

LEASE AND PURCHASE OPTION AGREEMENT

THIS LEASE AND PURCHASE OPTION AGREEMENT (this "Lease") is made and entered into as of this _____ day of January 2006, by and between JAMES CITY COUNTY, a political subdivision of the Commonwealth of Virginia (the "County"), WILLIAMSBURG AREA TRANSPORT COMPANY, a Virginia corporation ("WAT") and collectively with the County, (the "Lessor"), and YORK COUNTY, a political subdivision of the Commonwealth of Virginia (the "Lessee").

RECITALS

WHEREAS, during Federal fiscal year 2006, the Federal Transit Administration Rail and Public Transportation approved an amount of \$229,600 of Statewide Flexible Surface Transportation Program Funds (the "Grant") to assist in the acquisition of one Bus Trolley (the "Project");

WHEREAS, the Commonwealth of Virginia Department of Rail and Public Transportation (DRPT) plans to offset the local match of twenty percent (20%) with sixteen percent (16%) State transportation matching funds (the "Matching Grant") and the Lessee, York County, the remaining four percent (4%) to assist in this Project;

WHEREAS, because the Project will be supported by Federal assistance awarded by the United States Department of Transportation, Federal Transit Administration (the "FTA"), the administration of the Project will be governed by a master agreement between the FTA and the Lessor in substantially the form attached hereto as Exhibit A (the "Master Agreement");

WHEREAS, the County is the administrative, fiscal and purchasing agent for WAT and is entering into this Lease to facilitate the transactions contemplated hereby and to perform some of the obligations of the "Lessor" hereunder;

WHEREAS, the Lessor will apply for the Grant and the Matching Grant upon approval of this Agreement to fund, in part, the purchase by the Lessor one (1) new Bus Trolley; and

WHEREAS, upon award of the Grant by the FTA and the Matching Grant by the DRPT to the Lessor, any remaining balance of the purchase price of the Bus (the "Deficiency") will be funded by the Lessor with funds provided by the Lessee; and

WHEREAS, the Lessor and the Lessee, as the proposed recipient and subrecipient, respectively, of the Grant and the Matching Grant desire to provide for the lease of the Bus from the Lessor to the Lessee and the Lessee desires to lease the Bus from the Lessor to satisfy the increased demand for increased public transit services for visitation in Yorktown, Virginia, in furtherance of the purposes of the Grant; and

WHEREAS, the Lessor and Lessee desire to enter into this Lease to establish their respective responsibilities with respect to the Bus.

NOW, THEREFORE, for and in consideration of the promises hereinafter contained, the parties agree as follows:

ARTICLE I DEFINITIONS

Section 1.01. Definitions. The following terms shall have the meanings indicated below unless the context clearly requires otherwise:

“Acceptance Certificate” means a certificate substantially in the form attached hereto as Exhibit B.

“Bus” has the meaning set forth in the Recitals.

“Commencement Date” is the date the Lessee delivers to the Lessor the Acceptance Certificate.

“Deficiency” has the meaning set forth in the Recitals.

“DRPT” has the meaning set forth in the Recitals.

“FTA” has the meaning set forth in the Recitals.

“Grant” has the meaning set forth in the Recitals.

“Initial Lease Payment” has the meaning set forth in Section 5.01(a) of this Lease.

“Lease” means this Lease and Purchase Option Agreement, including the exhibits attached hereto, as the same may be supplemented or amended from time to time in accordance with the terms hereof.

“Lease Payments” means, collectively, the Initial Lease Payment and all Supplemental Lease Payments.

“Lease Term” means the period from the Commencement Date until the twelfth anniversary of the Commencement Date.

“Lease Termination Date” means the date upon which the Lease Term expires.

“Lessee” has the meaning set forth in the first paragraph of this Lease.

“Lessor” has the meaning set forth in the first paragraph of this Lease.

“Manufacturer” or **“Manufacturers”** means the manufacturer or manufacturers of the Bus as well as the agents or dealers of such manufacturer or manufacturers from whom the Lessor purchased the Bus.

“Master Agreement” has the meaning set forth in the Recitals.

“Matching Grant” has the meaning set forth in the Recitals.

“Net Proceeds” means the gross proceeds from any insurance recovery, or action of condemnation or loss of title award in connection with the Bus, less payments for attorneys’ fees, and other expenses incurred in the collection of such gross proceeds.

“Purchase Option” means the option to purchase the Bus for the Purchase Option Price as more particularly described in Section 5.03 hereof.

“Purchase Option Price” means \$1.00 plus any reimbursement requested by the FTA, if any, for the transferred bus.

“Project” has the meaning set forth in the Recitals.

“Project Cost” means the sum of the Grant and the Initial Lease Payment.

“Supplemental Lease Payments” has the meaning set forth in Section 5.01(b) of this Lease.

“Termination Claim” means the cost of settling the reasonable claims of the Lessee relating to the Project which arise out of a termination for convenience of the Federal government; provided, that the amount of the Termination Claim shall not exceed the lesser of (i) the aggregate amount of Lease Payments and (ii) the amount, if any, received by the Lessor from the Federal government as a result of a termination for convenience.

ARTICLE II

LEASE OF BUS

Section 2.01. Lease of Bus. The Lessor hereby demises and leases to the Lessee, and the Lessee hereby leases from the Lessor, the Bus to have and to hold for the Lease Term. The bus shall be one for which the Lessee shall have developed and or approved the design and specifications to ensure compatibility and similarity with the trolley bus currently operated by the Lessee in Yorktown.

Section 2.02. Net Lease. This Lease is a net lease and, as between the Lessee and the Lessor, it is intended that the Lessee shall pay or cause to be paid all costs and expenses of every character, whether foreseen or unforeseen, ordinary or extraordinary, in connection with the Bus and the procurement thereof, whether with respect to delivery, ownership, use, possession, control, operation, maintenance, repair, insurance, improvement, and return of the Bus, or otherwise, including the costs and expenses particularly set forth in this Lease. All obligations of the Lessee under this Lease shall be done, performed, or complied with at the Lessee’s cost and expense, unless otherwise expressly stated.

Section 2.03. Title to Bus. During the Lease Term, title to the Bus, and any and all additions, repairs, replacements, or modifications thereto, shall remained vested in the Lessor, subject to the rights of the Lessee under this Lease; provided, however, that title to the Bus shall vest permanently in the Lessee upon exercise by the Lessee of the Purchase Option and payment of the Purchase Option Price.

ARTICLE III LEASE TERM

Section 3.01. Commencement of Lease Term. The Lease Term shall commence on the date of execution by the Lessee of the Acceptance Certificate.

Section 3.02. Execution of Acceptance Certificates and Payment by Lessor. Upon delivery by the Lessor and the Lessee of the fully executed Acceptance Certificate, the Bus shall be deemed to have been delivered to and accepted by the Lessee for all purposes of this Lease and then shall be subject to all the terms and conditions of this Lease. The Lessee's execution and delivery of the Acceptance Certificate shall be conclusive proof that the Bus has been subjected to this Lease on the terms of this Lease, notwithstanding any defect with respect to the design, manufacture, condition or any other matter or the failure of the Bus to comply with the specifications applicable to such a Bus or with any applicable governmental or administrative requirements, specifications, or recommended standards, and that as between the Lessor and the Lessee, such Bus is in good order and condition. Time is of the essence with respect to execution of the Acceptance Certificate and the Lessee shall not unreasonably withhold acceptance of the Bus.

Section 3.03. Termination of Lease. This Lease will terminate upon the earliest to occur of the following events:

- (a) the expiration of the Lease Term;
- (b) the Lessor's election to terminate this Lease for convenience of the Federal government in accordance with paragraph (q) of Article X of this Lease; or
- (c) the Lessor's election to terminate this Lease upon a default by the Lessee in accordance with paragraph (r) of Article X of this Lease.

If any termination of this Lease results in the Bus being removed prematurely from service, the Lessor and/or the Lessee shall notify the FTA in order to permit the FTA to establish or approve the Bus useful life for purposes of calculating any reimbursement owing to the FTA under the Grant. Any such reimbursement owing to the FTA shall be paid by the Lessee as a Supplemental Lease Payment.

ARTICLE IV ENJOYMENT OF EQUIPMENT

Section 4.01. Quiet Enjoyment. The Lessor hereby covenants to provide the Lessee during the Lease Term with the quiet use and enjoyment of the Bus and the Lessee shall during the Lease Term peaceably and quietly have and hold and enjoy the Bus, without suit, trouble, or hindrance from the Lessor.

Section 4.02. Inspection of Equipment. The Lessor shall have the right upon reasonable notice at all times during normal business hours of the Lessee to enter upon the property of the Lessee for the purposes of inspecting any Bus.

**ARTICLE V
LEASE PAYMENTS, PURCHASE OPTION, RETURN**

Section 5.01. Payment of Lease Payments.

(a) On the Commencement Date, the Lessee shall make a payment to the Lessor in an amount equal to the Deficiency (the “Initial Lease Payment”), an amount representing payment in advance of all rent due and owing under this Lease. The Lessee represents and warrants that the funds necessary to make the Initial Lease Payment have been set aside by the Lessee for such purpose by means of a capital expense request.

(b) In the event that the Lessor advances any funds with respect to the Bus or the procurement thereof in excess of the Project Cost, the Lessee shall reimburse the Lessor for such advances (“Supplemental Lease Payments”).

Section 5.02. Lease Payments to be Unconditional. The obligation of the Lessee to make payment of the Lease Payments required under Section 5.01 above, and to perform and observe the covenants and agreements contained herein, shall be absolute and unconditional.

Section 5.03. Purchase Option. If this Lease has not been earlier terminated for the convenience of the Federal government or by reason of a default by the Lessee, then the Lessee may, by written notice, delivered to the Lessor not less than thirty (30) days prior to the expiration of the Lease Termination Date, elect to purchase on the Lease Termination Date all (but not less than all) of the Bus at a price equal to the Purchase Option Price.

Section 5.04. Return Option. If the Lessee does not elect to exercise the Purchase Option, the Lessee shall redeliver to the Lessor on the Lease Termination Date of the Bus. The Bus being returned shall be free and clear of all liens and shall be in the condition required by Article VI of this Lease. Upon the return of the Bus, pursuant to this section, the Lessee shall deliver to the Lessor or its designee any maintenance logs kept with respect to the Bus. The Lessee shall continue to insure and bear the risk of loss of the Bus in accordance with this Lease until they are redelivered in the condition required by this Section.

**ARTICLE VI
MAINTENANCE AND INSURANCE**

Section 6.01. Maintenance of Equipment by Lessee. The Lessee shall throughout the Lease Term maintain the Bus (i) in good repair, working order, and operating condition, ordinary wear and tear excepted, and (ii) in compliance with applicable law and industry regulations, including, without limitation, FTA regulations. The Lessee agrees that it will not discriminate against any Bus (as compared to other similar equipment owned or leased by the Lessee) with respect to its use, operation, or maintenance in contemplation of the expiration or termination of the Lease Term or otherwise.

Section 6.02. Provisions Regarding Insurance. The Lessee shall at all times after the Commencement Date, at its own expense, carry and maintain or cause to be carried and maintained (a) physical damage insurance with respect to the Bus and (b) public liability insurance with respect to third-party personal and property damage, in each case with such deductibles, in such amounts, against such risks and with such insurance companies of recognized responsibility as is consistent with prudent industry practice. All policies of insurance maintained pursuant to this Section shall name the Lessor as an additional insured and require thirty (30) days prior notice to the Lessor of cancellation or material change in coverage.

Section 6.03. Compliance with Applicable Law. The Lessee agrees to comply in all material respects with any applicable Federal, State or local law governing or relating to the Bus, including, without limitation, FTA regulations. If such applicable law requires any alteration, replacement, or addition of or to any part on any Bus, the Lessee will conform to such applicable law at its own expense. The Lessee may at its own expense and after written notice to the Lessor in good faith, contest the validity or application of any applicable law in any reasonable manner which does not in the reasonable opinion of the Lessor: (i) materially and adversely affect the property or rights of the Lessor; (ii) have any risk of resulting in any criminal liability; or (iii) have a reasonable risk of resulting in any material civil liability on the part of the Lessor or involve any material risk of loss, forfeiture or sale of the Bus.

Section 6.04. Lessor's Right to Perform for Lessee. If the Lessee fails to perform or comply with any provision in this Lease, the Lessor may upon notice to the Lessee (but shall be under no obligation to) perform or comply with such provision, and the amount of the reasonable costs and expenses of the Lessor incurred in connection with such performance or compliance shall be payable by the Lessee upon demand as a Supplemental Lease Payment. No such performance or compliance by the Lessor shall be deemed a waiver of the rights and remedies of the Lessor against the Lessee under this Lease.

ARTICLE VII DAMAGE, DESTRUCTION AND CONDEMNATION; USE OF NET PROCEEDS

Section 7.01. Damage, Destruction and Condemnation. If prior to the expiration of the Lease Term (a) the Bus is destroyed or is damaged by casualty or (b) title to, or the temporary use of the Bus shall be taken under the exercise of the power of eminent domain by any governmental body or any person, firm, or corporation acting under governmental authority, the Lessee and the Lessor will cause the Net Proceeds of any insurance claim or condemnation award to be applied to the prompt repair, restoration, modification, or replacement thereof. Any balance of the Net Proceeds remaining after such work has been completed shall be paid to the Lessee.

Section 7.02. Insufficiency of Net Proceeds. If the Net Proceeds are insufficient to pay in full the cost of any repair, restoration, modification, or replacement referred to in Section 7.01 by reason of the Lessee's failure to comply with Section 6.02 hereof, the Lessee shall complete the work and pay any cost in excess of the amount of Net Proceeds without any right to reimbursement therefor from the Lessor.

**ARTICLE VIII
DISCLAIMER OF WARRANTIES; MANUFACTURERS'
WARRANTIES; USE OF THE BUS; REPORTS**

Section 8.01. Disclaimer of Warranties. THE LESSOR MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION, MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE OR FITNESS FOR USE OF THE BUS, OR WARRANTY WITH RESPECT THERETO. In no event shall the Lessor be liable for any incidental, indirect, special, or consequential damage in connection with or arising out of this Lease or the existence, furnishing, functioning, or the Lessee's use of the Bus.

Section 8.02. Manufacturers' Warranties. The Lessor hereby irrevocably appoints the Lessee as its agent and attorney-in-fact during the Lease Term, so long as the Lessee shall not be in default hereunder, to assert from time to time whatever claims and rights, including warranties, which the Lessor may have against the Manufacturer or Manufacturers of the Bus. The Lessee's sole remedy for the breach of such warranty, indemnification, or representation shall be against the Manufacturer or Manufacturers of the Bus, and not against the Lessor, nor shall such matter have any effect whatsoever on the rights and obligations of the Lessor with respect to this Lease, including the right to receive Lease Payments hereunder. The Lessee expressly acknowledges that the Lessor makes, and has made, no representations or warranties whatsoever as to the existence or availability of the Manufacturer or Manufacturers of the Bus.

Section 8.03. Use of the Bus. The Lessee will not use, operate, or maintain the Bus improperly, carelessly, in violation of any applicable law or in a manner contrary to that contemplated by this Lease. The Lessee shall acquire all permits and licenses, if any, necessary for the operation of the Equipment. In addition, the Lessee agrees to comply in all respects (including, without limitation, with respect to the use, maintenance, and operation of the Bus) with all laws of the jurisdiction in which its operations may extend and any legislative, executive, administrative, or judicial body exercising power or jurisdiction over the Bus; provided, however, that the Lessee may contest in good faith the validity or application of any such law or rule in any reasonable manner. During the Lease Term, the Bus shall be used by the Lessee for purposes consistent with the Lessor's current bus fleet usage. The Lessee hereby acknowledges and agrees that during the Lease Term, the Bus will be integrated into the Lessor's public transportation scheduling system.

Section 8.04. Subleasing of Bus. The Lessee shall not sublease the Bus without the prior written consent of the Lessor.

Section 8.05. Restriction on Liens; Payment of Taxes. The Lessee shall keep the Bus free of all levies, liens, and encumbrances except those created by this Lease. If the use, possession, or acquisition of the Bus is determined to be subject to taxation, the Lessee shall pay when due all taxes and governmental charges lawfully assessed or levied.

Section 8.06. Reporting. The Lessee agrees to submit to the Lessor (i) the reports required by the administrative regulations issued by the United States Department of Transportation for grants and cooperative agreements and (ii) any other reports the Federal government may require. The Lessee agrees that all reports and other documents or information intended for public availability developed in the course of the Project and required to be submitted to the FTA must be

prepared for submission in such formats as the FTA may require. Additionally, the Lessee shall submit to the Lessor on a monthly basis reports covering such topics and in such detail as the Lessor may reasonably request, including, without limitation, reports with respect to ridership, revenues, expenses, miles operated, hours operated, fuel usage, major and minor accidents, passenger miles, linked passenger trips, operating labor and revenue vehicle inventory.

ARTICLE IX COVENANTS OF LESSOR AND LESSEE

Section 9.01. Covenants of Lessor. The Lessor represents, covenants and warrants, for the benefit of the Lessee, as follows:

- (a) The Lessor is a political subdivision of the Commonwealth of Virginia.
- (b) The Lessor is authorized under the Constitution and laws of the Commonwealth of Virginia to enter into this Lease, to perform the transactions contemplated hereby and to carry out its obligations hereunder, and by proper action has duly authorized, executed, and delivered this Lease.
- (c) There is no litigation at law or in equity or any proceeding before any governmental agency involving the Lessor pending, or to the best of its knowledge, threatened with respect to (i) the authority of the Lessor to execute and deliver this Lease, (ii) the validity or enforceability of this Lease or the Lessor's performance of its obligations hereunder, (iii) the title of any officer of the Lessor executing this Lease or (iv) the power to lease the Bus to the Lessee.

Section 9.02. Covenants of Lessee. In addition to the Lessee's covenants set forth in Article X of this Lease, the Lessee represents, covenants and warrants, for the benefit of the Lessor, as follows:

- (a) The Lessee is a political subdivision of the Commonwealth of Virginia and duly incorporated and validly existing under the laws of the Commonwealth of Virginia.
- (b) The Lessee has full power and authority to enter into this Lease and to perform the transactions contemplated hereby and to carry out its obligations hereunder and by proper corporate action has duly authorized, executed and delivered this Lease.
- (c) There is no litigation at law or in equity or any proceeding before any governmental agency involving the Lessee pending, or to the best of its knowledge, threatened with respect to (i) the authority of the Lessee to execute and deliver this Lease, (ii) the validity or enforceability of this Lease or the Lessee's performance of its obligations hereunder, (iii) the title of any officer of the Lessee executing this Lease, or (iv) the power to lease the Bus from the Lessor.

**ARTICLE X
FEDERALLY-MANDATED CLAUSES**

In accordance with the Master Agreement and solely in connection with the Lessee's lease of the Bus, the Lessee hereby agrees to comply with each of the following requirements, to the extent applicable to the Bus and the Project:

(a) **Buy America.** Not Applicable

(b) **Charter Service Operations.** The Lessee agrees to comply with 49 U.S.C. 5323(d) and 49 CFR Part 604, which provide that recipients and sub-recipients of FTA assistance are prohibited from providing charter service using Federally funded equipment or facilities if there is at

least one private charter operator willing and able to provide the service, except under one of the exceptions at 49 CFR 604.9. Any charter service provided under one of the exceptions must be "incidental" (i.e., it must not interfere with or detract from the provision of mass transportation).

(c) **School Bus Operations.** Pursuant to 69 U.S.C. 5323(f) and 49 CFR Part 605, recipients and sub-recipients of FTA assistance may not engage in school bus operations exclusively for the transportation of students and school personnel in competition with private school bus operators unless qualified under specified exemptions. When operating exclusive school bus service under an allowable exemption, recipients and sub-recipients may not use Federally funded equipment, vehicles, or facilities.

(d) **Energy Conservation.** The Lessee agrees to comply with mandatory standards and policies relating to energy efficiency that are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

(e) **Clean Water.** The Lessee agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Lessee agrees to report each violation to the Lessor and understands and agrees that the Lessor will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(f) **Byrd Anti-Lobbying Amendment.** The Lessee certifies to the Lessor that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. The Lessee shall disclose to Lessor the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant, or award covered by 31 U.S.C. 1352.

(g) **Access to Records.** The following access to records requirements apply to this Lease:

(i) The Lessee agrees to provide the Lessor, the FTA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Lessee which are directly pertinent to this Lease for the purposes of making audits, examinations, excerpts, and transcriptions. The Lessee agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

(ii) The Lessee agrees to maintain all books, records, accounts, and reports required under this Lease for a period of not less than three years after the date of termination or expiration of this Lease, except in the event of litigation or settlement of claims arising from the performance of this Lease, in which case the Lessee agrees to maintain same until the Lessor, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims, or exceptions related thereto.

(h) **Federal Changes.** The Lessee shall at all times comply with all applicable FTA regulations, policies, procedures, and directives, including without limitation those listed directly or by reference in the Master Agreement, as they may be amended or promulgated from time to time during the term of this Lease. The Lessee's failure to so comply shall constitute a material breach of this Lease.

(i) **Clean Air.** The Lessee agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Lessee agrees to report each violation to the Lessor and understands and agrees that the Lessor will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. The Lessee also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

(j) **Recovered Materials.** The Lessee agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

(k) **Overtime Requirements.** Neither the Lessee nor any other person contracting for any part of the work under this Lease, which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any work week in which he or she is employed on such work to work in excess of 40 hours in such work week unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such work week. In the event of any violation of foregoing, the Lessee and any other person responsible therefor shall be liable for the unpaid wages. In addition, the Lessee and such person shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of this clause, in the sum of \$10 for each

calendar day on which such individual was required or permitted to work in excess of the standard work week of 40 hours without payment of the overtime wages required hereby.

(l) **Withholding for Unpaid Wages; Liquidated Damages.** The Lessor shall upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld, from any moneys payable on account of work performed by the Lessee under this Lease or any other Federal contract with the Lessee, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the Lessee, such sums as may be determined to be necessary to satisfy any liabilities of the Lessee for unpaid wages and liquidated damages as provided in Clause (k) above.

(m) **Subcontracts.** The Lessee shall insert in any subcontracts the provisions set forth in Clauses (k), (l), (m), and (n) of this Article and also a clause requiring subcontractors to include these clauses in any lower tier subcontracts. The Lessee shall be responsible for compliance by any sub-lessee therewith.

(n) **Payrolls and Basic Records.** Payrolls and basic records relating thereto shall be maintained by the Lessee during the term of this Lease and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in Section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Lessee shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. The Lessee's employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(o) **No Obligation by the Federal Government.** The Lessor and the Lessee acknowledge and agree that, notwithstanding any concurrence by the Federal government in or approval of the solicitation or award of this Lease, absent the express written consent by the Federal government, the Federal government is not a party to this Lease and shall not be subject to any obligations or liabilities to the Lessor, the Lessee or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract. The Lessee agrees to include the foregoing clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

(p) **Program Fraud and False or Fraudulent Statements or Related Acts.** The Lessee acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of this Lease, the Lessee certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to this Lease or the FTA-assisted project for which work is being performed. In addition to other penalties that may be applicable, the Lessee further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Lessee to the extent the Federal government deems appropriate. The Lessee also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Lessee, to the extent the Federal government deems appropriate. The Lessee agrees to include the foregoing clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

(q) **Termination for Convenience.** The Lessor may terminate this Lease, in whole or in part, by written notice to the Lessee at any time after the Lessor has been notified that the Federal government has determined that it is in the Federal government's best interest to do so. The Lessee shall be paid its costs and shall promptly submit its Termination Claim to the Lessor to be paid. If the Bus is then in the Lessee's possession, the Lessee will account for the same and dispose of the Bus in the manner the Lessor directs.

(r) **Termination for Default.** If the Lessee fails to perform in the manner called for in this Lease or fails to comply with any other provisions of this Lease, the Lessor may terminate this Lease for default. Termination shall be effected by serving a notice of termination on the Lessee setting forth the manner in which the Lessee is in default. If it is later determined by the Lessor that the Lessee had an excusable reason for not performing, such as a strike, fire, flood, or other events, which are not the fault of or are beyond the control of the Lessee, the Lessor may allow the Lease to continue or treat the termination as a termination for convenience.

(s) **Opportunity to Cure.** The Lessor in its sole discretion may, in the case of a termination for breach or default, allow the Lessee thirty (30) days in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions. If the Lessee fails to remedy to the Lessor's satisfaction the breach or default or any of the terms, covenants, or conditions of this Lease within thirty (30) days after receipt by the Lessee or written notice from the Lessor setting forth the nature of said breach or default, the Lessor shall have the right to terminate this Lease without any further obligation to the Lessee. Any such termination for default shall not in any way operate to preclude the Lessor from also pursuing all available remedies against the Lessee and its sureties for said breach or default.

(t) **Waiver of Remedies for any Breach.** In the event that Lessor elects to waive its remedies for any breach by the Lessee of any covenant, term or condition of this Lease, such waiver by the Lessor shall not limit the Lessor's remedies for any succeeding breach of that or of any other term, covenant, or condition of this Lease.

(u) **Contracts Involving Federal Privacy Act Requirements.** The Lessee agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Lessee agrees to obtain the express consent of the Federal government before the Lessee or its employees operate a system of records on behalf of the Federal government. The Lessee understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract. The Lessee also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal government financed in whole or in part with Federal assistance provided by FTA.

(v) **Civil Rights.** The following requirements apply to this Lease:

(i) **Nondiscrimination:** In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, Section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, Section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal Transit Law at 49 U.S.C. § 5332, the Lessee agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Lessee agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

(ii) **Equal Employment Opportunity:** The following equal employment opportunity requirements apply to this Lease:

(A) **Race, Color, Creed, National Origin, Sex** - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal Transit Laws at 49 U.S.C. § 5332, the Lessee agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations and Federal policies that may in the future affect activities undertaken in the course of the Project. The Lessee 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, national origin, sex, or age. Such action shall include, but not be limited to, the following: 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. In addition, the Lessee agrees to comply with any implementing requirements FTA may issue.

(B) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623 and Federal transit law at 49 U.S.C. § 5332, the Lessee agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Lessee agrees to comply with any implementing requirements FTA may issue.

(C) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Lessee agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, The Lessee agrees to comply with any implementing requirements FTA may issue.

(D) The Lessee also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

(w) **Disputes - Performance During Dispute.** Disputes arising in the performance of this Lease that are not resolved by agreement of the parties shall be decided in writing by the Lessor's Human Services Manager. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the Lessee mails or otherwise furnishes a written appeal to the Lessor's County Administrator. In connection with any such appeal, the Lessee shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the County Administrator shall be binding upon the Lessee and the Lessee shall abide by the decision. Unless otherwise directed by the Lessor, the Lessee shall continue performance under this Lease while matters in dispute are being resolved.

(x) **Claims for Damages.** Should either party to this Lease suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents, or others for whose acts he is legally liable, a claim for damages therefor shall be made in writing to such other party within a reasonable time after the first observance of such injury of damage.

(y) **Remedies.** Unless this Lease provides otherwise, all claims, counterclaims, disputes, and other matters in question between the Lessor and the Lessee arising out of, or relating to, this Lease or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the Commonwealth of Virginia.

(z) **Rights and Remedies.** The duties and obligations imposed by this Lease and the rights and remedies available thereunder, shall be in addition to and not a limitation of any duties, obligations, rights, and remedies otherwise imposed or available by law. No action or failure to act by the Lessor or the Lessee shall constitute a waiver of any right or duty afforded any of them under this Lease, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

(aa) **General Transit Employee Protective Requirements.** To the extent that FTA determines that transit operations are involved, the Lessee agrees to carry out the transit operations work on the underlying contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this Lease and to meet the employee protective requirements of 49 U.S.C. A 5333(b), and U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from the U.S. DOL to FTA applicable to the FTA recipient's project from which Federal assistance is provided to support work on the underlying contract. The Lessee agrees to carry out that work in compliance with the conditions stated in that U.S. DOL letter. The requirements of this Clause (aa), however, do not apply to any contract financed with Federal assistance provided by FTA either for projects for elderly individuals and individuals with disabilities authorized by 49 U.S.C. § 5310(a)(2) or for projects for non-urbanized areas authorized by 49 U.S.C. § 5311. If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5311, the Lessee agrees to comply with the terms and conditions of the Special Warranty for the Non-urbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by U.S. DOL or any revision thereto. The Lessee also agrees to include the any applicable requirements in each subcontract involving transit operations financed in whole or in part with Federal assistance provided by FTA.

(bb) **Half Fare.** Lessor shall comply with FTA regulations governing half fare for elderly and handicapped persons.

(cc) **Incorporation of FTA Terms.** The preceding provisions include, in part, certain Standard Terms and Conditions required by the Department of Transportation, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by the Department of Transportation, as set forth in FTA Circular 5010.1C, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Lease. The Lessee shall not perform any act, fail to perform any act, or refuse to comply with any Lessor requests that would cause the Lessor to be in violation of the FTA terms and conditions.

ARTICLE XI MISCELLANEOUS

Section 11.01 Indemnities. The Lessee hereby bears and assumes all risk and liability for, and the Lessee hereby agrees to indemnify, defend, and hold harmless the Lessor from any and all claims, liens, demands, or liabilities, costs, and expenses (including reasonable attorneys' fees) arising out of or relating to the lease, operation, maintenance and use of the Bus, including death, personal injury, damage to property, claims by the Lessee's employees, agents, and servants; claims by the FTA with regard to compliance with the terms of Article X of this Lease, and all other liability howsoever arising with respect to the Bus and the ownership or the leasing thereof; provided, however, that the Lessee shall not be required to indemnify the Lessor or any other indemnitee for: (i) any claim in respect of the Bus arising from acts or events which occur after possession of the Bus has been redelivered to the Lessor at the expiration of the Lease Term, (ii) any claim resulting from acts which would constitute the willful misconduct or gross negligence of the Lessor or any other indemnitee; (iii) any claim arising in connection with liens on the Bus created by the Lessor; or (iv) claims resulting solely from the breach by the Lessor of its covenant of quiet enjoyment set forth in Section 4.01 hereof. If the Lessor is subjected to any expense or liability because of any default or breach by the Lessee hereunder, then, upon written notice to the Lessee of the nature and/or amount thereof, the Lessee shall forthwith discharge the same, and if not so discharged, the amount of such expense shall be payable as a Supplemental Lease Payment. The indemnities and assumptions of liability herein provided for shall continue in full force and effect (notwithstanding the termination of this Lease, whether by expiration of time, by operation of law, or otherwise) with respect to claims based upon losses occurring during the Lease Term.

Section 11.02. Notices. All notices, certificates, or other communications hereunder shall be sufficiently given and shall be deemed given when delivered or mailed by registered mail, postage prepaid, to the parties at their respective places of business.

Section 11.03. Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon the Lessor and the Lessee and their respective successors and assigns.

Section 11.04. Severability. In the event any provision of this Lease shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 11.05. Amendments. The terms of this Lease shall not be waived, altered, modified, supplemented, or amended in any manner whatsoever except by written instrument signed by the Lessor and the Lessee.

Section 11.06. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original, all of which together shall constitute but one and the same instrument.

Section 11.07. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia.

Section 11.08. Captions. The captions or headings in this Lease are for convenience only and no way define, limit, or describe the scope or intent of any provisions or sections of this Lease.

Section 11.09. Entire Agreement. This Agreement constitutes the entire agreement between the Lessor and the Lessee. No waiver, consent, modifications or change of terms of this Lease shall bind either party unless in writing signed by both parties, and then such waiver, consent, modification, or change shall be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements, representations or warranties, express or implied, not specified herein regarding this Lease, or the portion or portions of the Equipment acquired or installed and leased hereunder. Any terms and conditions of any purchase order or other document submitted by the Lessee in connection with this Lease, which are in addition to or inconsistent with the terms of this Lease, will not be binding upon the Lessor and will not apply to this Lease.

[Signatures on Next Page]

IN WITNESS WHEREOF, the parties hereto have executed this Lease as of the date first written above.

LESSOR: WILLIAMSBURG AREA TRANSPORT COMPANY

By: _____

Title: _____

JAMES CITY COUNTY

By: _____

Title: _____

LESSEE: YORK COUNTY

By: _____

Title: _____

EXHIBIT B

ACCEPTANCE CERTIFICATE

THIS ACCEPTANCE CERTIFICATE is issued pursuant to the Lease and Purchase Option Agreement dated as of January _____, 2006 (the "Agreement"), between James City County (the "Lessor") and York County (the "Lessee"). All capitalized terms used herein without definitions shall have the meanings assigned to them in the Agreement.

The undersigned, as Lessee under the Agreement, acknowledges delivery and receipt in good condition the Bus more specifically described below and hereby accepts the following Bus identified by its Vehicle Identification Number:

The Bus hereby accepted, which is described in further detail on the attached original invoice or invoices, represent a total cost of \$_____.

IN WITNESS WHEREOF, the Lessee has executed this Acceptance Certificate as of this _____ day of _____ 2006.

YORK COUNTY

By: _____

Title: _____