

ITEM 9-B

(10 PAGES)

**POTOMAC AND RAPPAHANNOCK
TRANSPORTATION COMMISSION**

RESOLUTION

MOTION: _____

RESOLUTION NO. 08-06-___

SECOND: _____

OFFICIAL COMMISSION MEETING

JUNE 5, 2008

**RE: AGREEMENT WITH GOOGLE PROVIDING FOR PRTC's
PARTICIPATION IN A STATEWIDE "TRANSIT ITINERARY
BUILDER" INITIATIVE**

WHEREAS, having a "transit itinerary building" capability is essential for making transit easier to use and for enticing new ridership; and

WHEREAS, PRTC has a web-site based transit itinerary building capability that is limited, even with enhancements that are currently being made; and

WHEREAS, the Virginia Department of Rail and Public Transportation (DRPT) has informed PRTC and other transit providers in the Commonwealth that it is partnering with Google to create a statewide transit itinerary builder (encompassing all of the Washington D.C. metropolitan area) with more robust capabilities than PRTC's itinerary builder, and invited providers to participate at no cost; and

WHEREAS, PRTC's participation in the prospective DRPT – Google itinerary building initiative would benefit PRTC's customers; and

WHEREAS, to formalize such participation, DRPT and Google are asking providers to sign a licensing agreement that entitles Google to the use of transit service information necessary for itinerary building; and

WHEREAS, negotiations regarding the content of the proposed licensing agreement are still in progress.

NOW, THEREFORE, BE IT RESOLVED that the Potomac and Rappahannock Transportation Commission does hereby authorize the Executive Director to execute a licensing agreement that, in the opinion of both the Executive Director and PRTC's Legal Counsel, is acceptable for execution, so PRTC can participate in the initiative.

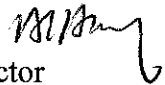


Potomac and Rappahannock
Transportation Commission

14700 Potomac Mills Road
Woodbridge, VA 22192

June 5, 2008

TO: Chairman Jones and Commissioners

FROM: Alfred H. Harf 
Executive Director

RE: Agreement with Google Providing for PRTC's Participation in a
Statewide "Transit Itinerary Builder" Initiative

Recommendation:

Authorize the Executive Director to execute a licensing agreement between PRTC and Google to participate in a statewide "transit itinerary builder" initiative.

Background:

The ability to build a transit itinerary is essential for making transit easier to use and for enticing new ridership. For some time now, PRTC has had its own transit itinerary builder on PRTC's web-site, and enhancements to PRTC's itinerary builder are now nearing completion¹. Even with the enhancements, however, PRTC's itinerary builder does not have a uniform level of precision throughout the area served by PRTC's routes, because the network of transit services operated by neighboring transit operators is not fully represented in PRTC's itinerary builder software/algorithm². For example, WMATA's far-reaching regional rail and bus network is only skeletally represented, so people using PRTC's itinerary builder have to be referred to WMATA's (and other transit providers' as may be necessary) itinerary builder for trips that entail use of both PRTC's and other provider's services.

In mid-March, Virginia Department of Rail and Public Transportation (DRPT) Director Matthew Tucker sent a letter to PRTC and other transit providers statewide to advise that DRPT and Google have formed a partnership to create a statewide transit

¹ The enhancements being made to PRTC's itinerary builder will enable PRTC customers to build a trip itinerary between any pair of PRTC bus stops rather than just the stops that are so-called "time-points". This makes the itinerary building capability far more versatile.

² This is a limitation present in most transit operators' itinerary builders because there is simply not enough of a need for neighboring system intricacy to justify the added cost of extended precision.

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itinerary builder with the same level of precision statewide (and throughout the Washington D.C. metropolitan area) that each transit provider now has for its own immediate territory. Director Tucker's letter (attachment one) urges the individual providers to join the partnership by signing a licensing agreement that was sent in draft soon thereafter (attachment two). There is no cost to participate in the prospective partnership, so doing so has only upsides since the Google product promises to be truly extraordinary³.

After receiving the draft licensing agreement, the transit providers in Northern Virginia (NOVA) concluded that it would be in their collective interest to review it and react collectively. A conference call discussion has already occurred and reactions have been compiled for transmittal to Google and DRPT. There are aspects of the agreement as now drafted that the NOVA providers want to see changed, so discussions about the agreement itself are continuing. Because DRPT and Google are eager to gauge the level of interest in participating, I am asking the Commission to authorize the Executive Director to execute a no-cost licensing agreement that, in the opinion of both the Executive Director and PRTC's Legal Counsel, is acceptable for execution.

Fiscal Impact:

There is no fiscal impact because there is no cost being incurred by PRTC.

³ A test version of the product has already been produced and is now being reviewed by the prospective participants.



COMMONWEALTH of VIRGINIA

DEPARTMENT OF RAIL AND PUBLIC TRANSPORTATION
 1313 EAST MAIN STREET, SUITE 300
 P.O. BOX 590
 RICHMOND, VA 23218-0590

MATTHEW O. TUCKER
 DIRECTOR

(804) 786-4440
 FAX: (804) 786-7286
 VIRGINIA RELAY CENTER
 1-800-828-1120 (TDD)

March 19, 2008

Mr. Al Harf
 Executive Director, PRTC
 14700 Potomac Mills Road
 Woodbridge, Virginia 22192

Dear Mr. Harf:

The Virginia Department of Rail and Public Transportation (DRPT) and Google, the Internet search engine, have formed a partnership to provide a new generation of transit information for the traveling public. Virginia will be the first state in the country to provide comprehensive statewide transit trip information through Google Transit. I write to request that you participate in this effort.

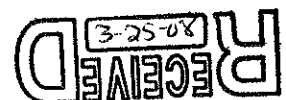
The Google Transit Trip Planner allows users to plan trips, complete with itineraries and maps, from point A to point B using public transportation similar to the way that Google Maps provide driving directions. Several regions across the country have begun using the Google Transit Beta site, including Hampton Roads, but Virginia will be the first to provide transit trip information for all areas within the state.

DRPT is working to launch the service this spring in Northern Virginia. The launch date is scheduled for April 22, 2008. Your support and participation is needed to ensure the success of this groundbreaking endeavor. To ensure a cohesive launch, this project should be kept confidential to the public until further notice. A DRPT representative will contact you in the coming days regarding the transit route information needed.

DRPT will provide technical assistance as transit route information is collected. Adding your information to Google Transit is free; however, your agency must authorize the release of transit trip information through Google.

Information from other regions across Virginia will be added in stages. Our goal is to have the entire state integrated into the Google Transit Trip Planner by fall 2008.

The Smartest Distance Between Two Points
www.drpt.virginia.gov

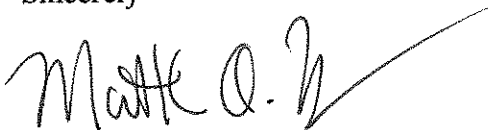


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This service will not only create a simple, streamlined way to plan trips using public transportation, but it will also highlight Virginia's robust transportation network.

Michael Harris, DRPT Northern Virginia Coordinator, will contact you regarding this initiative. Mr. Harris can be reached at michael.harris@drpt.virginia.gov or 703-572-0556. To learn more about Google Transit visit www.google.com/transit.

Sincerely

A handwritten signature in black ink that reads "Matt O. T." followed by a long, sweeping horizontal stroke.

Matthew O. Tucker
Director

[About Google Transit](#)

[Terms and Conditions](#)

Google is accepting data from public transportation agencies to include in Google Transit. If your agency is interested in participating in this program, please take a look at the sign up sheet below. A qualified representative from your agency needs to fill out the contact information below, read and accept our terms and conditions to initiate the data collection process. We will contact you shortly thereafter.

Contact Information

Name	<input type="text"/>
	You will be the signatory to the following agreement
Title	<input type="text"/>
Agency	<input type="text"/>
Address	<input type="text"/>
	<input type="text"/>
City	<input type="text"/>
State/Province	<input type="text"/>
Zip/Postal Code	<input type="text"/>
Country	<input type="text" value="Please select a country."/>
Phone	<input type="text"/>
Fax (optional)	<input type="text"/>
Email	<input type="text"/>

Google Transit Agreement

This Google Transit Agreement ("**Agreement**") is entered into by and between Google Inc. ("**Google**") with an address at 1600 Amphitheatre Parkway, Mountain View, CA, 94043 and the entity agreeing to the terms herein ("**Licensor**"). This Agreement will be effective as of the date you click the "I Agree" button below (the "**Effective Date**"). If you are accepting on behalf of your employer or another entity, you represent and warrant that you have full legal authority to bind your employer or such entity to these terms and conditions. If you don't have the legal authority to bind, please do not click the "Accept and Sign Up" button below.

1. LICENSED CONTENT.

1.1 **License.** Licensor hereby grants to Google a perpetual, worldwide and royalty-free right and license to (i) use, copy, distribute, store (electronically or otherwise), create derivative works based on, publicly perform (including but not limited to by digital audio transmission) and publicly display the data, materials and content provided to Google by Licensor during the Term of this Agreement, including, without limitation, all text, data, images, materials and other content related to schedules, pricing, location and general availability of public transportation, and any updates, refreshes, corrections and other modifications ("**Updates**") thereto provided to Google by Licensor ("**Licensed Materials**"), and (ii) allow end users who access or use Google Services ("**End Users**") to access and use the Licensed Materials through the Google Services. Licensor hereby grants to Google worldwide, non-exclusive, non-transferable, royalty-free right and license to use the various service marks, trademarks, company names, trade names, and logos ("**Licensor Marks**") in connection with the Licensed Materials in the Google Services

during the Term of this Agreement. "**Google Services**" shall mean Google's products and services, including, without limitation, any products and services accessible through any Web site located at a Google-owned domain, including all sub-domains and directories thereof, and all successor sites thereto (the "**Google Sites**") and any Google syndication sites and services. Google may use consultants and other contractors in connection with the performance of obligations and exercise of rights under this Agreement, provided that such consultants and contractors will be subject to the same obligations as Google. The license granted hereunder may not be sublicensed by Google, except to its affiliates and its syndication partners in connection with their use of the Google Services.

1.2 Reservation of Licensor Rights. Except for the rights and licenses granted hereunder, as between the parties, Licensor retains any right, title and interest in and to the Licensed Materials and Licensor Marks in accordance with and subject to applicable law.

1.3 Reservation of Google Rights. Notwithstanding anything to the contrary, Licensor understands and agrees that nothing in this Agreement will prevent or restrict Google from using materials and content Google obtains from a source other than Licensor.

2. DELIVERY AND FORMAT OF LICENSED CONTENT

2.1 Delivery; Access. Within fourteen (14) days after the Effective Date (or upon such other date mutually agreed upon by the parties), Licensor will make the Licensed Materials available to Google in accordance to the format and specifications set forth in the Google's transit feed specifications as updated by Google from time to time, the current version of which is located at http://code.google.com/transit/spec/transit_feed_specification.htm or some other mutually agreeable format and specifications. Without limiting the foregoing, any such electronic format will enable Google to securely and efficiently access and download all such Licensed Materials in a format and manner mutually agreed upon by the parties.

2.2 Updates; Refreshes. Licensor shall provide Updates to the Licensed Materials (the Updates together with the Licensed Materials, the "**Updated Licensed Materials**") on a regular basis, and make the Updated Licensed Materials available to Google in the manner pursuant to Section 2.1 hereof. Licensor shall ensure that the Updates and the Updated Licensed Materials made available to Google hereunder will be the same as and are as current as the corresponding data, materials and content that Licensor (or the entities originating the Updates and the Updated Licensed Materials in the event that Licensor is an aggregator of licensed materials provided by other entities) makes available to its users and for its operations and procedures.

2.3 Display. The rights granted to Google herein include the right to display the Licensed Materials on Google Services, Google Sites and Google syndication partner sites, as determined by Google in its sole discretion; provided that, notwithstanding anything to the contrary, nothing in this Agreement obligates Google to make available to End Users any or all of the Licensed Materials. Google will have the sole right to determine the placement and location of the selected Licensed Materials through the Google Services. For the sake of clarity, Google retains sole discretion with respect to the look and feel, display and operation of the Google Services. In consideration of the rights granted hereunder, Google may elect to display branding and attribution of Licensor (or the entities originating the Licensed Materials in the event that Licensor is an aggregator of licensed materials provided by other entities) on its Google Services. This Agreement does not affect any right that either party would have had, or shall have, independent of the Agreement including but not limited to rights under the U.S. Copyright Act or analogous laws in other jurisdictions.

3. WARRANTIES AND DISCLAIMER. Each party represents and warrants that it has full power and authority to enter into the Agreement. Licensor represents and warrants that: (a) the Licensed Materials and Licensor Marks do not infringe any third party patent, trademark or copyright or misappropriate any trade secret or violate any right of privacy or right of publicity or other legal right of any person; (b) Licensor has obtained and will maintain throughout the Term all rights, authorizations and licenses, if any, that are required in order for it to grant the rights and licenses granted hereunder and for Google to use the Licensed Materials and Licensor Marks as permitted herein; and (c) the Licensed Materials provided to Google will not contain any viruses, worms, Trojan horses or other similar harmful components. In the event that Licensor is an aggregator of licensed materials provided by other entities, Licensor also represents and warrants that it has the full power and authority or has entered into agreements to ensure that the originating entities of the Licensed Materials comply with the applicable

provisions of this Agreement, including, without limitation, the confidentiality obligations set forth in Section 6. Except as expressly provided for herein, NEITHER PARTY MAKES ANY OTHER WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR USE AND NONINFRINGEMENT.

4. INDEMNIFICATION. To the extent permitted by law, Licensor will indemnify, defend and hold harmless Google, its affiliates, contractors, licensees, and syndication partners, and any of their respective officers, directors, employees and agents, from and against any third party claim based upon or otherwise arising out of: (a) a claim alleging facts that would constitute a breach of Licensor's representations, warranties or obligations hereunder, or (b) Google's authorized use of any Licensed Materials. Google will: (i) promptly notify Licensor of such claim, (ii) provide Licensor with reasonable information, assistance and cooperation in defending the lawsuit or proceeding, and (iii) give Licensor full control and sole authority over the defense and settlement of such claim, subject to Google's approval of any such settlement, which approval will not be unreasonably withheld or delayed.

5. LIMITATION OF LIABILITY EXCEPT FOR (A) LICENSOR'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 4, AND (B) BREACHES OF CONFIDENTIALITY UNDER SECTION 6, (I) NEITHER PARTY WILL BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES, INCLUDING BUT NOT LIMITED TO DAMAGES FOR LOST DATA, LOST PROFITS, LOST REVENUE OR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, HOWEVER CAUSED AND UNDER ANY THEORY OF LIABILITY, INCLUDING BUT NOT LIMITED TO CONTRACT OR TORT (INCLUDING PRODUCTS LIABILITY, STRICT LIABILITY AND NEGLIGENCE), AND WHETHER OR NOT SUCH PARTY WAS OR SHOULD HAVE BEEN AWARE OR ADVISED OF THE POSSIBILITY OF SUCH DAMAGE AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY STATED HEREIN, AND (II) IN NO EVENT SHALL EITHER PARTY'S LIABILITY FOR ANY CLAIM ARISING OUT OF THIS AGREEMENT EXCEED ONE THOUSAND DOLLARS (\$1,000). The parties agree that (i) the mutual agreements made in this Section reflect a reasonable allocation of risk, and (ii) that each party would not enter into the Agreement without these limitations on liability.

6. CONFIDENTIALITY; PR. In connection with performance of its obligations hereunder, a party (the "**Discloser**") may disclose to the other party certain information it considers confidential and/or proprietary ("**Confidential Information**") to the other party (the "**Recipient**") including, but not limited to, tangible, intangible, visual, electronic, present, or future information such as: (a) trade secrets; (b) financial information, including pricing; (c) technical information, including research, development, procedures, algorithms, data, designs, and know-how; (d) business information, including operations, planning, marketing interests, and products; and (e) the terms of this Agreement and the discussions, negotiations and proposals related thereto. The Recipient will only have a duty to protect Confidential Information disclosed to it by the Discloser: (1) if it is clearly and conspicuously marked as "confidential" or with a similar designation; (2) if it is identified by the Discloser as confidential and/or proprietary before, during, or promptly after presentation or communication; or (3) if it is disclosed in a manner in which the Discloser reasonably communicated, or the Recipient should reasonably have understood under the circumstances that the disclosure should be treated as confidential, whether or not the specific designation "confidential" or any similar designation is used. Recipient shall not disclose or cause to be disclosed any Confidential Information of Discloser, except to those employees, agents, representatives, or contractors of the parties who require access to the Confidential Information to perform under this Agreement ("**Authorized Personnel**") and who are bound by written agreement not to disclose third-party confidential or proprietary information disclosed to Recipient, or as such disclosure may be required by law or governmental regulation. Furthermore, Recipient agrees to be responsible for any act and/or omission of any Authorized Personnel in breach of this Section. Recipient shall protect the Confidential Information of Discloser by using the same degree of care, but no less than a reasonable degree of care, that it uses to protect its own confidential information of a like nature to prevent its unauthorized use, dissemination or publication to any unauthorized third parties. A party's Confidential Information shall not include information that: (i) is or becomes publicly available through no act or omission of Recipient; (ii) was in the Recipient's lawful possession prior to the disclosure and was not obtained by Recipient either directly or indirectly from the Discloser; (iii) is lawfully disclosed to the Recipient by a third party without restriction on Recipient's disclosure, and where Recipient was not aware that the information was the confidential information of Discloser; or (iv) is independently developed by the Recipient without

violation of this Agreement. Recipient may disclose Confidential Information solely as needed to comply with a court order, subpoena, or other government demand (provided that Recipient first notifies Discloser and gives Discloser the opportunity to challenge such court order, subpoena, or government demand). Each party acknowledges that damages for improper disclosure of Confidential Information may be irreparable; therefore, the injured party is entitled to seek equitable relief, including temporary restraining order(s) or preliminary or permanent injunction, in addition to all other remedies, for any violation or threatened violation of this Section. A Recipient's duty to protect Confidential Information expires five (5) years from the date of disclosure. Neither party will issue any public announcement regarding this Agreement without the other party's prior written approval. Notwithstanding the foregoing, Google may include the Licensor's marks, names and logos in presentations, marketing materials, and customer lists (which includes, without limitation, customer lists posted on Google's Sites and screen shots of Licensor's implementation of the Services). Upon Licensor's request, Google will furnish Licensor with a sample of such usage.

7. TERM AND TERMINATION.

7.1 Term. Unless terminated earlier in accordance with this Agreement, this Agreement will begin on the Effective Date and expire twenty-four (24) months thereafter (the "**Initial Term**") and will automatically renew for additional one (1) year terms unless Google notifies Licensor of its intent to not renew at least sixty (60) days prior to the end of the then current term (the Initial Term and all such renewal terms, collectively, the "**Term**").

7.2 Termination. Either party may terminate this Agreement: (a) immediately upon written notice to the other party if (1) the other party files a petition for bankruptcy, becomes insolvent, or makes an assignment for the benefit of its creditors, or a receiver is appointed for the other party or its business, or (2) the other party breaches Section 6 of this Agreement (Confidentiality); or (b) if the other party materially breaches any material term or condition of this Agreement and fails to cure such breach within thirty (30) days after receiving written notice thereof. Google may terminate this Agreement immediately upon written notice to Licensor if Licensor breaches its representations and warranties in Section 3 of this Agreement (Warranties and Disclaimer). Google may terminate this Agreement upon seven (7) days' prior written notice to Licensor if Google determines that the quality and/or integrity of the Licensed Materials is inaccurate, outdated or otherwise not consistent with Google's standards of quality and integrity.

7.3 Effect of Termination, Expiration. Sections 1.2, 1.3, and 3 through 8 will survive any termination or expiration of this Agreement. For the sake of clarity, beyond any termination or expiration of this Agreement, nothing in this Agreement prohibits Google from using any data, information or other facts contained in the Licensed Content that has been independently verified.

8. MISCELLANEOUS. Each party will comply with all laws, rules and regulations, if any, applicable to it in connection the performance of its obligations under the Agreement. All notices will be in English and in writing and (a) if sent to Licensor to the address identified above and (b) if sent to Google to: Google Inc., Attn: Legal Department, 1600 Amphitheatre Parkway, Mountain View, CA 94043. Notice will be deemed given (i) upon receipt when delivered personally, (ii) upon written verification of receipt from overnight courier, (iii) upon verification of receipt of registered or certified mail or (iv) upon verification of receipt via facsimile, provided that such notice is also sent simultaneously via first class mail. Licensor will not assign or otherwise transfer its rights or delegate its obligations under the Agreement, in whole or in part, without the prior written consent of Google; and any attempt to do so will be null and void. The laws of California, excluding its choice of law rules, and applicable federal U.S. laws will govern the Agreement. Each party agrees to submit to the personal and exclusive jurisdiction of the courts located in Santa Clara County, California. The parties specifically exclude from application to the Agreement the United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act. The Agreement supersedes any other prior or collateral agreements, whether oral or written, with respect to the subject matter hereof. Any modifications to this Agreement must be made in a writing executed by authorized representatives of both parties, or by Licensor's online acceptance of updated terms, and must reference this Agreement. The failure to require performance of any provision will not affect a party's right to require performance at any time thereafter; nor will waiver of a breach of any provision constitute a waiver of the provision itself. If any provision is adjudged by a court of competent jurisdiction to be unenforceable, invalid or otherwise contrary to law, such provision will be interpreted so as to best accomplish its intended objectives and the remaining

provisions will remain in full force and effect. The parties hereto are and will remain independent contractors and nothing herein will be deemed to create any agency, partnership, or joint venture relationship between the parties. Neither party will be deemed to be an employee or legal representative of the other nor will either party have any right or authority to create any obligation on behalf of the other party. Neither party will be liable for failing or delaying performance of its obligations (except for the payment of money) resulting from any condition beyond its reasonable control, including but not limited to, governmental action, acts of terrorism, earthquake, fire, flood or other acts of God, labor conditions, power failures, and Internet disturbances. The Agreement is not intended to benefit, nor will it be deemed to give rise to, any rights in any third party. The Agreement will be binding on and inure to the benefit of each of the parties and their respective successors and assigns.

(Last revised April 17, 2007)

Accept Agreement

Note: If you are accepting on behalf of your employer or another entity, you represent and warrant that you have full legal authority to bind your employer or such entity to these terms and conditions. If you don't have the legal authority to bind, please do not click the "Accept and Sign Up" button below.

By checking this box, I have read and accept the above terms and conditions

Accept and Sign Up

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