

SUBJECT: APPROVAL OF NEW CONTRACT AND AMENDMENT OF CURRENT CONTRACT FOR GENERAL MANAGER

2009-56
RESOLUTION
OF THE
BOARD OF DIRECTORS
OF THE
WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

WHEREAS, John B. Catoe, Jr. has provided outstanding service during his tenure as the General Manager of the Washington Metropolitan Area Transit Authority; and

WHEREAS, The Board of Directors wishes to retain the services of John B. Catoe, Jr. as General Manager for an additional three years and Mr. Catoe is amenable to continuing as General Manager for that period of time; and


WHEREAS, Mutually acceptable terms for the retention of Mr. Catoe's services have been negotiated and are attached as Attachments A and B to this Resolution; now, therefore be it

RESOLVED, That the Board of Directors authorizes the execution of the new contract with John B. Catoe, Jr., attached as Attachment A to this Resolution, to serve as Metro's General Manager through January 29, 2013; and be it further

RESOLVED, That the Board of Directors authorizes the execution of the Amendment to Mr. Catoe's existing Employment Agreement that is attached as Attachment B to this Resolution; and be it finally

RESOLVED, That this Resolution shall be effective immediately.

Reviewed as to form and legal sufficiency,



Carol B. O'Keeffe
General Counsel

**EMPLOYMENT AGREEMENT
BY AND BETWEEN
THE WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
AND
JOHN B. CATOE, JR.**

THIS EMPLOYMENT AGREEMENT (the "Agreement") is executed this ___ day of _____, 2009 by and between the Washington Metropolitan Area Transit Authority ("WMATA") and John B. Catoe, Jr. (the "Executive") (collectively WMATA and the Executive are referred to as the "Parties").

RECITALS

The original November 16, 2006 contract between the Parties will expire on January 29, 2010 and WMATA wishes to retain the Executive as the General Manager of WMATA for the period January 30, 2010 (the "Effective Date") through and including January 29, 2013 and the Executive has agreed to serve as the General Manager for such time period beginning on the Effective Date, and to perform and exercise the responsibilities of General Manager.

WMATA and the Executive each desire to enter into this Agreement in order to define the Executive's duties, obligations and responsibilities as General Manager, and to set forth his compensation and benefits for the period covered hereby.

Accordingly, in consideration of the foregoing, and the mutual agreements contained in this Agreement, the parties hereto, intending to be legally bound, agree as follows:

1. **Employment of Executive; Duties and Status.**

1.1 **Retention as General Manager.** WMATA hereby agrees to engage the Executive as the General Manager of WMATA, for the period defined in Section 2 hereof (the "Employment Period"), and the Executive hereby accepts such employment, all on the terms and conditions set forth in this Agreement. During the Employment Period, the Executive shall (i) have responsibility for the active management of WMATA and general supervision and direction of the affairs of WMATA, except as otherwise determined by the Board of Directors of WMATA (the "Board"), (ii) have such authority (including but not limited to hiring and termination of exempt and non-exempt employees in accordance with WMATA personnel policies and procedures) and perform such other executive duties, as are commensurate with the authority and duties customarily performed by a general manager of a major transit authority, and (iii) perform such other duties as shall be assigned to the Executive by the Board, provided that such other duties are commensurate with the Executive's position with WMATA.

The Executive shall be subject to the general supervision, direction and control of the Board and shall cooperate with and follow all reasonable instructions of the Board. The Executive agrees that, at all times, he shall act in a manner consistent with, and otherwise comply with, the Standards of Conduct contained in WMATA Board Resolution No. 92-20, as the same may be amended and in effect from time to time and timely provided to the Executive (the "Standards of Conduct").

1.2 **Full-Time Employee.** During the Employment Period, the Executive shall be a full-time employee of WMATA and shall devote all of his business time and energies to WMATA. So long as such activities, in the aggregate, do not interfere with the performance by the Executive of the Executive's duties hereunder, or conflict with the Standards of Conduct, (i) the Executive may supervise personal financial investments; and (ii) the Executive may participate (as board member, officer, volunteer or otherwise) in professional, charitable, educational, religious, civic, trade associations and similar types of activities. If requested by the Board, the Executive shall provide the Board with a description of the activities of the Executive described in item (ii) above.

1.3 **Office and Administrative Support.** During the Employment Period, WMATA shall provide the Executive with an office commensurate with the Executive's position, and full-time secretarial and administrative assistance and the support staff necessary in order to perform his duties hereunder.

2. **Term of Employment; Termination of Agreement.**

2.1 **Term of Employment.** The Executive's employment hereunder shall continue through and including January 29, 2013, unless such employment is terminated earlier in accordance with the provisions of Section 4 of this Agreement (the "Employment Period"). On January 30, 2013 and on each such succeeding January 30, the term of this Agreement will automatically be extended for an additional one-year period unless, not later than ninety (90) days prior to any such January 30th, either party to this Agreement will have given written notice to the other that the term of this Agreement will not be extended. Such extended term will then constitute the term of the Executive's employment under this Agreement.

2.2 **Termination of Prior Contract.** Execution of this Agreement shall constitute the required written notice to terminate the contract between the parties dated November 16, 2006 effective on the Effective Date of this Agreement.

3. Compensation and Benefits.

3.1. Salary. WMATA agrees to pay to the Executive an annual base salary of Three Hundred Fifteen Thousand Dollars (\$315,000) during the Employment Term. The Executive's Base Salary shall be adjusted annually on the same basis of other non-represented employees of WMATA. The Executive's base salary, less amounts required to be withheld under applicable law, shall be payable in equal installments in accordance with the practice of WMATA in effect from time to time for the payment of salaries to nonrepresented employees of WMATA, but in no event less frequently than biweekly.

3.2. Annual Evaluation. The Board shall establish an annual performance plan for the Executive and shall communicate the Board's evaluation of the Executive under such performance plan in person or in writing.

3.3. Bonus.

3.3.1 Performance Bonus. In addition to his Base Salary, the Executive shall be eligible annually for a bonus based on outstanding performance. The decision to pay a bonus, if any, and the amount thereof, shall be in the sole and absolute discretion of the Board.

3.3.2 Retention Incentive Payment. On the Effective Date of this Agreement, Executive shall receive a retention incentive payment of \$50,000 net of taxes and other deductions. Should Executive remain employed with WMATA on January 30, 2012, then Executive shall receive an additional retention incentive payment of \$50,000 net of taxes and other deductions.

3.4. Expenses. During the Employment Period, the Executive shall be entitled to cause payment by, or to receive prompt reimbursement from, WMATA for all reasonable and necessary expenses incurred by the Executive in performing the duties required hereunder on behalf of WMATA. All payments and reimbursements by WMATA pursuant to this Section 3.4 shall be subject to, and consistent with, WMATA's policies for expense payment and reimbursement, as in effect from time to time. To the extent necessary to avoid characterizing any payment or reimbursement under this Section 3.4 as deferred compensation under Section 409A of the Internal Revenue Code, such payment or reimbursement shall be made prior to March 15th following the close of the calendar year in which the expense or liability was incurred. To the extent that payment or reimbursement is based on claims, bills, invoices or other documentation that the Executive is required to submit to WMATA, such documentation must be submitted by the Executive on or before February 15th following the close of the calendar year in

which the expense or liability was incurred. Amounts that are not submitted within the required timeframe shall not be eligible for payment or reimbursement hereunder.

3.5. Benefits.

3.5.1. WMATA Plans. During the Employment Period, Executive shall be entitled to participate in, and to receive benefits under, any deferred compensation plan, qualified retirement plan (including, without limitation, the WMATA Defined Contribution Retirement Plan), welfare plan (including, without limitation, any group life, short or long-term disability, sickness, long-term care, accident and health insurance programs), or any other similar benefit plan or arrangement generally made available by WMATA to its nonrepresented employees, subject to and on a basis consistent with the terms, conditions and overall administration of each such plan or arrangement except as otherwise expressly provided in this Agreement.

3.5.2. Leave. The Executive shall be entitled to up to twenty-seven days paid annual leave each year during the Employment Period accruing on January 1 of each year. In addition, the Executive shall be entitled to sick leave in accordance with WMATA's sick leave policy for its non-represented employees and shall be entitled to all paid holidays given by WMATA to its nonrepresented employees. The extent to which the Executive may receive payment for any unused leave at the end of the Employment Period shall be determined in accordance with WMATA's policies for its non-represented employees.

3.5.3. SmarTrip® Pass. The Executive shall be provided with a lifetime pass for the free use of Metrorail, Metrobus and any other form of public transportation owned and operated by WMATA.

3.5.4. 457 Plan. During each month of the Employment Period, WMATA will make a non-elective contribution to the WMATA Deferred Compensation Plan & Trust (the "457 (b) Plan") on behalf of the Executive in the amount of one-twelfth of the applicable dollar limits under (i) Section 457(e)(15) of the Internal Revenue Code, and (ii) under Section 457(e)(18) of the Internal Revenue Code (in the case of an eligible participant described in Section 414(v) of the Internal Revenue Code). Except as required under applicable law (or except as necessary to qualify the Executive for the full matching contribution under the WMATA Defined Contribution Plan), such contribution shall be designated as a non-elective contribution.

3.5.5. Retirement

3.5.5.1. WMATA Defined Contribution Retirement Plan. The Executive shall participate in the WMATA Defined Contribution Retirement Plan, which currently provides for a basic (non-elective) contribution of four percent (4%) of compensation (up to the dollar limit imposed by Section 401(a)(17) of the Internal Revenue Code) and a matching contribution (based on elective contributions to the 457(b) Plan) of three percent (3%) of compensation (up to the dollar limit imposed by Section 401(a)(17) of the Internal Revenue Code).

3.5.5.2. Nonqualified Annuity. WMATA shall provide an annuity to Executive in the amount of \$27,000 with WMATA retaining all incidents of ownership in such annuity. Such annuity will be subject to the claims of WMATA's creditors. Executive shall be vested in 50% of the annuity amount upon completion of the first year as General Manager under this Agreement. Executive shall be vested in an additional 25% of the annuity amount at the completion of the second year under this Agreement and the remaining 25% of the annuity amount at the end of the third year of this Agreement.

3.5.6. Health Care Coverage

3.5.6.1. Health Insurance. WMATA will provide the Executive with health care coverage under the insured WMATA health plan on the same basis as other non-represented employees of WMATA, except that during the term of this Agreement WMATA will pay 100% of the premium. In addition, the Executive shall, for purposes of this section, be deemed to be age 65 with the requisite number of years of service so as to be entitled to such retiree health care coverage under the insured WMATA health plan on the same basis, and subject to the same terms, retiree contribution requirements, conditions and limitations as other non-represented employees of WMATA who have retired under the WMATA Defined Contribution Retirement Plan on their Normal Retirement Date with the requisite years of service to qualify for retiree medical coverage. WMATA shall retain any and all rights that it has to modify or terminate such coverage (provided that, with respect to any such modification or termination of coverage, the Executive shall not be treated any differently than any other non-represented employee of WMATA who has met the eligibility requirements for retiree health care coverage).

3.5.6.2. Executive Medical/Wellness Program. WMATA will reimburse Executive for up to \$6,000 annually for additional medical or wellness premiums, costs or other expenditures not covered by the insured health care program. Reimbursement shall follow the procedure set forth in Section

3.4 of this Agreement. Executive shall bear the cost of any taxes imposed on such payments.

3.5.6. **Housing Allowance.** During each month of the Employment Period, the Executive shall receive a housing allowance of five thousand dollars (\$5,000). The amount of such housing allowance shall be payable on the 15th of each month. The Executive shall, upon request of the Board, provide evidence that such amount was actually used to cover the cost of the Executive's housing.

3.5.7. **WMATA Vehicle.** During the Employment Period, WMATA shall provide the Executive with the use of a WMATA vehicle in new or like-new condition. The vehicle will be maintained and serviced by WMATA.

3.5.8. **Life Insurance Coverage.** The Executive shall be entitled to life insurance coverage equal to three times his annual Base Salary, as in effect on the Effective Date, If requested by the Executive, such coverage shall be provided under an individual term policy in lieu of group coverage (provided an individual policy is reasonably available at standard rates).

4. **Termination of Agreement.**

4.1 **General.** Under the terms of the WMATA Compact, officers of WMATA serve at the pleasure of the Board and the Board may elect to terminate the employment of the Executive at any time in accordance with the provisions of Section 4.4 or 4.5.

4.2 **Expiration of Employment Period.** Unless the Board and the Executive mutually agree to extend the term of this Agreement, the employment of the Executive hereunder (and the Employment Period) shall terminate upon expiration of the term provided in Section 2.

4.3 **Termination Upon Mutual Agreement.** WMATA and the Executive may, by mutual written agreement, terminate this Agreement and/or the employment of the Executive (and the Employment Period) at any time.

4.4 **Death or Disability of the Executive.**

4.4.1. The employment of the Executive hereunder (and the Employment Period) shall terminate upon the death of the Executive. In the event of the Executive's Total Disability (as defined in Section 4.4.2. below), the Board may, upon not less than thirty (30) days prior written notice to the Executive or his

guardian, terminate this Agreement. Upon termination for death or Total Disability, WMATA shall pay to the Executive (or his guardian or personal representative, as the case may be), (i) his Base Salary through the date of termination, (ii) reimbursement for any unreimbursed business expenses properly incurred by the Executive prior to the date of termination (in accordance with Section 3.4 hereof); and (iii) such employee benefits, if any, to which the Executive is entitled under the employee benefit plans and arrangements of WMATA. Such payments shall be in addition to any insurance or disability benefits to which the Executive may be entitled hereunder.

4.4.2. For purposes of this Agreement, "Total Disability" shall mean, (i) the Executive is subject to a legal decree of incompetency (the date of such decree being deemed the date on which such disability occurred); (ii) the written determination by a physician selected by WMATA that, because of a medically determinable disease, injury or other physical or mental disability, the Executive is unable substantially to perform the essential functions of his position, with or without reasonable accommodation, and that such disability has lasted for the immediately preceding ninety (90) days and is, as of the date of determination, reasonably expected to last an additional ninety (90) days or longer after the date of determination, in each case based upon medically available reliable information; or (iii) the Executive's qualifying for benefits under the WMATA's long-term disability coverage.

4.4.3. The date of any legal decree of incompetency or written opinion which is conclusive as to the Total Disability of the Executive shall be deemed the date on which such Total Disability occurred. Any leave on account of illness or temporary disability which is short of Total Disability shall not constitute a breach of this Agreement by the Executive, and in no event shall the Board be entitled to terminate this Agreement for Cause due to any such leave. All physicians selected hereunder shall be board certified in the specialty most closely related to the nature of the disability alleged to exist. In conjunction with determining mental and/or physical disability for purposes of this Agreement, the Executive consents to any such examinations which are relevant to a determination of whether he is mentally and/or physically disabled, and which is required by the aforesaid physician, and to furnish such medical information as may be reasonably requested, and to waive any applicable physician-patient privilege that may arise because of such examination.

4.5 Termination for Cause. The Board may terminate this Agreement at any time for Cause (as defined in Section 4.5.1. below). The Executive shall not be entitled to any salary or benefits following termination of employment if he is terminated for Cause.

4.5.1. For purposes of this Agreement, "Cause" means:

4.5.1.1. a failure by the Executive to comply with any material obligation imposed by this Agreement;

4.5.1.2. a failure by the Executive to comply with any lawful direction of the Board;

4.5.1.3. a good faith determination by the Board that the Executive has repeatedly failed to adequately perform to the established expectations of the Board (after written communication of such failure to perform to those expectations and a failure by the Executive to correct such deficiencies within a reasonable period of time);

4.5.1.4. gross negligence or willful malfeasance by the Executive in connection with the performance of his duties under this Agreement;

4.5.1.5. a violation by the Executive of the Standards of Conduct;

4.5.1.6. a material violation by the Executive of any Legal Requirement (as defined in Section 4.5.2. below) to which WMATA is subject (other than in the event the Executive had a reasonable good faith belief that the act, omission or failure to act in question was not a violation of such Legal Requirement);

4.5.1.7. the Executive's indictment or arrest for a felony;
or

4.5.1.8. theft, embezzlement or fraud by the Executive in connection with the performance of his duties hereunder.

4.5.2. For purposes of this provision, a "Legal Requirement" means any obligation or requirement imposed upon the Executive and/or WMATA by any federal, state, local, or other governmental, regulatory or administrative agency, commission, department, board, or other governmental subdivision, court, tribunal, arbitral body or other governmental authority.

4.6 Termination Without Cause. This Agreement may also be terminated by the Board without Cause, in its sole and absolute discretion, at any time upon sixty (60) days advance written notice to the Executive. In the event the

Executive's employment is terminated without "Cause" during the Employment Period, the following provisions shall apply:

4.6.1. WMATA shall continue to pay the Executive the Base Salary to which the Executive would have been entitled pursuant to Section 3.1 for twenty-six (26) weeks following the expiration of the notice period set forth in section 4.6 of this Agreement, with such amount payable in accordance with WMATA's payroll system in the same manner and that the same time as though the Executive remained employed by WMATA. For this purpose, a Separation From Service means a termination of employment that constitutes a separation for service under Section 409A(a)(2)(A)(i) of the Internal Revenue Code.

4.6.2. The Executive shall continue to participate in, and be covered under, WMATA health and dental insurance programs on the same basis as other nonrepresented employees of WMATA through the end of the Termination Payment Period.

4.6.3. Following the expiration of the benefit continuation period described in section 4.6.2., the Executive shall be entitled to retiree health care coverage under the insured WMATA health plan on the same basis, and subject to the same terms, contribution requirements, conditions and limitations as other non-represented employees of WMATA who have retired under the WMATA Defined Contribution Retirement Plan on their Normal Retirement Date with the requisite years of service to qualify for retiree medical coverage. WMATA shall retain any and all rights that it has to modify or terminate such coverage (provided that, with respect to any such modification or termination of coverage, the Executive shall not be treated any differently than any other non-represented employee of WMATA who has retired at normal retirement under the WMATA Defined Contribution Retirement Plan).

5. Confidentiality; Intellectual Property; Nonsolicitation.

5.1. Confidentiality.

5.1.1. The Executive recognizes and acknowledges that the Standards of Conduct require the confidentiality of certain information, both during and after the Employment Period, and the Executive agrees to be bound and abide by such Standards of Conduct regarding confidential information.

5.1.2. The Executive recognizes that WMATA has received, and in the future will receive, "confidential information" from persons subject to a duty on WMATA's part to maintain the confidentiality of such information and to use it

only for certain limited purposes. The Executive agrees that he owes WMATA and such persons, during the Employment Period and thereafter, a duty to hold all such information in the strictest confidence and, except with the prior written authorization of WMATA, or as required by law, a governmental authority or court order, not to disclose such information to any person (except as necessary in carrying out the Executive's duties for WMATA consistent with WMATA's agreement with such person) or to use it for the benefit of anyone other than for WMATA or such person (consistent with WMATA's agreement with such person).

5.2. Intellectual Property.

5.2.1. All drawings, memoranda, notes, lists, records and other documents or papers (and all copies thereof), including but not limited to, such items stored in computer memories, on microfiche, electronically, or by any other means, made or compiled by or on behalf of the Executive, or made available to the Executive or in the Executive's possession concerning or in any way relating to the conduct of WMATA, are and shall be the property of WMATA.

5.2.2. The Executive also acknowledges and stipulates that all of the WMATA's electronic and telephonic communication systems, computers and other business equipment including, but not limited to, computer systems, data bases, phone mail, modems, e-mail, Internet access, Web sites, fax machines, techniques, processes, formulas, mask works, source codes, programs, semiconductor chips, processors, memories, disc drives, tape heads, computer terminals, keyboards, storage devices, printers and optical character recognition devices, and any and all components, devices techniques or circuitry incorporated in any of the above and similar business devices (herein collectively referred to as "Electronic Equipment"), are the sole property of WMATA, and that any information transmitted by, received from, or stored in such Electronic Equipment is also WMATA's property. The Executive agrees that, following the termination of his employment with WMATA, he shall not, directly or indirectly, for himself or for any other person or entity, use, access, copy, or retrieve, or attempt to use, access, copy, or retrieve, any of WMATA's Electronic Equipment or any information on WMATA's Electronic Equipment.

5.2.3. The Executive agrees that upon termination of his employment, he will surrender to WMATA every item and every document that is the property of WMATA (including, but not limited to, keys, credit cards, phones, records, computers, peripherals, computer files and disks, notes, memoranda, models, correspondence and equipment) or that contains information of or concerning WMATA, in whatever form. All of these materials are and shall be the sole and absolute property of WMATA.

5.3 **Nonsolicitation.** For a period of six months following his termination of employment with WMATA, the Executive agrees that he will not, directly or indirectly, on his own behalf or as a partner, owner, officer, director, stockholder, member, employee, agent or consultant of any other Person, solicit, hire, or otherwise attempt to establish for any Person (as defined below), any employment, agency, consulting or other business relationship with any Person who is an employee or consultant of WMATA, provided that the prohibition in this Section 5.3 shall not bar the Executive from soliciting or hiring any former employee or former consultant who at the time of such solicitation or hire had not been employed or engaged by WMATA for a period of at least six (6) months, and any other provider of services to the WMATA, as long as such Person's engagement by the Executive does not interfere or conflict with the provision of services to WMATA by such Person. For this purpose, a Person means a corporation, partnership, limited liability company, joint venture, association, business trust, joint-stock company, estate, trust, unincorporated organization, or government or other agency or political subdivision thereof, or any other legal or commercial entity.

6. **Miscellaneous**

6.1 **Indemnification.** WMATA shall indemnify and hold the Executive harmless, in accordance with the Compact and its policy of indemnification of employees, against judgements, fines, amounts paid in settlement and reasonable expenses, including reasonable attorneys' fees incurred by the Executive, in connection with the defense of , or as a result of any action or proceeding (or any appeal from any action or proceeding) in which the Executive is made or is threatened to be made a party by reason of the fact that the Executive is or was an officer or employee of WMATA.

6.2. **Entire Agreement; Waiver.** This Agreement, and the agreements, schedules and exhibited incorporated herein by reference contain the entire agreement between the Executive and WMATA with respect to the subject matter hereof, and supersede any and all prior understandings or agreements, whether written or oral, relating to the Executive's employment with WMATA. No delay on the part of any party to this Agreement in exercising any right or privilege hereunder or by law shall impair, prejudice or constitute a waiver of such right or privilege.

6.3 **Remedies.** The Executive acknowledges and agrees that if the Executive breaches any of the provisions of Section 5 hereof, WMATA may suffer immediate and irreparable harm for which monetary damages alone will not be a sufficient remedy, and that, in addition to all other remedies that WMATA may have, WMATA shall be entitled to seek injunctive relief, specific performance or any

other form of equitable relief to remedy a breach or threatened breach of this Agreement by the Executive and to enforce the provisions of this Agreement. The existence of this right shall not preclude or otherwise limit the applicability or exercise of any other rights and remedies which WMATA and/or the Executive may have at law or in equity. The Parties hereby waive any and all defenses each may have on the grounds of lack of jurisdiction or competence of a court to grant the injunctions or other equitable relief provided above.

6.4. Interpretation; Severability.

6.4.1. The Parties and their respective legal counsel actively participated in the negotiation and drafting of this Agreement, and in the event of any ambiguity or mistake herein, or any dispute among the Parties with respect to the provisions, hereto, no provision of this Agreement shall be construed unfavorably against any of the Parties on the ground that he, she, it or his, her or its counsel was the drafter thereof.

6.4.2. The Executive has carefully considered the possible effects on the Executive of the confidentiality provisions, and the other obligations contained in this Agreement, and the Executive recognizes that WMATA has made every effort to limit the restrictions placed upon the Executive to those that are reasonable and necessary to protect WMATA's legitimate interests.

6.4.3. The Executive acknowledges and agrees that the restrictive covenants set forth in this Agreement are reasonable and necessary in order to protect WMATA's valid interests. It is the intention of the Parties hereto that the provisions and agreements contained in this Agreement shall be enforceable to the fullest extent allowed by law. If any covenant, provision or agreement contained herein is found by a court having jurisdiction to be unreasonable in duration, scope or character of restrictions or otherwise to be unenforceable, such provision or agreement shall not be rendered unenforceable thereby, but rather the duration, scope or character of restrictions of such provision or agreement shall be deemed reduced or modified with retroactive effect to render such provision or agreement reasonable or otherwise enforceable (as the case may be), and such covenant, provision or agreement shall be enforced as modified. The Parties agree that if a court having jurisdiction determines, despite the express intent of the Parties, that any portion of the covenants, provisions or agreements contained herein are not enforceable, the remaining provisions and agreements herein shall be valid and enforceable. Moreover, to the extent that any provision is declared unenforceable, WMATA shall have any and all rights under applicable statutes or common law to enforce its rights with respect to any and all confidentiality requirements.

6.5. **Withholding.** WMATA may withhold from any amounts payable under this Agreement such taxes or other amounts as are required to be withheld

pursuant to any applicable law or regulation.

6.6. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the District of Columbia, without regard to principles of conflict of laws.

6.7. **Successors and Assigns; Binding Agreement.** The rights and obligations of the Parties under this Agreement shall be binding upon and inure to the benefit of the Parties and their heirs, personal representatives, successors and permitted assigns. This Agreement constitutes a personal contract, and except as specifically set forth herein, the rights and interests of the Executive herein may not be sold, transferred, assigned, pledged or hypothecated by any party without the prior written consent of the others.

6.8. **Representation by Counsel.** Each of the Parties hereto acknowledges that (i) they have read this Agreement in its entirety and understand all of its terms and conditions, (ii) they have had the opportunity to consult with any individuals of their choice regarding its or his agreement to the provisions contained herein, including legal counsel of its or his choice, and any decision not to was his or its alone, and (iii) they are entering into this Agreement of their own free will, without coercion from any source.

6.9. **Notices.** All notices and communications hereunder shall be in writing and shall be deemed properly given and effective when received, if sent by facsimile or telecopy, or by postage prepaid by registered or certified mail, return receipt requested, or by other delivery service which provides evidence of delivery, as follows:

If to WMATA, to:

Jim Graham, Chairman (or successor thereto)
Board of Directors
Washington Metropolitan Area Transit Authority
600 Fifth Street, N.W.
Washington, D.C. 20001-2693

If to the Executive, to:

John B. Catoe, Jr.
c/o Washington Metropolitan Area Transit Authority
600 Fifth Street NW
Washington, DC 20001

or to such other address as one party may provide in writing to the other party from time to time.

6.10. **Compliance with Section 409A.** To the extent that Section 409A of the Internal Revenue Code applies to any election or payment required under this Agreement, such payment or election shall be made in conformance with the provisions of Section 409A of the Internal Revenue Code.

6.11. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

6.12. **Captions.** Paragraph headings are for convenience only and shall not be considered a part of this Agreement.

IN WITNESS WHEREOF, the Parties have duly executed this Agreement, intending it as a document under seal, as of the date first above written.

WASHINGTON METROPOLITAN AREA
TRANSIT AUTHORITY

JOHN B. CATOE, JR.

By: _____
Jim Graham
Chairman
Board of Directors

By: _____
John B. Catoe, Jr.

Dated: _____

Dated: _____

Reviewed for legal sufficiency

Carol B. O’Keeffe
General Counsel

**FIRST AMENDMENT TO EMPLOYMENT AGREEMENT
BY AND BETWEEN
THE WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
AND
JOHN B. CATOE, JR.**

WHEREAS, the Washington Metropolitan Area Transit Authority ("WMATA") and John B. Catoe, Jr. (the "Executive") (with WMATA and the Executive collectively referred to as the "Parties") entered into an employment agreement dated November 16, 2006 concerning Executive's employment as General Manager for WMATA (the "Agreement"); and

WHEREAS, the Parties wish to amend the Agreement and both WMATA and the Executive are amenable to the amendment of the Agreement; and

WHEREAS, WMATA desires the opportunity to negotiate a further Employment Contract with Executive and the Executive is willing to provide that opportunity;

Accordingly, in consideration of the foregoing, and the mutual agreements contained in the Agreement and this First Amendment to Employment Agreement By and Between the Washington Metropolitan Area Transit Authority and John B. Catoe, Jr. executed this ___ day of _____, 2009 (the "First Amendment"), the Parties, intending to be legally bound, agree as follows:

1. Agreement section 3.5.6 Health Care Coverage is amended to add a section 3.5.6.2. for an Executive Medical/Wellness Program which reads as follows:

For calendar year 2009, WMATA will reimburse Executive for up to \$6,000 incurred after the date of this First Amendment for additional medical or wellness premiums, costs or other expenditures not covered by the insured health care program. Reimbursement shall follow the procedure set forth in Section 3.4 of the Agreement. Executive shall bear the cost of any taxes imposed on such payments.

2. All other terms and conditions of the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the Parties have duly executed this First Amendment, intending it as a document under seal, as of the date first above written.

**WASHINGTON METROPOLITAN AREA
TRANSIT AUTHORITY**

JOHN B. CATOE, JR.

By: _____
Jim Graham
Chairman
Board of Directors

By: _____
John B. Catoe, Jr.

Dated: _____

Dated: _____

Reviewed for legal sufficiency

Carol B. O'Keeffe
General Counsel