

STATE OF NORTH CAROLINA  
COUNTY OF ORANGE

**AGREEMENT FOR REAL TIME PASSENGER INFORMATION SYSTEM**

This Agreement made and entered into by and between the Town of Chapel Hill, 405 Martin Luther King Jr. Boulevard, Chapel Hill, NC 27514, herein "Town", a North Carolina municipal corporation, and NextBus, Inc., 2433 Mariner Square Loop, Suite 103, Alameda, CA, 94501 herein "NextBus", a duly licensed contractor authorized and qualified to do business in North Carolina, for the provision of a real time passenger information system for the Town of Chapel Hill.

WITNESSETH:

That for and in consideration of the mutual promises and conditions set forth below, the Town and NextBus agree:

1. Duties of NextBus: NextBus agrees to provide a real time passenger information system ("the system") for the Town of Chapel Hill. The system is described in the Town's Request for Proposals for a Real Time Passenger Information System for Chapel Hill Transit, dated September 12, 2005 and subsequent addendum, NextBus' proposal dated November 10, 2005, and subsequent correspondence between the Town and NextBus clarifying the proposal which is attached hereto, as Exhibit A, and all of which are incorporated herein by reference and made a part of this Agreement. NextBus will designate a project manager for the duration of the project.
2. Duties of the Town: The Town agrees to designate a project manager for the duration of the project. The project manager is Jeanmarie Curtis, Special Projects Coordinator, Transportation Department, Town of Chapel Hill.
3. Billing and Payment: NextBus agrees to accept the sum of \$949,025 (the "Contract Sum") in full compensation for furnishing materials and for all labor in performing all the Work contemplated in this Agreement. The payment schedule is Exhibit B of this Agreement. NextBus shall submit bills to the Town for work performed under the terms of this Agreement. Payment will be made by the Town within thirty (30) days of receipt of an accurate invoice, approved by the Town's project manager or her designee.
4. Project Schedule: The Contractor agrees to complete the Work within 125 calendar days following receipt of a written Notice to Proceed. The project schedule is Exhibit C to this Agreement.
5. Maintenance and Warranty: Upon completion of the Work, NextBus shall have the continuing maintenance and warranty obligations as spelled out in the Town's Request for Proposal and NextBus' proposal.
6. Assignment: NextBus and the Town agree that this Agreement may not be assigned or transferred, including any assignment by operation of law, without the consent of the other. Assignment or transfer includes sale of NextBus or transfer of an interest in NextBus

exceeding twenty five percent of the company's value, and any assignment by operation of law.

7. Performance: NextBus agrees to perform the Work in such a manner as to be of least inconvenience to the Town. NextBus agrees to comply with all ordinances and regulations affecting the Work in any manner.
8. Insurance Provisions: NextBus will maintain insurance with the following limits:

Worker's Compensation: Coverage to apply for all employees for statutory limits in compliance with the applicable state and federal laws. The policy must include employer's liability with a limit of \$100,000 for each accident, \$100,000 bodily injury by disease each employee and \$500,000 bodily injury by disease policy limit.

Comprehensive General Liability: Shall have minimum limits of \$1,000,000 per occurrence combined single limit for bodily injury liability and property damage liability. This shall include premises and/or operations, independent contractors, products and/or completed operations, broad form property damage and explosion, collapse and underground damage coverage, sudden and accidental pollution losses, and a contractual liability endorsement.

Business Auto Policy: Shall have minimum limits of \$1,000,000 per occurrence combined single limit for bodily injury liability and property damage liability. This shall include: owned vehicles, hired and non-owned vehicles and employee non-ownership.

Special Requirements:

The Town of Chapel Hill is to be named as an additional insured on the Comprehensive General Liability policy.

Current, valid insurance policies meeting the above requirements shall be maintained for the duration of the project. Renewal certificates shall be sent to the Town of Chapel Hill thirty (30) days prior to any expiration date. There shall also be a 30 day notification to the Town in the event of cancellation or modification of any stipulated insurance coverage. Certificates of Insurance on an Accord 25 (8/84) or similar form meeting the required insurance provisions shall be forwarded to the Town of Chapel Hill. Wording on the Certificate of Insurance which states that no liability shall be imposed upon the company for failure to provide such notice is not acceptable. Original policies or certified copies of policies may be required by the Town at any time.

It shall be the responsibility of the Contractor to insure that all subcontractors comply with the same insurance requirements that he is required to meet.

9. Hold Harmless/State and Local Law Disclaimer: NextBus agrees to indemnify, and hold harmless the Town of Chapel Hill from all loss, liability, claims or expense (including reasonable attorney's fees) arising out of this contract from bodily injury, including death or property damage to any person or persons caused in whole or in part by the negligence or willful misconduct of NextBus, except to the extent same are caused by the negligence or misconduct of the agents, officials and employees of the Town.

10. Non-Discrimination: NextBus shall abide by the non-discrimination policy of the Town of Chapel Hill to administer all functions without discrimination because of race, creed, sex, national origin, age, economic status, sexual orientation, gender identity or gender expression.
11. Change Orders: No work other than that included in this Agreement shall be done and no additional material shall be furnished by NextBus without a written Change Order signed by the Town Manager, Transportation Director, Town Attorney and the Town Finance Director, and, if required by ordinance or resolution, approved and executed by the Town Council. In the absence of such written Change Order, NextBus shall not be entitled to the payment for any additional work.
12. North Carolina law shall govern this Agreement. Venue for any suit arising out of this Agreement shall be the Superior Court in Orange County, North Carolina.
13. Amendment: This Agreement may be amended in writing by mutual agreement of the Town and NextBus.

This Contract is between the Town of Chapel Hill and NextBus for the provision of a real time passenger information system for Chapel Hill Transit.

IN WITNESS WHEREOF, the parties hereunto cause this agreement to be executed in their respective names.

**NEXTBUS, INC.**

*Don Egan*  
SIGNATURE

CEO  
TITLE

*Patricia Chen*  
ATTEST

COO  
TITLE

**TOWN OF CHAPEL HILL**

*W. Calvin Horton*  
TOWN MANAGER



ATTEST BY TOWN CLERK:

*Billie*  
TOWN CLERK

Town Clerk attests date this the 24<sup>th</sup> day of APRIL, 2006.

Approved as to Form and Authorization

*Ralph D. Kavinovs*  
TOWN ATTORNEY

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

*[Signature]*  
FINANCE DIRECTOR

*[Signature]*  
TRANSPORTATION DIRECTOR



November 10, 2005

Town of Chapel Hill  
405 Martin Luther King, Jr. Boulevard  
Chapel Hill, NC 27514

NextBus and the Town of Chapel Hill are working together to bring passenger information to the passengers of the Chapel Hill Transit. We present real-time arrival information on our web site [www.NextBus.com](http://www.NextBus.com). This information is free to the passengers.

In our effort to inform your customers about this service, we plan to use the Town of Chapel Hill's trademark on our website in direct support of a web based real time information for the Town of Chapel Hill whose logo will so appear.

Trademarks have been an effective tool for NextBus website users. This symbol, so familiar to your customers will help familiarize your customers with our meaningful information. The trademark lets them know that our information applies to their Town of Chapel Hill traveling experience.

With your permission we would like to include this graphic on our web site. Please sign below and return this form via mail or fax. With your approval, we will continue to use your trademark on our site. If the use of your trademark presents a problem, please contact me immediately to discuss alternatives.

Thank you for your participation. Together, NextBus and the Town of Chapel Hill will increase customer satisfaction among your passengers.

Sincerely,

John Eaton  
Chief Financial Officer  
NextBus, Inc.

Yes, please include our official graphical trademark of the Town of Chapel Hill on the NextBus website.

Signature: W. Calvin Horton Date: 4/24/06

Printed Name: W. Calvin Horton Title: Town Manager

# END USER LICENSE AGREEMENT

THIS AGREEMENT made as of the 24<sup>th</sup> of April 2006 by and between NEXTBUS, INC. with its place of business at 2433 Mariner Square Loop Suite 103 Alameda, CA 94503, hereinafter referred to as "NEXTBUS" and the Town of Chapel Hill with its place of business at 405 Martin Luther King Jr. Boulevard, Chapel Hill, N.C. 27514 hereinafter referred to as "LICENSEE".

WHEREAS NEXTBUS is the owner of the rights to use the hardware, software and services;  
AND WHEREAS LICENSEE is desirous of obtaining a license to use such hardware, software and services;  
AND WHEREAS such hardware, software and services, hereinafter referred to as "Licensed Equipment" and defined as:

Dynamic Message LED Signs for price as quoted in the Proposal,  
Internet-based Map Display with local street map and route system overlay for twenty-six (26) routes included in Project Management as quoted in the Proposal,  
Vehicle Arrival Time Predictions for eighty-three fixed route buses included in Project Management as quoted in the Proposal,  
Display of the bus Arrival Time Predictions on the NextBus website included in Project Management as quoted in the Proposal,  
Wireless Handheld Device (PDA) support on the NextBus website included in Project Management as quoted in the Proposal.

Now therefore, in consideration of the covenants, conditions and agreements herein contained, the parties agree as follows:  
NEXTBUS grants to LICENSEE a personal, non-transferable and non-exclusive license (a) to use the hardware, software and services (hereinafter referred to as the "Licensed Equipment"), in the form supplied by NEXTBUS on any suitable vehicle, bus shelter and PC at LICENSEE's place of business, but only as required to exercise the license granted herein. Other than the rights of use expressly conferred upon LICENSEE by this paragraph, LICENSEE shall have no further rights to use the Licensed Equipment, and shall not copy, reproduce, modify, adapt or translate them, without the express written authority of NEXTBUS.

LICENSEE acknowledges that the software, and other information relating thereto disclosed to LICENSEE pursuant to this Agreement are trade secrets of and continue to be proprietary to NEXTBUS, and subject to the California Public Records law, LICENSEE shall maintain in confidence and not disclose the same, directly or indirectly, to any third party without the NEXTBUS' prior written consent. This obligation of confidentiality shall survive termination of the license granted hereunder.

NEXTBUS warrants the Licensed Equipment to operate as specified in the Proposal to LICENSEE. NEXTBUS shall be responsible for correcting, with all possible speed and at its own expense, any defects in the Licensed Equipment for a period of one (1) year after acceptance by LICENSEE. The foregoing warranty is in lieu of all other warranties, express or implied, including but not limited to the implied warranties of merchantability and fitness for a particular purpose. In no event shall NEXTBUS be liable for special, indirect or consequential damages even if advised of the possibility of such damages.

The License granted by this Agreement is effective until terminated. NEXTBUS has the right to terminate the license granted under this agreement if LICENSEE is in default of any term or condition of this Agreement, and fails to cure such default within seven (7) days after receipt of written notice of such breach or default.

LICENSEE acknowledges having read and understood this Agreement and agrees to be bound by its terms and conditions.

LICENSEE also agrees that the license granted under this Agreement is the complete and exclusive statement of the Licensed Equipment license agreement between the parties, and supersedes all representations, oral and written, express or implied, between the parties on this subject.

This Agreement or any of the rights or obligations of NEXTBUS created herein, may be assigned by NEXTBUS, but this Agreement is for the sole benefit of LICENSEE and may not be assigned by LICENSEE without the express written consent if NEXTBUS.

Notwithstanding any other provision of this agreement, NextBus warrants that it has all rights necessary to license the Licensed Equipment and shall defend and indemnify LICENSEE against any claim that LICENSEE's use of the Licensed Equipment under this agreement is unauthorized.

LICENSEE is entitled to obtain the Source Code for the software licensed under the agreement as provided in the separate Source Code Escrow Agreement between NextBus and LICENSEE.

This License Agreement shall be governed and construed in accordance with the laws of the State of California.

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed as of the date and year first written above.

**NEXTBUS, INC.**

Signed: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**LICENSEE**

Signed: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

W. Calvin Horton *WCH*

W. Calvin Horton

Town Manager

4/24/06

## Exhibit A

### NEXTBUS QUESTIONS 12/15/05

1. Does your communications plan require that the Town contract directly with the communications provider?

No. NextBus is a cellular reseller and has a national agreement with the providers.

2. Does your communications plan allow the Town to contract directly with the communications provider? If so, which provider would you recommend based on your analysis of the coverage within the CHT operating area, recommended data throughput, and cost?

NextBus plans to provide cellular service through Cingular Wireless. Costs has been included in the NextBus proposal.

3. What is the anticipated data throughput per connection (vehicle/display-sign) per month in megabytes assuming 1min polling? (please specify if your solution requires more frequent polling) interval updates?

Typical bandwidth requirement for a sign is 2MB/month though signs will exceed that amount if they display information for multiple routes or if there are other unusual factors such as many text messages being sent.

4. What is the display-sign/web-page refresh rate – are they the same or different and why?

Is the display-sign/web-page refresh rate tied to the vehicle polling frequency (what is the dependency and can it be tailored, if so, what are the repercussions)?

Does your solution require more than 5MB of data throughout per month per device (vehicle/sign) – if so, how much more?

The website updates predictions when they are expected to change. For example, if a prediction is for 4 minutes and 36 seconds the website will display 4 minutes and then after 36 seconds the page will be refreshed and show the new value which will most likely be 3 minutes. The minimum time between updates is 20 seconds and the maximum time is 60 seconds.

The public map that the passengers use is updated every 30 seconds. The private map that is used by the transit agency supervisors is updated every 10 seconds.

For the signs, reducing the data communications is critical because there is a monthly charge depending on the bandwidth required. Therefore the signs automatically count down a prediction until an update is received. An update is sent only if the prediction needs to be updated by more than a minute. Typically, the signs are communicated with every three minutes.

Typical bandwidth required for a wireless sign is under 5MB. If a sign is displaying information for more than 3 routes, then 5MB could be exceeded.

5. Can the Town specify a preferred communications provider?

See answers to 1 and 2 above.

6. The Town is interested in minimizing communication costs. Do you have any suggestion of ways to do that?

An explanation is in order. Voice cellular is charged by the minute whereby the clock starts when two or more parties make a connection and stops when the call is disconnected. NextBus will be utilizing data cellular. Data cellular is charged by the number of data bits that are transmitted. Data is compacted and transmitted in packets and connections and disconnections are made in short microsecond "bursts". NextBus has minimized costs in several ways.

One way is through design of the equipment by transmitting only the data that is absolutely essential for the operation of the system. On the vehicles, through trial and error over many projects, NextBus has determined that an average reporting rate of one minute is a sufficient balance between determining the GPS location while minimizing data bit transmission "bursts".

For the signage, firmware within the sign counts down the bus arrival times and is corrected with data bit bursts when there is a change in the bus' forward progress that is different than the previous prediction. A more detailed explanation is provided in the answer to question 4 above.

A second way to minimize costs is through having a national account with the cellular providers through sheer volume. NextBus is a major user of data cellular nationally.

7. Could you provide a pricing model that does not include advertising? If that is not possible, provide information on the formats (banner ads, pop-ups, pop unders, etc). What is the maximum advertisement size in bytes per page?

NextBus can and will remove the wording with respect to advertising from the proposal and will stand behind the quoted pricing.



**Exhibit B Payment Schedule**

		Invoice Date
1 Order vehicle hardware	\$230,350.00	1-May-06
2 Complete automatic vehicle location installation, agency maps , website, interface with personal data assistants and 511 integration	\$276,000.00	1-Jul-06
3 Deliver and install dynamic message signs	\$75,000.00	1-Aug-06
4 System Acceptance	\$367,675.00	15-Sep-06
Total	\$949,025.00	

**Exhibit C****Project Schedule**

<b>Tasks</b>	<b>Responsible</b>	<b>Start</b>	<b>Finish</b>	<b>Duration in work days</b>
Authorize Notice to Proceed	Chapel Hill	Day 1	Day 1	1
Provide route maps/schedule information/stop locations	Chapel Hill	Day 1	Day 5	5
Place order for AVL trackers and message sign displays	NextBus	Day 2	Day 2	1
Perform stop locations where necessary	NextBus	Day 6	Day 11	5
Route definition/server set-up and configuration	NextBus	Day 12	Day 47	35
Receive AVL trackers	NextBus	Day 30	Day 30	1
Test and configure AVL trackers	NextBus	Day 31	Day 41	10
Receive message sign displays	NextBus	Day 35	Day 35	1
Set-up and configure message signs for burn-in and test	NextBus	Day 36	Day 51	15
Ship trackers and peripherals to Chapel Hill	NextBus	Day 42	Day 47	5
Install AVL trackers and MDTs in vehicles	NextBus	Day 48	Day 63	15
Ship signs to Chapel Hill	NextBus	Day 52	Day 59	5
Install message signs	NextBus	Day 64	Day 74	10
Collect data and perform analysis	NextBus	Day 63	Day 93	30
Interface to Regional Trip Planner	NextBus	Day 94	Day 104	10
Interface to the IVR	NextBus	Day 105	Day 115	10
Perform system test and QA	NextBus	Day 93	Day 118	25
Perform on-line training	NextBus	Day 119	Day 119	1
Perform end to end system check out	Chapel Hill	Day 120	Day 121	2
System acceptance	Chapel Hill	Day 122	Day 122	1



# CERTIFICATE OF INSURANCE

Date: April 20, 2006

The Insurer(s) hereby states that it has issued to the insured named herein a policy or policies of insurance providing the type of insurance and limits of liability set forth herein. This certificate of insurance neither affirmatively nor negatively amends, extends or alters the coverage, limits, terms or conditions of the policy it certifies.

**Certificate Holder:**

Town of Chapel Hill, 405 Martin Luther King Jr. Blvd.,  
Chapel Hill, NC 27514

**Named Insured:**

Grey Island Systems International Inc. a/o Interfleet Inc., a/o  
NextBus Inc., 76 Stafford Street, Suite 100, Toronto, ON M6J 2S1

**COVERAGE PROVIDED ONLY FOR THE FOLLOWING SECTIONS: A,B,C,D,E,G,H, & Q**

SECTION	TYPE OF POLICY	INSURER & POLICY NO.	POLICY PERIOD M / D / Y	LIMITS OF LIABILITY	
A	Commercial General Liability	Chubb Insurance Company #35819769	08/19/05 to 08/19/06	Each Occurrence	\$1,000,000
B	Products and Completed Operations			Products / Completed Operations - Aggregate	\$1,000,000
C	Owners and Contractors protective				
D	Blanket Contractual Liability			Tenant's Legal Liability	\$1,000,000
E	Occurrence Bodily Injury & Property Damage				
F	Employers Liability				
G	Cross Liability - Severability of Interests Clause			Non-Owned Automobile	\$1,000,000
H	Personal Injury				
I	Property			Property of Every Description or	
J	Certificate Holder Loss Payee			Building	
K	• All Risks, subject to policy exclusions			Equipment	
L	• Replacement Cost			Stock	
M	• Stated Amount of Co-insurance			Property of Others	
N	• Other:			Tenants Improvement Business Interruption	
O	Boiler & Machinery			Limit Per Accident	
P	Umbrella Liability			Comprehensive Form	
Q	Re: The Town of Chapel Hill is added as an additional insured with respect to liability arising out of the operations of the Named Insured. USA Territory Aggregate - \$2,000,000. Workers Compensation Policy # 71709068 with Federal Insurance Company, August 19, 2005 to August 19, 2006. Limit of \$1,000,000 for Bodily Injury by Accident or Disease - Covered states: New York, California, Delaware, Maryland and North Carolina.				

If required by contract, the certificate holder is added to the policy(ies) as an additional insured but only with respect to liability arising out of the operations/negligence of the Named Insured. The Insurer(s) agrees to provide 30 days notice to the holder of this certificate of any material change adverse to the certificate holder or cancellation by the Insurer of these policies.

Authorized Representative  
**THOMAS I. HULL INSURANCE LIMITED**