

**NASSAU COUNTY
OFFICE OF THE COMPTROLLER**



**COMPTROLLER'S LIMITED REVIEW OF
LICENSE AGREEMENT BETWEEN
THE COUNTY OF NASSAU and VEOLIA
TRANSPORTATION SERVICES, INC.**

**George Maragos
Nassau County Comptroller**

December 5, 2011

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EXECUTIVE SUMMARY

Nassau County has entered into a five (5) year agreement with Veolia to operate LIBS commencing January 1, 2012, currently operated by the MTA. The County was forced to find an alternative operator to avoid the MTA's demands for a 400% subsidy increase from \$9 million to over \$36 million annually or face significant cutbacks in service.

The Proposed Contract with Veolia will provide for a higher level of service at a lower cost when compared to the MTA 2012 operating plan. In the first year under Veolia, service hours will be increased by 6% when compared to the proposed MTA plan. The MTA had proposed service cutbacks that would have eliminated 25 weekday and two (2) weekend routes, a 56% reduction in service, affecting more than 16,800 daily riders. The Proposed Contract reduces the service changes to just six (6) routes affecting about 1,200 daily weekday riders in the first six (6) months and a maximum worst-case of 11 routes after the first year potentially affecting 3,800 daily riders.. Additionally, the Proposed Contract maintains Paratransit service at its current levels until the end of 2013. The MTA had proposed reducing Paratransit service by 18%.

The Proposed Contract has some risks, as described below, with estimated consequences and liability to the County.

1. Presently, there is no MetroCard reciprocal arrangement with the MTA, which can affect as many as 32,600 weekday or almost 33% of LIBS daily weekday riders who would lose some or all of the value of the MetroCard. It is strongly recommended that Veolia negotiate a MetroCard agreement with the MTA, similarly to Westchester, to alleviate this impact on bus riders.
2. The County may have a 13(c) liability estimated to be about \$22.8 million annually. This liability may be significantly reduced or totally eliminated depending on negotiations with the Union or by arbitration.
3. Potential service cuts may impact the portion of Federal (\$16.4 million Capital Grants) & State (\$53.9 million in operating assistance) funding received by LIBS due to a reduction in service level or the "for-profit" nature of the Proposed Contract. The MTA would have reduced service levels more and therefore this risk could have been greater under the MTA.

We believe these risks are manageable and may not result in higher cost or liability than if the MTA continued to operate LIBS. We reiterate that the Proposed Contract with Veolia will provide a higher level of service at reduced cost to the County taxpayer.

We are suggesting several recommendations to improve the Proposed Contract terms.

1. Fare adjustments should be changed from quarterly to annually. The potential of quarterly adjustments would harm public confidence.
2. The Fixed Fee should have some relationship to the Variable Fee. The County should not be put into a situation where service is substantially cut while the

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- Fixed Fee represents a significantly higher percentage of the total payment to Veolia.
3. The composition of the Transit Committee should properly reflect the interests of all affected parties.
 4. Veolia should make every effort to enter into an agreement with the MTA on the use of the MetroCard in order to maintain a useful service.

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1.0 BACKGROUND

Currently, the Long Island Bus System (“LIBS”) is operated by the Metropolitan Transportation Authority (“MTA”), under the name, MTA LI Bus (“MTA LI Bus”). In early 2010, the MTA announced that it would reduce service and increase fares if Nassau County (“County”) did not contribute over \$25 million in additional funding to the system to cover the deficit. After failed negotiations between the MTA and the County, the County Executive announced the possibility of privatizing the system in order to alleviate the increased financial demands by the MTA.

By March 2011, the MTA confirmed that without the additional funding from the County, it would reduce service levels to compensate for a projected deficit by eliminating more than half of LIBS routes, affecting 16,000¹ daily bus riders. This plan included the elimination of more than half of the current weekday routes (27 of 48)² by July (after 11 routes were already cut in late 2010) and a cut in Paratransit service that would affect 18% or 200 of the current 1,130 disabled daily riders. Paratransit service was previously cut by \$1.2 million in 2010 affecting 9% of riders).³

On March 16, 2011, the County Executive, forced with no feasible alternative, announced that the County would explore privatization as soon as late 2011 to maintain service levels and reduce the overall County subsidy currently being paid to the MTA.

On April 27, 2011, the MTA Board unanimously voted to terminate its 38-year contract with the County to run LIBS. A letter from MTA CEO, Jay Walder, was delivered the same day to the County Executive officially giving notice to terminate service with the County as of December 31, 2011.⁴

Faced with the possibility of losing bus service for 100,000 daily riders after the actions of the MTA, the County Executive appointed a committee to review bids for private operation of LIBS from Veolia Transportation Services, Inc. (“Veolia”), MV Transportation Inc., and First Transit. Veolia, a company based in Lombard, Illinois was selected as the new operator of LIBS effective January 1, 2012.⁵

On November 9, 2011, the County Executive submitted the Proposed Contract with Veolia to the County Legislature (“Legislature”) to operate LIBS. LIBS would be renamed the “Nassau Inter-County Express” or “NICE Bus.”⁶

¹ Approximately 16,000 weekday riders in addition to about 900 weekend riders

² Includes 2 weekend routes

³ Alfonso A. Castillo, “MTA plans to cut most of LI Bus routes,” *Newsday*, March 2, 2011; Alfonso A. Castillo and Keiko Morris, “Many disabled in Nassau to lose Able-Ride,” *Newsday*, March 6, 2011; Alfonso A. Castillo, “Nassau: Private company to run LI Bus,” *Newsday*, March 16, 2011.

⁴ Alfonso A. Castillo, “MTA vote ends contract to run LI Bus,” *Newsday*, April 27, 2011.

⁵ Alfonso A. Castillo, “LI Bus moving toward new mode of operating,” *Newsday*, June 13, 2011.

⁶ Alfonso A. Castillo, “LI Bus gets new name, look, operator says,” *Newsday*, November 9, 2011.

2.0 MAJOR VEOLIA CONTRACT TERMS

2.1 Term⁷

The Proposed Contract provides for a five (5) year base term, commencing January 1, 2012 and ending December 31, 2016 at 11:59 p.m. The agreement includes one (1) additional five (5) year "Option Period" to be exercised by the County. If the base term and Option Period are successfully completed, this agreement would expire on December 31, 2021.

2.2 Transit Committee⁸

The Proposed Contract establishes a "Transit Committee," which will be "empowered to act on behalf of the County. . ." to monitor and work with Veolia and approve or disapprove service levels, fare increases and the Annual Plan and Budget. The Transit Committee will also be responsible for the supervision and approval of a process for "soliciting and considering public comment . . . to be in place prior to any proposed fare increase. . . ."

Changes to service levels and fare increases will require prior notification to the Transit Committee in writing and must "comply with the public hearing process." This section also expressly mentions that for the first two (2) years of service, the Paratransit "service area" will not be modified "downward."

According to the County Executive's press conference on November 9, 2011, the Transit Committee will be made up of a five (5) member board with three (3) members appointed by the County Executive, one (1) by the Legislative Majority, and one (1) by the Legislative Minority.

2.3 Compensation, Funding, Costs, and Payments⁹

The NICE Bus operating costs are the sole responsibility of Veolia. These costs are prohibited from being carried over from one year to the next in order to avoid taxpayer dollars being used for system deficits.

Under the Proposed Contract, the County will pay Veolia a Fixed Fee and a Variable Fee.

⁷Fixed Route Bus and Paratransit Operation, Management, and License Agreement by and between The County of Nassau and Veolia Transportation Services, Inc., §1.2, page 3, November, 2011.

⁸Fixed Route Bus and Paratransit Operation, Management, and License Agreement by and between The County of Nassau and Veolia Transportation Services, Inc., §2, pages 3-6, November, 2011.

⁹Fixed Route Bus and Paratransit Operation, Management, and License Agreement by and between The County of Nassau and Veolia Transportation Services, Inc., §4, pages 8-11, November, 2011.

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- The Fixed Fee is a monthly payment from the County to Veolia for costs such as administration, workers' compensation insurance, utilities, office supplies, etc., that will be set each year by the Transit Committee. The Fixed Fee for the first year will be \$27.6 million. Subsequent year increases will need to be approved by the Transit Committee.
- The Variable Fee in the first year will be \$87.12 per vehicle hour for Fixed Route buses and \$55.81 per vehicle hour for Paratransit service. These rates will be adjusted each year by the Transit Committee and will be tied to New York City Area CPI. The Variable Fee will be paid on a monthly basis.

The maximum payment for 2012 (the first year) will be \$106.4 million and increase to \$131.1 million by 2021. The County payments will be offset by Federal & State funds, farebox revenues and advertising revenues. The County has the unilateral right to adjust these maximums. The County portion of the payment in 2012 is estimated at \$2.5 million. The Proposed Contract does not explicitly state what the County payment portion will be in the second and subsequent years.

2.4 Annual Plan and Budget¹⁰

Each year, Veolia is required to submit an Annual Plan (operating service) and Budget to the Transit Committee for approval. These two documents will provide the financial projections and calculations used to determine funding for the following year.

Veolia must also submit Quarterly Reviews. If either (1) "actual revenues are below projected revenues," (2) changes in operational cost drivers cause costs to exceed the CPI increase, fuel, insurance or health benefits, or (3) "there are material changes in applicable laws which result in additional costs;" Veolia will then have the option to request a fare increase or service modification to compensate for any projected revenue shortfall (subject to any public hearing requirements).

Veolia will have the option to terminate the Proposed Contract if its service and fare adjustments are rejected by the Transit Committee. However, Veolia must use its best effort to continue to operate the bus system until another operator can be found.¹¹ There is no provision in the Proposed Contract as to which party will be responsible for any potential shortfall for continued operation of the system. Presumably, the result will be service cuts in the absence of increased funding or fare increases.

¹⁰ *Fixed Route Bus and Paratransit Operation, Management, and License Agreement by and between The County of Nassau and Veolia Transportation Services, Inc.*, §12, pages 19-22, November, 2011.

¹¹ *Fixed Route Bus and Paratransit Operation, Management, and License Agreement by and between The County of Nassau and Veolia Transportation Services, Inc.*, §12.2, page 20-21, November, 2011.

2.5 “Major Event”¹²

“Major Event[s]” are defined as (1) “Material changes in funding . . . beyond the control of Veolia or the County,” (2) 13(c) Claims, or (3) other labor related issues. In the event of a “Major Event,” Veolia will have sole discretion to implement “Non-Major Changes,” such as the “reduction of Unproductive Services [20% or less profitability] or Temporary Service Changes [changes in effect for less than six months].” The Transit Committee must approve any fare increase or long-term modifications to service.

If a 13(c) Claim arises that is not covered by one of the discussed provisions in the subsequent section below, then “the Transit Committee shall approve all reasonable and necessary changes to satisfy. . .” the claim prior to “Veolia having any financial responsibility.”

2.6 Federal Transit Act §13(c) Related Issues¹³

Section 15 of the Proposed Contract discusses a majority of the Labor issues that may arise from the execution of the agreement. In terms of 13(c), “Veolia agrees to make offers of employment to a majority of employees [currently] working for. . .” the MTA in order to mitigate the liability for 13(c) Claims.

If a 13(c) Claim does arise, however, the County and Veolia agree not to assist or encourage the employee to file such a claim. Furthermore, any claims arising by actions of Veolia “not directed or approved by the County” will become the “sole financial responsibility” of Veolia.

If 13(c) Claims arise outside the context of the previous sentence, Veolia will be solely responsible only if the liabilities exceed what can be mitigated under the Proposed Contract. However, all reasonable and necessary changes requested by Veolia, including service cuts, fare increases, or additional funding needed to cover and/or mitigate the potential liability costs must be approved by the Transit Committee prior to “Veolia having any financial responsibility for any 13(c) Claim . . .”

¹² *Fixed Route Bus and Paratransit Operation, Management, and License Agreement by and between The County of Nassau and Veolia Transportation Services, Inc.*, §12, pages 19-22, November, 2011.

¹³ *Fixed Route Bus and Paratransit Operation, Management, and License Agreement by and between The County of Nassau and Veolia Transportation Services, Inc.*, §15, pages 24-26, November, 2011.

2.7 Farebox Revenue¹⁴

Revenues that are received as a result of fares will be credited monthly against the operating costs of the system. If revenues are in excess of or below 5% of the projected amount, the additional revenue or liability will be the responsibility of Veolia. If, however, revenues are in excess or below the projected amount by 10%, then the following will occur:

- Above 10%: funds will be deposited in a separate account that will be used by both parties as created in the Annual Plan and Budget.
- Below 10% (for more than two (2) quarters): Veolia will have the right to renegotiate the agreement.

The Proposed Contract does not estimate this revenue, however, the Nassau County Office of Management and Budget has projected farebox revenues in 2012 at \$43.8 million.¹⁵

2.8 MetroCard Transfers¹⁶

The Proposed Contract states that Veolia will attempt to contract with the MTA and Suffolk County for acceptance of the MetroCard, however it is silent as to the costs/revenues that may be incurred or collected as a result.

2.9 Termination¹⁷

The Proposed Contract may be terminated by the County with ninety (90) calendar days notice at its “sole discretion.”

Veolia may terminate the Proposed Contract one (1) year following its giving of 60 days notice to the County if “the Transit Committee fails to approve the Annual Plan and Budget submitted to it by Veolia in the time frame specified . . . or fails or refuses to approve reasonable route, service, or fare adjustments as recommended by Veolia as provided . . . or if the parties are unable to agree on revised farebox terms”

If the Proposed Contract is terminated, regardless of by whom, Veolia must continue to provide service “without interruption. . .” until a new operator is found consistent

¹⁴ *Fixed Route Bus and Paratransit Operation, Management, and License Agreement by and between The County of Nassau and Veolia Transportation Services, Inc.*, §16, pages 26-27, November, 2011.

¹⁵ Steven Antonio. “Long Island Bus/Veolia Memo.” Office of Legislative Budget Review, Nassau County. November 28, 2011. Page 6.

¹⁶ *Fixed Route Bus and Paratransit Operation, Management, and License Agreement by and between The County of Nassau and Veolia Transportation Services, Inc.*, §16.1(b), page 27, November, 2011.

¹⁷ *Fixed Route Bus and Paratransit Operation, Management, and License Agreement by and between The County of Nassau and Veolia Transportation Services, Inc.*, §18, pages 28-34, November, 2011.

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with Veolia's "best efforts and cooperation."¹⁸ The Proposed Contract does not specify under what terms and for how long.

¹⁸ *Fixed Route Bus and Paratransit Operation, Management, and License Agreement by and between The County of Nassau and Veolia Transportation Services, Inc.*, §26, pages 38-39, November, 2011.

3.0 CONTRACT BENEFITS – LOWER COSTS AND BETTER SERVICE LEVELS WITH GREATER PUBLIC INPUT

3.1 The County Expense Will Be Reduced by \$6.6 Million Annually Compared to an MTA Increase of \$27.9 Million

The funding for Veolia's budget is constructed using four categories: (1) State, Federal, & County funding, (2) farebox revenues, (3) advertising revenues, and (4) other funds as determined by the County. The Proposed Contract expressly states the maximum obligations for 2012, 2013, and 2014 at \$106.4 million, \$107.2 million, and \$108.8 million, respectively. If this funding is below projected levels, the budget would be in deficit and Veolia would be required to submit a revenue creation or expense reduction plan to the Transit Committee for approval.

The County contribution under the Proposed Contract will be \$2.5 million for 2012, down from the current \$9.1 million for 2012. The County subsidy is \$34.5 million less than the \$37 million demanded by the MTA.

3.2 Service Levels Will Be Better Under Veolia

Route Analysis: According to Section 2 of the Proposed Contract, service levels will be adjusted at Veolia's discretion under three expressed guidelines: (1) if a trip within a route is less than 20% profitable, (2) if a trip within a route is less than 20% occupied on average, or (3) up to six (6) routes may be cut within the first two (2) quarters of Veolia starting operation of the system.

Under these rules and using the data from the MTA's March 2011 Route Reduction Plan, this Office determines that Veolia may eliminate the six (6) most under-performing routes within the first six (6) months of the Proposed Contract. The candidate routes are the N14 (Rockville Centre Loop), N73/N74 (Wantagh-Hicksville), N81 and N80 (Hicksville-Sunrise Mall), and N62 (South Freeport).¹⁹ If these routes are eliminated, operating expenses will be cut by a net of \$4.3 million (after lost revenue is factored in) while impacting only about 1% of daily ridership.

After the initial six (6) month period of operation, Veolia may further modify service by eliminating trips within routes if they are less than 20% profitable (Section 2.4(b)(i)) or under 20% capacity (Section 2.4(b)(ii)). Although individual trip data was not available for review, this Office analyzed all MTA routes that fall into this "20/20" category, and evaluated the potential impact to service. In addition to the six (6) routes identified above, there are five (5) full routes that operate at less than 20% profitability and 20% capacity (less than 11 passengers on average). These routes are Freeport-Babylon (N19), Bellmore-Roosevelt Field (N45), Franklin Square-Elmont-

¹⁹ MTA. *2011 Long Island Bus Service Reduction Proposals*. MTA Long Island Bus. Page viii and Page 2. March 1, 2011.

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Green Acres (N8), Bellmore-Hicksville (N50), and Roosevelt Field-Merrick (N51). The overall impact on bus riders under the Proposed Contract would be less than the proposed MTA cuts.

Together with the initial six (6) routes, this analysis projects a *worst-case scenario* of up to 11 routes (23% of all routes) that could be cut within the first 12 months, affecting up to 3,800 daily riders or 4% of daily ridership.

When compared to the MTA plan, the Proposed Contract will retain more than half of the routes. The MTA's proposed plan would have cut 19 weekday and two (2) weekend routes affecting 15,600 daily riders or about 16% of ridership.

The Proposed Contract also maintains Paratransit service at its current levels until the end of 2013. Under the MTA plan, 18% or 200 disabled daily riders would have lost ridership during the same period.

The following table provides a comparison of routes impacted under the MTA plan and the Proposed Contract. The significantly greater number of routes retained by Veolia can be noted.

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LIBS Projected Route Modification Plan Comparison for 2012^				
MTA Route Designations	MTA*	Veolia**		Average Daily Weekday Ridership
		First 6 Months	After 6 Months	
Routes Eliminated out of 48 Total (%)	25 (52%)	6 (12.5%)	11 (23%)	
Avg. Daily Riders Affected out of 100,000 Est. Total (%)	15,957 (16%)	1,246(1%)	3,823(4%)	
Weekday Routes:				15,957
Jones Beach (N88)	Eliminated	Retained	Retained	441
Lynbrook-Freeport (N36)	Eliminated	Retained	Retained	400
Hempstead-East Meadow-Bellmore (N46/47)	Eliminated	Retained	Retained	725
Mineola-Plainview-S.Huntington (N78/79)	Eliminated	Retained	Retained	2,086
Great Neck Loop (N57)	Eliminated	Retained	Retained	353
Green Acres-Floral Park (N2)	Eliminated	Retained	Retained	585
Hewlett-Elmont/Jamaica (N1)	Eliminated	Retained	Retained	1,968
Great Neck-Kings Point (N58)	Eliminated	Retained	Retained	1,170
Hempstead-Sunrise Mall-Amityville (N54/55)	Eliminated	Retained	Retained	2,045
Long Beach-Far Rockaway (N33)	Eliminated	Retained	Retained	903
Hempstead-Far Rockaway (N31)	Eliminated	Retained	Retained	1,458
Freeport-Babylon (N19)	Eliminated	Retained	Eliminated	1,389
Bellmore-Roosevelt Field (N45)	Eliminated	Retained	Eliminated	371
Franklin Square - Elmont - Green Acres (N8)	Eliminated	Retained	Eliminated	298
Bellmore-Hicksville (N50)	Eliminated	Retained	Eliminated	308
Roosevelt Field-Merrick (N51)	Eliminated	Retained	Eliminated	211
Rockville Centre Loop (N14)	Eliminated	Eliminated	Eliminated	125
Wantagh-Hicksville (N73/74)	Eliminated	Eliminated	Eliminated	413
Hicksville-Sunrise Mall (N81)	Eliminated	Eliminated	Eliminated	268
South Freeport (N62)	Eliminated	Eliminated	Eliminated	172
Hicksville-Sunrise Mall (N80)	Eliminated	Eliminated	Eliminated	268
Specialty Routes (not included in above analysis):				904
ParaTransit Service	Reduced	2-yr Guarantee	2-yr Guarantee	n/a
Lynbrook-Great Neck (N25)	Reduced, Disc. Sun	Fully Retained	Fully Retained	361
Roosevelt Field-Baldwin (N16)	Reduced, Disc. Sat	Fully Retained	Fully Retained	543

[^]MTA Ridership and Cost Data used to estimate comparison (excludes weekend Ridership)

* According to MTA 2011 Long Island Bus Service Reduction Proposals, March 1, 2011.

2.4(b)(iii), using MTA's least six profitable routes based on 2011 statistics and Sections

2.4(b)(i) and (ii) for "after 6 months."

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Service Hours Analysis:²⁰ Using data from the 2010 National Transit Database “General Information” data sheet for MTA LI Bus, this Office was able to compare service and fleet levels under the MTA and Veolia based on service hours as shown in the table below.

	Current MTA Service		MTA	Veolia		% change
	Op. Exp/Hr	Current Service Hours	Route Reduction Plan Service Hours	Op. Exp/Hr	Proposed Service Hours	
Fixed	\$ 128.05	983,822	818,318	\$ 87.12	760,596	-7.05%
Paratransit	\$ 60.02	219,650	108,087	\$ 55.81	219,650	103.22%
Total		1,203,472	926,405		980,246	5.81%

The current operation of LIBS by the MTA uses 296 buses for Fixed Routes and 93 vehicles for Paratransit service, for a total fleet size of 389. Fixed Routes and Paratransit service currently run over 1.2 million total hours per year, 984,000 and 220,000 hours, respectively. Using the MTA’s operating cost estimates for year-end 2011, their current Operating Expenses per Hour were calculated at \$128.05 per Fixed Route hour and \$60.02 per Paratransit service hour, respectively.

Applying the same formula to the MTA’s Route Reduction Plan would have adjusted service hours for Fixed Routes and Paratransit service to 818,000 and 108,000, respectively, for a total of 926,000 service hours.

Using Veolia’s stated operating budget of \$78.5 million (total budget less administrative costs) and hourly rates of \$87.12 (Fixed) and \$55.81 (Paratransit), and maintaining the current Paratransit service level, this Office has calculated the total service hours under the Proposed Contract. Veolia’s proposed service is estimated to be 761,000 Fixed Route hours and 220,000 Paratransit service hours, a total system hourly service increase of 5.8% over the MTA Route Reduction Plan.

In both comparisons, Veolia’s plan is superior to the MTA in terms of both Routes and Hourly Service. Veolia will be providing 5.8% more service hours and adversely affect 12% less riders. Moreover, Paratransit service will remain at the current level until the end of 2013.

3.3 Transit Committee Provides Greater Public Oversight

Currently, under the MTA, fare hikes are approved by the MTA Board with subsequent State legislative approval with the County having no direct involvement in the process. Any fare increase proposal going forward will start with the submission of a written recommendation by Veolia to the Transit Committee to raise fares in order to compensate for an identified budget shortfall. The Transit Committee will then be required to hold public hearings (pursuant to guidelines that have not yet

²⁰ MTA. 2011 Long Island Bus Service Reduction Proposals. MTA Long Island Bus. Page viii and Page 2. March 1, 2011.

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been released) and vote on the measures. The plurality needed for the Transit Committee approval will depend on the powers and procedures granted to it by the County Executive.

The Transit Committee is understood that it will be comprised of five (5) appointees, three (3) from the County Executive, one (1) from the Legislative Majority, and one (1) from the Legislative Minority.

3.4 Termination of Service Will Be More Difficult

The ability to terminate service under the current 1973 Lease & Operating Agreement between the County and the MTA is defined in Section 13: “The AUTHORITY [MTA] and the COUNTY shall each have the right to terminate this Agreement at any time on not less than 60 days’ advance written notice to the other.”²¹ This was the exact provision referenced in the MTA’s “60 days’ advance written notice. . .” of termination of service in the letter sent to the County, dated April 27, 2011, referenced above.

The “Termination” of service provision under the Proposed Contract has been expanded to limit the rights of the operator to walk away while maintaining the rights of the County to cancel at any time.

Under the Proposed Contract, the County may terminate Veolia for no-cause with ninety (90) days’ written notice. This requirement is thirty (30) days longer than the original agreement with the MTA. However, where Veolia violates a provision in Section 18.2(a), called “default,” the County has the right to terminate Veolia immediately after allowing them twenty-one (21) days to fix the specific “default.” This Section allows the County to terminate Veolia up to 39 days sooner than the MTA agreement for concerns such as major safety violations and corporate financial issues, among others.

Veolia has two expressed provisions, Section 18.3 and 18.4, where it can initiate termination of service with the County. First, Veolia can terminate the Proposed Contract if the Transit Committee fails to approve the Annual Plan, Remedy a Major Event, or “Approve a Change during a Quarterly Review.” If the former occurs, Veolia may terminate service effective one (1) year following sixty (60) days’ written notice (however, it must still abide by Section 26 at the end of the one (1) year period, discussed below).

In the event of termination by either the County or Veolia, Section 26 still provides for service to continue “without interruption . . .” from termination of the Proposed Contract until a new operator is found or new terms can be negotiated with the County. This provision ensures that riders have uninterrupted service throughout any

²¹ “Lease & Operating Agreement between the County of Nassau and the Metropolitan Suburban Bus Authority (a/k/a MTA Bus Company)” January 15, 1973. §13 , pages not listed.

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transition period that may occur, by the County, Veolia, or another operator. “Veolia agrees to exercise its best efforts and cooperation to effect an orderly and efficient transition to the new operator...” It is uncertain what fares and what routes will be operated during this continuation period.

4.0 CONTRACT RISKS

4.1 13(c) Liabilities Remain a Financial Concern

As previously discussed, the Proposed Contract between Veolia and the County is governed by Federal Transit Act Section 13(c), which is set forth in Section 5333(b) of Title 49 of the United States Code (hereinafter referred to as "13(c)").²²

The Federal Transit Act enables the federal government to provide grants to local governments for assistance in the operation and/or acquisition of mass transportation systems. As a condition to receiving these federal grants, local governments are required to comply with specific protective arrangements established in Section 13(c) that protect transit employees from any adverse effects that may arise as a result of changes (i.e. organizational/operational) to the federally funded transit system. The minimum protections required by 13(c) are:

1. The preservation of rights, privileges, and benefits (including continuation of pension rights and benefits) under existing collective bargaining agreements;
2. The continuation of collective bargaining rights;
3. The protection of employees against a worsening of their positions with respect to employment;
4. Assurances of employment to employees of acquired public transportation systems; and
5. Paid training or retraining programs.

In 1973, the County applied for and received a grant from the federal government to assist the County in purchasing the assets of a private bus company.²³ Said acquisition resulted in the creation of what is today MTA Long Island Bus. As a condition to this federal assistance, the County entered into a 13(c) agreement with TWU employees. A second 13(c) agreement with similar protections was executed in 1999.²⁴ Both of these agreements provided that the protective provisions would be binding on any party that operates the bus system in the future, whether public or private, and that the protections contained in the 13(c) agreements would be tied to any federal assistance received by the County for the bus system.

²² 49 U.S.C. § 5333(b)

²³ *Agreement dated March 23, 1973 between the County of Nassau and various labor unions pursuant to Section 13(c) of the Urban Mass Transportation Act of 1964.*

²⁴ *Capital Assistance Protective Arrangement pursuant to Section 5333(b) of Title 49 of the U.S. Code, Chapter 53 between the New York Metropolitan Transportation Authority, Long Island Bus and the Transport Workers Union Local 252.*

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Accordingly, as long as the County continues to receive federal assistance for its bus system, it appears that the 13(c) protections would apply. An adverse impact would include a worsening of the following:

- TWU employees' wages,
- pension benefits,
- sick leave,
- vacation days/pay, and
- health insurance benefits.

It appears that any employee who is not retained by Veolia or who is retained but placed in a worse position with respect to his/her total compensation could be considered a "displaced employee." Under the 13(c) agreements, such an employee would be paid a monthly "displacement allowance" that will pay the difference between the employee's current position and the one from which the employee was removed or retained but placed in a worse position.²⁵ The length of time that a "displaced employee" will receive said allowance is the period equal to the employee's length of service, not to exceed six (6) years.

This Office estimates that approximately 800²⁶ TWU members, mostly drivers and mechanics, may be impacted by 13(c).

If none of the TWU employees are hired, the annual County liability can be as much as \$89.4 million in compensation claims. However, if sufficient TWU members are hired to operate under the Veolia reduced service plan, then 67 fewer fixed route buses will be required. Using the MTA's current average union workforce per bus of at least two (2) employees, this Office can estimate that approximately 138 current MTA employees may be laid off as a result of these service modifications.

If 138 current MTA employees are laid off and 662 are rehired at 90% compensation, then the 13(c) liability is estimated to be \$15.4 million for the laid off and \$7.4 million for the rehired for a total of \$22.8 million annually for up to six (6) years.

It is important to note that any potential 13(c) liability is speculative until TWU employees execute a new collective bargaining agreement. Moreover, any potential liability on behalf of the County may ultimately be determined through litigation.

4.2 Reduced Federal & State Funding

The New York State Metropolitan Mass Transportation Operating Assistance ("MMTOA") of \$50.9 million, the State Operating Subsidy of \$3 million, and Federal

²⁵ The exact formula is more fully described in Sections 6 and 7 of the "Model 13(c) Agreement" incorporated into the "Capital Assistance Protective Arrangement."

²⁶ Due to attrition, it is uncertain at this point how many employees will elect to retire, thus excluding them from 13(c).

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Capital Grant funding for 2012 are determined by the respective legislatures, which may consider to decrease appropriations for funding of NICE if service level is reduced or because of the “for-profit” nature of the Proposed Contract. This risk is not identified at this point, but it remains reasonable until Federal & State budgets are set for 2012.

4.3 Federal Grants Held By the MTA May Be at Risk when Transferred to the County

As of November 17, 2011, there is a balance of \$16.4 million of Federal Transit Administration (“FTA”) Capital Grants outstanding for LIBS that will transition to the County and Veolia on January 1, 2012 from the MTA. This amount includes \$2.5 million at “high risk” of recapture. The specific grants are briefly discussed below.

- \$11.5 million in grant funding to purchase 63 new buses should not be affected by the transition (under current service levels).
- \$2.4 million in grant funding to repair and upgrade maintenance facilities remains unused since as early as 2008. This project includes service support equipment, the replacement of a compressed natural gas (CNG) compressor, and \$502,000 subject to imminent recapture for the installation of bus lifts at Mitchel Field, Rockville Centre, and Stewart Avenue facilities. The FTA is concerned that a three (3) year delay in using these funds to improve the efficiency of maintenance procedures has negatively impacted operating costs. Additionally, the FTA is concerned that the installation of the new CNG compressor, which requires, but has yet to receive MTA real estate approval, is detrimentally behind schedule.
- \$538,000 in grant funding to purchase and install new bus stop signs has not been used since 2009 and still requires written approval to be received from New York City and Suffolk County.
- \$2 million in grant funding remains at risk for communications improvements at LIBS and LIRR transfer points. These funds were granted in 2007 and after \$500,000 has been spent on research, the project is still not complete.

Improper grant management procedures on the part of the MTA may create a loss of \$2.5 million in grant revenue if issues are not resolved prior to January 1, 2012. Since these improvements are necessary to ensure safety and minimize maintenance expenses and need to be completed regardless of grant funding levels, operational funds may be necessary to cover the costs.

Additionally, up to 14 buses were removed from service before the end of their useful depreciable life without the proper notification to the FTA, which may result in fines and/or penalties. Similarly, the same 14 buses were used for spare parts without proper notification to the FTA, which may result in a credit against preventative maintenance grants. There is uncertainty between the MTA and the County on the

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potential amount of lost funding. Currently, the MTA is in possession of these funds. This is in addition to the \$2.5 million loss mentioned above.

Service level (total hours and route reductions) will require the fleet level to be reduced accordingly, which may result in paying a fee to the FTA to retire up to 67 buses early or incur a credit against future grants. To maintain Federal funding levels for these grants, the County may only keep 20 buses in reserve for every 100 in the fleet (20% reserve ratio). The current fleet is operating with a reserve ratio of 11%, which allows for an additional 16 buses to be removed from service and kept as spares without the risk of a fee or penalty. The result is a risk of penalties, fees, or credits being incurred for up to 51 buses that will need to be retired as a result of the projected service reduction. The total financial loss is not yet quantifiable.

4.4 Loss of MetroCard May Reduce Farebox Revenues

The absence of a MetroCard agreement in place between the MTA and Veolia may have consequences in reduced bus riders that would now have to pay a second fare. Approximately 33,000 daily riders use the MetroCard. Some loss of riders and fare revenues can be expected if the MetroCard program is not continued. The magnitude of farebox loss cannot be estimated at this time.

4.5 Potential Quarterly Fare Increases or Service Adjustments May Result in Public Confusion and Loss in System Confidence

The Proposed Contract allows Veolia to change service levels or increase fares on a quarterly basis or walk away.

If Veolia projects a deficit and the Transit Committee does not approve “reasonable route, service, or fare adjustments,” the Proposed Contract is subject to termination. This provides the operator with considerable leverage over the Transit Committee to allow for those modifications or risk losing the operator. Potential quarterly fare increases or service adjustments are too frequent and may result in public confusion and loss of confidence in the system.

This Office recommends the frequency of any future service cuts or fare increases to be reduced to a minimum, once annually.

4.6 Transit Committee Composition

The Transit Committee will be critical to the operation of the system. It is recommended that the composition properly reflects the interests of all affected parties. Failure to adequately represent the community may have a negative impact on Federal & State funding.

5.0 RECOMMENDED ADDITIONAL CONTRACT TERMS

1. Fare and service adjustments should be changed from quarterly to annually.
2. The Fixed Fee should have some relationship to the Variable Fee. The County should not be put into a situation where service is substantially cut while the Fixed Fee represents a significantly higher percentage of the total payment to Veolia.
3. The composition of the Transit Committee should properly reflect the interests of all affected parties.

6.0 CONCLUSION

The Proposed Contract with Veolia appears more favorable than the current agreement with the MTA in a number of significant areas:

1. Veolia will reduce eleven (11) bus routes initially affecting about 3,800 daily riders while the MTA was proposing eliminating 25 weekday and two (2) weekend routes affecting more than 16,800 daily riders.
2. The County will reduce its annual subsidy expense by \$6.6 million from the current level of \$9.1 million and by \$34.5 million from the subsidy demanded by the MTA in their 2014 February Financial Plan.
3. County residents will now participate in system development by taking part in the Transit Committee and Public Hearing Process. Any changes to the fare or service level must adhere to a particular bilateral, bi-partisan, and public process before it is implemented. Under the MTA, fare increases were unilaterally determined outside the County.

The Proposed Contract with Veolia, however, contains a number of risks:

1. Presently, there is no MetroCard reciprocal arrangement with the MTA, which can affect as many as 32,600 weekday or almost 33% of LIBS daily weekday riders who would lose some or all of the value of the MetroCard. It is strongly recommended that Veolia negotiate a MetroCard agreement with the MTA, similarly to Westchester, to alleviate this impact on bus riders.
2. The County may have a 13(c) liability estimated to be about \$22.8 million annually. This liability may be significantly reduced or totally eliminated depending on negotiations with the Union or by arbitration.
3. Potential service cuts may impact the portion of Federal (\$16.4 million Capital Grants) & State (\$53.9 million in operating assistance) funding received by LIBS due to a reduction in service level. This risk would be the same or greater under the MTA plan. The "for-profit" nature of the Proposed Veolia Contract may present an unknown new risk that should be manageable.