TSP and increases the total In Service Hours for the Participating City, no federal or state public support funds already allocated will be applied to that service until that service is included in the annual TSP and budget.

I. Whenever an addition, deletion, or revision to the TSP is proposed, the Commission will develop an estimated cost of the proposed change. The estimated cost will be furnished to the Participating City or Participating Cities affected by the proposed change.

J. The Participating Cities will review and approve all proposed changes and estimated costs of the TSP before implementation by the Commission. The TSP will be revised to incorporate all changes approved by the Participating Cities. If no response is made by the City Manager or his designated representative before or at the public hearing, in the case of a change requiring a public hearing, or within 15 days before implementation in the case of a minor change, the Commission will assume that there are no objections to the service changes and will proceed.

K. Any capital cost or operating cost liability incurred by the Commission as a result of a reduction of transit service requested by a Participating City will be paid by the Participating City requesting the reduction until such time as the liability is relieved.

ARTICLE V

ALLOCATION OF ADMINISTRATIVE EXPENSES

A. The Participating Cities share equally in representation on the Commission and will share equally in administration expenses.

B. The Commission will prepare annually a budget of its administrative expenses.

C. The Participating Cities will bear equally the administrative expenses of the Commission except that each share will be reduced equally if any funds for administrative expenses are received by the Commission from any other source.

ARTICLE VI

ALLOCATION OF CAPITAL COSTS

A. The Commission will prepare annually a budget for its capital improvement program for the next fiscal year.

B. The federal and state governments provide significant financial assistance to the Commission for capital acquisitions. The Participating Cities provide matching funds for the federal and state grants in aid called "local share." The matching percentage of local funds changes on an annual basis. The dollar amounts of capital purchases can vary significantly on an annual basis. In order to reduce fluctuations in budgeting local share, the Participating City's contribution of capital funds will be a percentage of the Commission's depreciation expense pro-rated to each city on the basis of its percentage of total transportation services received expressed as In Service Hours. The percentage applied to depreciation will be reviewed each year and included as part of the TSP approved by the Commission. This formula applies to capital purchases and depreciation of assets which support transportation services which apply to all Participating Cities. Examples: vehicles, administration and maintenance facilities, bus stop signs, bus shelters, computer systems.

1. Capital purchases which apply to single transportation services such as pedestrian ferry or light rail will be locally funded by the Participating Cities receiving benefit from the transportation services on a proportional basis agreed to by the Participating Cities.

2. The local share of capital improvements which are requested by a Participating City and benefit only that Participating City will be borne by the requesting Participating City.

ARTICLE VII

DETERMINATION OF HAMPTON SCHOOL REVENUE

Each year as part of the development of the annual budget, Hampton School revenues will be calculated for the year being budgeted as follows:

1. The budgeted direct operating costs will be allocated to all service categories on a basis consistent with the cost allocation process described in Article VIII.

2. Hampton School Revenues will be established for the year being budgeted at an amount equal to the budgeted direct operating expenses for providing Hampton School Service.

Upon approval of the budget by the Commission and the respective cities, the Hampton School Revenues will be paid to the Commission by the City of Hampton and/or the Hampton School Board on a quarterly basis as established in the City of Hampton annual budget.

If there are any changes to the level of service for Hampton Schools as stated in the annual TSP and as adopted by the Commission and the Participating Cities, an adjustment will be made up or down to the Hampton School Revenue in an amount equal to the Direct Operating Cost of those changes. Such additional amounts will be paid by the City of Hampton and/or the Hampton School Board or refunded by the Commission as required.

ARTICLE VIII

ALLOCATION OF OPERATING COSTS

A. In recognition of the distinct characteristics of Participating Cities and to insure that each Participating City is equitably allocated only the net cost of providing public transportation services for its citizens, separate operating cost and passenger revenue allocation formulas will be used.

B. After the administrative costs of the Commission have been allocated in accordance with Article V and the capital costs allocated in accordance with Article VI, all other costs incurred by the Commission in providing public transportation services in the District will be considered operating costs of providing public transportation.

C. Each transit route service will be analyzed separately to determine its operating costs and passenger revenues.

D. Transportation operating costs will be allocated among the Participating Cities in the following manner:

1. For express or closed-door services, the total operating costs of providing the service on each route will be assigned to the Participating City having the open-door portion of the service;

2. For regular route local or open-door service, the total operation costs on each route will be allocated to each Participating City in the Division based on the relative share of In Service Hours operated by the Division in each Participating City; and

3. When specifically authorized by the Commission, a maximum of 7% of federal and state operating assistance received by the Commission each year will be used to cover the operating costs of cross-roads or regional transit service (service between the Virginia Peninsula and Southside).

E. The Commission operates numerous transportation services from multiple facilities and it is therefore necessary to capture costs and In Service Hours by Division and service. The Commission will maintain a system of accounting that will recognize costs by Division and service. The Commission will maintain costs by route for fixed route services. In Service Hours and other service statistics will be collected by Division and service. In Service Miles will be the basis for determining the proportions for demand response modes serving the disabled community. Each city receiving transportation services from a Division will be allocated costs proportional to their In Service Hours or In Service Miles, as the case may be, to total In Service Hours or In Service Miles for the service in that Division. Overhead costs for a Division which operates multiple transportation services will be proportioned on the basis of total Participating City In Service Hours received from that Division to total In Service Hours of the Division.

1. The Commission will carry property insurance adequate to protect the values of its assets and sufficient liability insurance coverage and reserves as determined by the Commission. In the event a claim is adjudicated against the Commission in excess of its insurance coverage, the cost of the excess judgment will be considered as an operating expense and allocated to each city on the basis of its proportion of service received to total services provided by all Divisions and services.

2. The Commission may engage in services which are non-transportation in nature and generate costs and revenues. The costs of these non-transportation services will be accounted for separately and not allocated to the Divisions or services and will be fully funded from Commission Generated Revenues.

ARTICLE IX

ALLOCATION OF REVENUES

A. All passenger revenue collected within the borders of a Participating City will be credited to the service and Participating City in which it was collected. The Commission will maintain passenger revenues by route for fixed route services. Demand response passenger revenue for the disabled community will be allocated on the basis of city of home address of the passenger. Charter and contract revenues equal to the operating expense of providing charter or contract services will be credited to the cities participating in the Division and service which provided the charter or contract services in the same manner as costs in Article VI. Charter and

contract revenues collected in excess of expense are allocated to the Commission. Auxiliary revenues will be allocated based on relative share of In Service Hours or In Service Miles operated by that Division and will be used to reduce overhead costs.

B. Revenues generated by Commission services will be used to cover costs of those services. Funds in excess of costs will be allocated to the Commission.

C. Investment and interest income from Commission funds will be retained by the fund generating the income. Investment income earned from funds advanced by a Participating City and not expended by the Commission will be allocated to that Participating City.

D. Federal funds received to reimburse net eligible operating expenses will be allocated to each Division on a proportion of Division net- operating expense to total net operating expense of the Commission. The formula funds will then be distributed to the transportation services operated within the Division on the same basis as the Division proportion.

E. State funds received to reimburse specific eligible expenses will be allocated to each Division on the basis of the proportion of Division eligible expenses to total eligible expenses of the Commission. The allocation to transportation services within the Divisions will be the same.

F. Federal or state funds received for specific purposes will be accounted for and applied to programs for which they were specifically received.

G. Funds received from the sale of assets will be retained by the Commission. All gains will be Commission revenue and all losses will be a Commission expense. This paragraph does not apply to the circumstance discussed in Article IV paragraph K.

H. To the extent permitted by law, dedicated revenues generated in each Participating City shall be allocated to that Participating City, unless the governing body thereof authorizes an alternative allocation based upon a finding that such alternative allocation encourages the most effective and efficient operation of the regional transportation system. The Commission shall request the General Assembly, in any legislation it may enact which establishes a source of dedicated revenues, to permit the Commission to allocate such dedicated revenues in a manner consistent with this provision.

I. Prior to (i) recommending to the General Assembly the imposition or increase of any tax or (ii) imposing or increasing any tax that the Commission is empowered to impose, the Commission shall receive resolutions supporting such recommendation, imposition, or increase from 100% of the member jurisdictions.

ARTICLE X

CALCULATION OF LOCAL SHARE OF OPERATING COSTS

A. Each transportation service listed in the TSP will be funded in the same manner using the same methodology. Costs will be captured for each service within each Division. Revenues will be captured by route and/or city and subtracted from Costs to determine if a deficit exists. If a deficit exists, federal formula funds will be applied in accordance with Article IX paragraph D. State funds will be applied in accordance with Article IX paragraph E. If funds are required after revenues, federal and state aid and any other assistance are applied to costs, the Participating City approving that service in the TSP will provide the funds

B. On a monthly basis, the Commission will provide each Participating City a detailed report of the status of each transportation service in which the city is participating. The report will summarize the individual Participating City's budget status for the month and year to date by transportation service.

ARTICLE XI

SCHEDULE FOR DEVELOPMENT AND APPROVAL OF TSP AND BUDGET

A. The schedule for development of the TSP will be designed to permit adequate time for each Participating City to review and consider the annual TSP and to allow sufficient time for the Commission to arrange for the implementation of the program after it is approved. The Commission will submit the proposed TSP to each Participating City by December 1 each year. The Participating Cities will consider the program and advise the Commission of any desired revisions by February 15. The Commission will incorporate desired revisions and produce an approved TSP by March 15.

B. The schedule for development of the Commission's budget will be designed to permit adequate review time for each Participating City and provide information on a timely basis to facilitate financial planning by each Participating City. A proposed consolidated budget will be prepared by the Commission by April 1 each year and distributed to the Participating Cities. The Commission's consolidated budget shall contain administrative, capital improvement, and net operating costs elements.

C. During the fiscal year in which this Agreement is executed, the time limits and deadlines set forth above will be directory, not mandatory, and substantial compliance therewith will be sufficient. Commencing the first day of the first fiscal year following execution of this Agreement, the time limits and deadlines will be adhered to Strictly.

ARTICLE XII

DISTRIBUTION OF PROPERTY IF COMMISSION CEASES OPERATION

If for any reason the Commission is dissolved, except for the purpose of transferring the entire operation to another agency, the Commission will distribute all of its property and funds to Participating Cities in the following manner:

A. The value of the property distributed to each Participating City shall be in proportion to the capital contribution each Participating City has made to the Commission up to that time. The capital contribution of each Participating City shall be the sum of payments made by a Participating City in accordance with the provisions of Article VI, "Allocation of Capital Costs", plus the value of any property transferred to the Commission by that Participating City, less any compensation paid to the Participating City by the Commission for property so transferred.

B. The Commission will first offer to each Participating City any land and building or other property with a useful life greater than twenty years, acquired by the Commission and located in the Participating City. The value of the land and building or other property will be established in accordance with paragraph D of this Article.

C. The buses, vehicles, other rolling stock, other equipment and facilities owned by the Commission will be divided among the Participating Cities as provided in paragraph A of this Article and in such a way that the ages, models and makes are in reasonable agreement with the ages, models and makes of all buses, vehicles, equipment and facilities as assigned for service in each Participating City in the most recent quarter in accordance with the bus miles operated as calculated in Article VIII, "Allocation of Operating Costs."

D. The value of all property will be determined by an independent appraisal and the Participating Cities agree to use the values so determined in negotiations between themselves for the ultimate distribution of property among the Participating Cities.

E. Any operating revenues collected by the Commission and on deposit in banks and for other financial institutions at the time of cessation of the Commission, and which are not otherwise encumbered, will be distributed to the Participating Cities based on the number of passengers boarding within each Participating City for the preceding six months as calculated in Article IX "Allocation of Revenues".

F. Any administrative funds, including cash on hand, which are not otherwise encumbered will be distributed equally to the Participating Cities. Any interest earned on such funds while on deposit in banks and/or other financial institutions will be distributed equally to the Participating Cities.

G. Any capital funds advanced to the Commission from Participating Cities which are not encumbered will be returned to the Participating Cities based on the same ratio as advanced for that particular fiscal year as calculated in Article VI, "Allocation of Capital Costs". Any interest earned on such Binds while on deposit in banks and/or other financial institutions shall be distributed directly proportional to the percentage of total weekday, in-service bus miles operated in each Participating City for the most recent quarter as calculated in Article VI, "Allocation of Capital Costs."

ARTICLE XIII

GENERAL

A. Each Participating City and the Commission pledges its faithful cooperation in providing for operation of transportation services and other purposes and objectives of this Agreement.

B. Each Participating City expressly consents to the reasonable use of its streets and highways by the Commission for public transportation purposes.

C. The annual maximum obligation of the Participating Cities shall be that amount duly appropriated for such purposes by the City Councils of the Participating Cities.

WITNESS the following signatures as of the date first written above.

TRANSPORTATION DISTRICT
COMMISSION OF HAMPTON ROADS

Attest:

Mary J. Need

By Michael Haines
Executive Director

Attest:

Robert A. Moore
City Clerk

CITY OF CHESAPEAKE

By Paul J. [Signature]
City Manager

Approved as to Form:

Wanda C. Hall
Chesapeake City Attorney

Attest:

Diana D. Heyler
City Clerk

CITY OF HAMPTON

By Depe L. Neenan City Manager
William A. Mason
Asst. City Manager

Attest:

Bernice Berry
City Clerk

CITY OF NEWPORT NEWS

By Ed Maroney ^{upm} City Manager

Attest:

Ph. Buelig Dreyfus
City Clerk

CITY OF NORFOLK

By Regina K. Williams
City Manager

Form and Correctness Approved:

Mary L. G. Nexsen
Mary L. G. Nexsen, Deputy City Attorney

Attest:

Debra H. White
City Clerk

CITY OF PORTSMOUTH

By Ronald Williams
City Manager

Attest:

C. [Signature]
City Clerk

CITY OF SUFFOLK

By [Signature]
City Mgr.

Attest:

[Signature]
City Clerk

CITY OF VIRGINIA BEACH

By [Signature]
City Manager