

**CITY OF NAPERVILLE
SERVICE AGREEMENT
Route 672**

This City of Naperville Service Agreement for Route 672 (“Agreement”) is made between Pace, the Suburban Bus Division of the Regional Transportation Authority, (hereinafter called "Pace") and the City of Naperville (hereinafter called “Client”). Pace and Client are individually referred to herein as a “Party” and collectively as the “Parties.”

RECITALS

WHEREAS, Pace is a unit of local government, body politic, political subdivision and municipal corporation established under the Regional Transportation Authority Act (70 ILCS 3615/1.01 *et seq.*) for the purpose of providing public transportation by bus; and

WHEREAS, Client desires Pace to provide certain transportation service; and

WHEREAS, Pace desires to provide Client with that transportation service.

NOW, THEREFORE, in consideration of the foregoing Recitals, the mutual promises contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Description of Service. Pace shall provide Route 672 transportation service to Client and the general public pursuant to information contained in Exhibit A and Exhibit B attached to this Agreement.
2. Payment. Client agrees to pay Pace the rates set forth in the attached Exhibit A. Payment shall be made to Pace by the 10th day of each month for which service is to be provided. Payment is to be mailed to:

Pace, the Suburban Bus Division of the RTA
550 W. Algonquin Road
Arlington Heights, IL 60005
Attn: Accounts Payable

3. Calculation of Rates. The payment rate is based on service costs calculated using fully allocated operating costs at each facility per trip and/or route.
4. Service Expansion. Pace and the Client may agree to Pace providing services in addition to the services described in Exhibit A and Exhibit B. Said additional services may be agreed to if memorialized in a written document signed by Pace and by the Client’s Transportation Team Leader. The costs for additional services shall be invoiced at Pace’s hourly rates as described in Exhibit A.

5. Passes. Pass allocations will not be available under this Agreement.
6. Service Provision. Pace shall not be responsible for any failure to provide the service due to circumstances beyond the control of Pace. However, Pace shall make every reasonable effort to restore service as soon as practical under the circumstances. Pace shall have the right to make minor revisions to the service during the term of this Agreement upon written notification to and concurrence by Client.
7. Term. This Agreement is effective beginning at 12:00 a.m. on January 1, 2020 through 11:59 p.m. on December 31, 2020, unless earlier terminated by either Party in accordance with the terms of this Agreement.
8. Termination. Any Party may terminate this Agreement with 60 days advance written notice to the other Party.
9. Independent Relationship. Pace is an independent contractor and not an employee, agent, joint venturer, or partner of Client, and nothing in this Agreement shall be construed as creating any other relationship between the Client and Pace, or between any employee or agent of Pace and the Clients. Pace employees shall at all times remain employees of Pace, which shall be solely responsible for all aspects of their employment, including, without limitation, compensation, benefits, payment or withholding of taxes, Social Security, Medicare, unemployment or other insurance, and workers' compensation.
10. Insurance. In the event that Pace directly provides the service described herein, Pace shall arrange for the Client to be named as additional insured under Pace's excess automobile liability policy of insurance with respect to claims asserted against Client arising from any covered negligent acts or omissions of Pace in providing the services described in this Agreement. In the event that Pace contracts with any outside service providers to provide the service described herein, Pace shall require the outside service provider(s) to arrange for Client to be named as additional insured under the outside service providers auto liability policy of insurance with respect to claims asserted against Client arising from any covered negligent acts or omissions of the outside service providers in connection with the services as described in this Agreement.
11. Indemnification. In the event that Pace directly provides the service and not through an outside service provider, to the fullest extent permitted by law and within the limits of Pace's self-insured retention and the excess/umbrella auto liability insurance policies purchased by Pace, Pace shall indemnify, defend and hold harmless Client, its Directors, officers, agents, and employees from and against any and all auto liability claims, suits, losses, damages and expenses, caused by the negligence of Pace, its officers and employees which may arise out of the operation of transportation services provided pursuant to this Agreement, provided that Client provides immediate notice of any claims, suits losses, damages and fully cooperate with the defense of any claims or lawsuits. This indemnification does not extend to the negligent, willful and wanton, reckless or intentional conduct of Client, its officers, agents, servants and employees and is specifically excluded from this indemnification and insurance coverage, including self-insurance.

To the extent that services are provided through or by an outside contractor, Pace agrees to require the contractor to indemnify, defend and hold harmless Client, its Directors, officers, agents, and employees from and against any and all auto liability claims, suits, losses, damages and expenses, caused by the negligence of the outside contractor, its officers and employees which may arise out of the operation of transportation services provided pursuant to this Agreement, provided that Client provides immediate notice of any claims, suits losses, damages and fully cooperates with the defense of any claims or lawsuits. In the event that Pace does not require such indemnification, defense, and hold harmless of its outside contractors Pace, agrees that it shall assume responsibility for said indemnification, defense, and hold harmless obligations.

With respect to any lawsuit that is within the scope of coverage and indemnification, defense, and hold harmless obligations afforded above, Pace (or the outside contractor, as applicable) shall have the right and duty to defend the Client, including the right to select defense counsel and control the defense of such lawsuit. In the event of any conflict of interest that would prevent Pace from controlling such defense or that would require Pace to allow the Client to select independent defense counsel, Pace will reimburse the reasonable attorney fees and expenses incurred in such defense by the Client, provided however that the hourly rates of such counsel shall not exceed the hourly rates ordinarily paid by Pace for its outside counsel for defense of similar types of lawsuits.

12. No Liability. Client agrees that Pace shall have no liability for any damage to property owned by the City of Naperville resulting from the normal wear and tear associated with operation of the service described herein.

13. Headings. The section headings contained in this Agreement are for reference and convenience only and shall not affect the meaning or interpretation of this Agreement.

14. Waiver. Failure of a Party to exercise any right or pursue any remedy under this Agreement shall not constitute a waiver of that right or remedy.

15. Compliance with Laws. The Parties shall comply with all federal, state and local laws, ordinances and regulations applicable to this Agreement.

16. Severability. If any provision of this Agreement is held invalid or unenforceable by an Illinois court of competent jurisdiction, such provision shall be deemed severed from this Agreement and the remaining provisions of this Agreement shall remain in full force and effect.

17. Entire Agreement and Non-reliance. This Agreement, including the introductory Recitals and any attached exhibits, which are hereby incorporated into and made a part of this Agreement, constitutes the entire agreement between the Parties and supersedes any prior written or oral understandings, agreements, or representations between the Parties that may have related in any way to the subject matter of this Agreement, and no other written or oral warranties, inducements, considerations, promises, representations, or interpretations, which are not expressly addressed in this Agreement, shall be implied or impressed upon this Agreement.

Client represents and warrants that: (a) Client has obtained such independent legal advice as desired by Client to evaluate this Agreement and the transaction(s) contemplated by this Agreement; (b) Pace has not made any representations or warranties to Client with respect this Agreement and the transaction(s) contemplated by this Agreement, except such representations and/or warranties that are specifically and expressly set forth in this Agreement; and (c) Client has relied only upon such representations and/or warranties by Pace that are specifically and expressly set forth in this Agreement and has not relied upon any other representations or warranties (whether oral or written or express or implied), omissions, or silences by Pace. Without limiting any representations and/or warranties made by Pace that are specifically and expressly set forth in this Agreement, Client acknowledges that Pace will not have or be subject to any liability to Client resulting from the distribution to Client or Municipality's use of any information, including any information provided or made available to Client or any other document or information in any form provided or made available to Municipality, in connection with this Agreement and the transaction(s) contemplated by this Agreement.

18. Binding Effect. This Agreement shall be binding upon the Parties and their respective directors, officers, employees, agents, representatives, successors, and approved assigns.

19. Survival. Any provision of this Agreement that imposes an obligation after termination of this Agreement shall be deemed to survive termination of this Agreement.

20. Assignment. Pace shall not assign, delegate, or otherwise transfer all or part of its rights and obligations under this Agreement without the prior written consent of the other Party.

21. Amendments. No changes, amendments, or modifications to this Agreement shall be valid unless in writing and signed by the duly authorized signatory of each Party.

22. Notice. Any notice under this Agreement shall be in writing and shall be given in the following manner:

- (a) by personal delivery (deemed effective as of the date and time of delivery);
- (b) by commercial overnight delivery (deemed effective on the next business day following deposit of the notice with a commercial overnight delivery company);
- (c) registered or certified mail, return receipt requested, with proper postage prepaid (deemed effective as of the second business day following deposit of the notice in the U.S. mail); or
- (d) by facsimile with confirmation of transmission (deemed effective as of the date and time of the transmission, except the effective date and time shall be 8:00 a.m. on the next business day after transmission of the notice if transmitted during non-business hours).

Business days are defined as Monday through Friday, excluding federal holidays. Business hours are defined as 8:00 a.m. to 5:00 p.m. Central Standard Time on Monday through Friday, excluding federal holidays.

The notice shall be addressed as follows or addressed to such other address as either Party may from time to time specify in writing to the other Party:

If to Pace:

Pace
550 W. Algonquin Road
Arlington Heights, IL 60005
Attn: Executive Director

If to City of Naperville:

City of Naperville
400 S. Eagle Street
Naperville IL, 60566
Attn: Jennifer Louden

23. Governing Law, Jurisdiction, and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois without regard to principles of conflicts of law, and the Parties shall submit to the exclusive jurisdiction and venue of the state courts of DuPage County, Illinois for any dispute arising out of or related to this Agreement.

24. Authority. The signatories to this Agreement represent and warrant that they have full authority to sign this Agreement on behalf of the Party for whom they sign. If a Party signs this Agreement but fails to date its signature, the date that Pace, who shall sign last, receives the signing Party's signature on this Agreement shall be deemed to be the date that the signing Party signed this Agreement.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their respective duly authorized signatory on the dates below.

**Pace, the Suburban Bus Division
of the Regional Transportation Authority**

City of Naperville

By: _____
Rocco L. Donahue
Executive Director

By: _____
Douglas Krieger
City Manager

Date: _____

Date: _____

EXHIBIT A
Route No. 672 95th Street Park-n-Ride Express

Description of Service:

Pace agrees to provide service on Route 672 with regular transit vehicles by operating seven mornings and eight afternoon rush hour trips using two morning and afternoon rush hour buses on Route 672; which will serve the route 59 Metra Station according to the route schedule and map attached.

The service will operate approximately every 20 – 36 minutes during the morning peak from 5:30 a.m. – 7:58 a.m. and approximately every 17 – 45 minutes in the evening peak from 4:07 p.m. – 7:53 p.m., Monday through Friday. Service will not be provided on Saturday, Sunday, and holidays.

The base fare to ride the service will be \$2.00* each way.

Total Hourly Rate:

\$117.16, from January 1, 2020 through September 30, 2020

\$120.24, from October 1, 2020 through December 31, 2020

Service Cost to Client:

\$12,667.25 monthly

\$152,007.05 for twelve months of service

Payment Rate:

The total cost for twelve months of service is \$333,600.38. The cost for twelve months of service, excluding trips added in October 2016, is \$304,014.11.

The cost to the Client shall not exceed 50% of the total cost, excluding the cost for the additional trips added to service in October 2016, which equals \$152,007.05.

The Client shall provide a monthly payment to Pace in the amount of \$12,667.25 for a total of \$152,007.05 over the term of the contract.

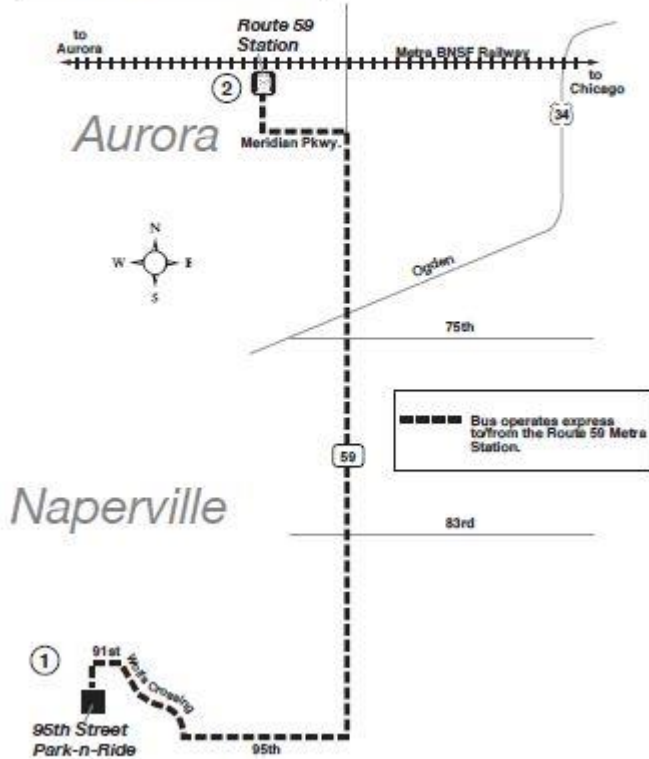
*when using your Ventra card to pay your fare. Cash fare is \$2.25.

EXHIBIT B

Route 672 Effective Date June 3, 2019

PS Posted Stops Only

Buses on this route will stop to pick up and drop off passengers only at bus stop signs with the Pace logo and route number. Please wait for the bus at a bus stop sign.



ROUTE 672 @ 95TH ST. PARK-N-RIDE - RT. 59 METRA DIRECT

WEEKDAY NORTHBOUND

95TH STREET PARK-N-RIDE	METRA BNSF RAILWAY		
	BUS ARRIVES	TRAIN DEPARTS	TRAIN ARRIVES
5:30AM	5:50AM	5:57AM	6:38AM
6:06	6:24	6:37	7:18
6:29	6:49	7:01	7:45
6:40	7:01	7:13	7:55
7:01	7:22	7:29	8:11
7:18	7:39	7:46	8:30
7:58	8:19	8:26	9:07

WEEKDAY SOUTHBOUND

95TH STREET PARK-N-RIDE	METRA BNSF RAILWAY		
	TRAIN DEPARTS	TRAIN ARRIVES	BUS DEPARTS
4:25PM	3:17PM	4:05PM	4:07PM
5:12	3:57	4:48	4:53
5:44	4:38	5:21	5:23
6:13	5:02	5:47	5:49
6:42	5:28	6:15	6:17
6:58	5:46	6:31	6:33
7:30	6:26	7:08	7:10
8:11	7:03	7:51	7:53

- Buses will stop at Posted Stops Only along the entire route.

Bus operates express to/from the Route 59 Metra Station.

No Saturday, Sunday or holiday service.