

Washington Metropolitan Area Transit Authority
Board Action/Information Summary

☒ Action ☐ Information

MEAD Number:
203432

Resolution:
☒ Yes ☐ No

TITLE:

Clear Lanes Program

PRESENTATION SUMMARY:

This presentation will provide a briefing on Metro's Clear Lanes program, an on-bus automated camera enforcement program and partnership with the District of Columbia. When bus only lanes and bus stop zones are clear and available for use, travel times for bus customers are shorter, leading to more reliable service and increased customer satisfaction. Metro's role will be to collect and share violation data of bus-only lanes and zones (e.g., bus stops) with local enforcement authorities.

PURPOSE:

Board approval is requested to execute a reimbursable project agreement with the District of Columbia for Clear Lanes (previously called the Violation Detection System program).

DESCRIPTION:

For conflicts of interest purposes staff has identified the following interested parties: **Hayden AI Technologies, Inc., Verra Mobility Co., Yunex Traffic GmbH, the District of Columbia Department of Transportation and the District of Columbia Department of Motor Vehicles. Conduent Inc. and Luminator Technology Group, LLC** attended the pre-bid conference but did not submit proposals.

Key Highlights:

- Metro is launching Clear Lanes in partnership with the District of Columbia (the District) to use automated cameras on Metrobuses to capture unauthorized vehicles in bus-only lanes and bus stop zones.
- When bus-only lanes and bus stop zones are clear and available for use, travel times for bus customers are shorter, leading to more reliable service and increased customer satisfaction.
- Metro will fund the capital and preventive maintenance costs of the equipment installed onboard Metrobus vehicles.

- The District of Columbia Department of Transportation (DDOT) will fund the expenses associated with operating the system, including annual licensing and software fees, assist with system set-up for evidence packages, and manage the issuance and adjudication of tickets, through an operating reimbursable project agreement.

Background and History:

The average speed of Metrobuses in the District was 9.8 miles per hour in 2022, while the average speed of the 15 highest ridership routes was 8.9 miles per hour. This average speed has been decreasing over 15 years and this reduced performance is a factor that undermines the competitiveness of Metrobus service. These slow speeds hurt our customers who rely on transit the most. Bus customers in our region are more likely to live in households that do not have a car (57 percent compared to 12 percent for the DMV that's served by Metro). They are also more likely to be living in households that make less than \$30,000 annually (50 percent compared to 5 percent in the DMV) and be persons of color (84 percent compared to 58 percent in the region).

To improve bus service in the District, the District Department of Transportation (DDOT) is implementing a \$101.5 million Bus Priority Program to increase the number of bus priority lane-miles from 17 lane-miles in 2022 to 120 lane-miles in 2029. However, if those bus lanes continue to be obstructed by unauthorized vehicles, bus speeds will continue to be slow, on-time performance will remain low, and travel time and reliability will not improve. Unauthorized use at bus stops also obstructs safe boarding and alighting, especially for customers with disabilities.

Discussion:

To enable bus lanes and bus stop zone enforcement and realize the value the investments in bus service and priority, Metro and the District have partnered to launch Clear Lanes, an onboard automated enforcement program. Similar programs have been successfully implemented in New York City and San Francisco and are under development in Philadelphia and Los Angeles. New York's Automated Bus Lane Enforcement program on the Select Bus Service routes found that where camera enforcement was implemented, bus speeds increased by between seven and 31 percent. Similarly, San Francisco's Transit Only Lane Enforcement program saw reductions in bus speeds of seven percent to 20 percent.

The Clear Lanes program uses an automated camera-based system on Metrobuses to capture the use of bus-only lanes and bus stop zones by unauthorized vehicles. Encrypted video and image files are transmitted to the District to issue citations.

Initially, 140 Metrobuses will be equipped with cameras and Metro has additional options to expand the program to 600 buses over a 10-year period. These 140 camera-equipped buses cover the operation of all corridors with bus lanes in CY2023 and those corridors that are anticipated to have bus lanes in the District in CY 2024.

The technology includes two small cameras mounted inside the windshield, one to record the locational context of the violation as a video and one that captures the vehicle's license plate using Automated License Plate Reader (ALPR) technology. GPS onboard identifies the location of the violation. A technology demonstration was held in September 2022 and bus operators confirmed that neither camera interfered with their field of vision. An antenna mounted on top of the bus is used for recording the GPS location at the time a violation is detected.

The partnership between Metro and the District includes the following elements:

- Metro will:
 - Procure the camera technology and maintain the vendor contract including corrective and preventive maintenance plans at a cost of \$4.6 million over the first two years of the program;
 - Transfer encrypted evidence packages directly to the District, which includes photo and video of the violations;
 - Ensure camera-equipped buses are assigned to Metrobus routes with bus lanes; and
 - Not have access to evidence packages once the District begins official enforcement and ticketing.
- DDOT and the District will:
 - Provide operating costs, including the annual licensing and software fees, estimated to be \$3.1 million over the first two years of the program;
 - Review the evidence packages to ensure legal compliance related to enforcement of bus lanes and bus stop zones;
 - Issue citations and collect fines; and
 - Provide Metro with a monthly report that details the number of citations issued by route and an annual report that details the percentage of citations paid.

Metro can expand Clear Lanes into other parts of the Metrobus service area as legislation becomes law. In Maryland, HB1027 includes the authority of local jurisdictions to use a bus lane monitoring system to enforce the prohibition against driving a motor vehicle in a designated bus lane.

Following the reimbursable project's authorization, camera installation and

testing will continue into the summer of 2023. A communications campaign will begin this summer to let drivers know about the program and tickets. Clear Lanes warnings will begin this summer and ticketing by DC will launch this fall.

FUNDING IMPACT:

Metro's capital funding is included in the FY2023 Capital Improvement Program. The operating portion is funded through this action as an operating reimbursable project by the District Department of Transportation. The requested action will increase the operating reimbursable account by \$904,533 in FY2023.

The proposed Memorandum of Understanding (MOU) will be renewed annually, subject to funding availability and agreement between DDOT and WMATA. It addresses DDOT's estimated funding of \$42 million for up to 10 years. The initial funding of \$904,533 covers the remainder of the District's FY2023, with additional funding of up to \$3.1 million covering FY2024 and a portion of FY2025 to align with the base contract term.

Future reimbursable funds will include additional money necessary for Clear Lanes' operations and will be handled as amendments or extensions to the agreement as executed by Metro and the District.

TIMELINE:

Previous Actions	None
Anticipated actions after presentation	None

RECOMMENDATION:

Staff recommends Board approval to execute an operating reimbursable project agreement to advance the Clear Lanes program.

Presented and Adopted: April 27, 2023

SUBJECT: REIMBURSABLE AGREEMENT FOR THE METROBUS CLEAR LANES PROGRAM IN THE DISTRICT OF COLUMBIA

2023-11

RESOLUTION
OF THE
BOARD OF DIRECTORS
OF THE
WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

WHEREAS, Resolution 2011-30, as amended, requires Board of Directors approval of reimbursable agreements over \$500,000; and

WHEREAS, The District of Columbia ("District") and WMATA have negotiated an agreement whereby the District, through the District Department of Transportation ("DDOT"), would fully fund the operational costs of a camera system, purchased and owned by WMATA, to detect violations of bus priority lanes in the District (the "Clear Lanes Program"); and

WHEREAS, The term of the agreement is for one year with nine, one-year options; and

WHEREAS, The operational cost for the first year is \$904,000; and

WHEREAS, The operational cost will increase with each option year as additional cameras are added by mutual agreement of the parties; and

WHEREAS, Staff recommends entering into a reimbursable agreement with DDOT for the Clear Lanes Program entitled "Metrobus Violation Detection System" agreement (Attachment A);

NOW, THEREFORE, be it

RESOLVED, That the General Manager and Chief Executive Officer or designee is authorized to negotiate and execute a reimbursable agreement for the District of Columbia to fully fund the operational costs of the Clear Lanes Program for the first year and each option year in substantially the same form set forth in the Metrobus Violation Detection System agreement (Attachment A); and be it finally

Motioned by Mr. Letourneau, seconded by Ms. Babers

Ayes: 8- Mr. Smedberg, Ms. Babers, Mr. Drummer, Ms. Kline, Mr. Letourneau, Dr. Loh, Mr. McAndrew and Ms. Martin-Proctor

RESOLVED, That in order to commence this work by June 30, 2023, this Resolution shall be effective immediately.

Reviewed as to form and legal sufficiency,



Patricia Y. Lee
Executive Vice President, Chief Legal Officer and
General Counsel

WMATA File Structure No.:
4.3.3. Reimbursable Agreements

**AGREEMENT
FOR
METROBUS VIOLATION DETECTION SYSTEM**

THIS METROBUS VIOLATION DETECTION SYSTEM AGREEMENT (“Agreement”) is entered into and made effective as of January 26, 2023 (“Effective Date”) between the Washington Metropolitan Area Transit Authority (“WMATA”) an interstate compact agency created by the District of Columbia, the State of Maryland, the Commonwealth of Virginia (“WMATA”), and the District of Columbia (“the District”) by and through the District Department of Transportation (“DDOT”). WMATA, the District, and DDOT are each referred to herein by name or as a “Party”, or collectively, as the “Parties”.

WHEREAS, WMATA owns and operates Metrobus, Metrorail, and MetroAccess and provides public transit in the National Capital region; and

WHEREAS, The Parties desire to explore strategies to make bus operations more efficient and effective in the District of Columbia; and

WHEREAS, The Parties have reviewed and considered research and studies on the effectiveness of bus priority lanes, especially in congested urban centers; and

WHEREAS, The Parties have jointly identified certain corridors within the District for installation of Bus Priority Infrastructure, including but not limited to, dedicated bus lanes for Metrobus and DC Circulator routes;

WHEREAS, 18 DCMR §§ 2405, 2600, 2601, and 9901 establish bus lane prioritization in the public right of way also known as Bus Priority Infrastructure and enforcement of such Bus Priority Infrastructure;

WHEREAS, To optimize the effectiveness of Bus Priority Infrastructure, the Parties desire to employ an automated camera-based enforcement system called the Metrobus Violation Detection System (“VDS”); and

WHEREAS, The Parties desire to specify certain rights, responsibilities, and obligations with respect to the use of VDS on Metrobuses operating in Bus Priority Infrastructure within the District .

NOW, THEREFORE, in consideration of the mutual covenants and agreements, set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

ARTICLE 1 - DEFINITIONS.

1. "Administrative Services" means duties performed by WMATA staff to support VDS operation including, installation and testing support, ongoing equipment maintenance and administrative software configuration and recordkeeping related to such operations.
2. "Bus Priority Infrastructure" means bus zones and bus lanes as defined in Title 18 of the District of Columbia Municipal Regulations, as may be amended from time to time.
3. "Evidence Packages" means VDS data which may be digitally transmitted in a format approved by WMATA and DDOT. VDS data includes but may not be limited to video clips, images to include: start date and time of recorded occurrences, end date and time of recorded occurrences, GPS coordinates for the location of recorded occurrences, street names of the nearest intersection to recorded occurrences, parameters used to detect and record occurrences, type of occurrence recorded, ALPR extracted information for vehicle license plates, Metrobus inventory number, camera inventory number and radar/camera/lidar numbers, equipment operation status of each system, including daily equipment test records, component and any additional VDS enforcement information agreed to by WMATA.
4. "Metrobus Priority Violation Detection System" or "VDS" means an automated camera-based enforcement system mounted on Metrobuses that records potential violations within Bus Priority Infrastructure and automatically transmits Evidence Packages to DDOT.
5. "Operation Costs" means WMATA's costs and WMATA's third-party costs to operate VDS, as further detailed in Attachment1.
6. "Performance Data" means the historical maintenance and testing records of a specific VDS unit.
7. "VDS Portal" is a repository of VDS systems, maintenance records, Performance Data, synchronization schedules, and equipment self-testing results, accessible to both DDOT and WMATA, which certify the integrity of data collection for each VDS unit.
8. "Violation" means use of Bus Priority Infrastructure in a manner that violates any applicable District of Columbia law, statute, or regulation, including, but not limited DCMR § 18-4005.1.

ARTICLE 2 - ROLES AND RESPONSIBILITIES.

The Parties agree to the following roles and responsibilities:

1. WMATA

- a. At its sole expense and subject to funding availability consistent with WMATA's then current WMATA Capital Improvement Plan, WMATA shall procure a number of bus-mounted camera monitoring systems including corrective and preventative maintenance plans for ancillary equipment hardware and software components.
- b. At its sole expense, WMATA shall install and test the functionality of all Metrobus-mounted camera monitoring systems along with ancillary equipment and data technology necessary to operationalize VDS.
- c. WMATA shall test daily the functionality of all Metrobus-mounted camera monitoring systems and upload the daily test records to the VDS Portal, using the testing standards agreed upon by the Parties.
- d. WMATA shall provide Administrative Services for VDS at its own expense.
- e. WMATA shall own VDS, including the camera equipment, ancillary interface equipment, testing and maintenance records, Performance Data, digital recordings and digital transmissions, and Evidence Packages.
- f. WMATA, may contract the operation of VDS to DDOT in its sole and exclusive discretion for the purpose of improving the efficiency of Metrobus service through the enforcement of Bus Priority Infrastructure within the District.
- g. Upon receipt of updated business rules from DDOT, WMATA shall transmit updated business rules to its vendor within 10 business days.
- h. WMATA shall establish an interest-free account which shall be funded by DDOT, in an amount not to exceed **Nine hundred and four thousand, five hundred and thirty-three dollars (\$904,533)**, subject to Article 8 Anti-Deficiency Considerations, to fund the daily Operation Costs of VDS ("VDS Account"). All moneys received from DDOT for the operation of VDS shall be deposited in the VDS Account.

2. DDOT

- a. DDOT shall procure VDS from WMATA for the sole purpose of improving the efficiency of Metrobus service through the enforcement of Bus Priority Infrastructure within the

District ("VDS Contract"). The fees from the VDS Agreement shall fund the Operation Costs detailed in Attachment 1.

- b. The District shall be solely and exclusively responsible for enforcement of violations within its Bus Priority Infrastructure, if any.
- c. The District acknowledges and agrees that WMATA shall have no duties or responsibilities whatsoever for enforcement of the Bus Priority Infrastructure, including, but not limited to, taking no actions whatsoever in regard to enforcing violations of the Bus Priority Infrastructure.
- d. DDOT shall be responsible for submitting changes to its Bus Priority Infrastructure into the VDS Portal, including, but not limited to adding or removing applicable street names and modifications to enforcement periods, days, and times for such streets, if any.
- e. DDOT shall provide business rules to WMATA as they are updated.

ARTICLE 3 - MINIMUM OPERATION STANDARDS.

- A. VDS Routes. WMATA shall install, operationalize, and maintain and prioritize VDS on Metrobus vehicles routes using Priority Bus Infrastructure in the District. The Parties agree to work collaboratively on the selection and termination of Metrobus routes for participation in VDS with the goal of including VDS installation on all active bus lanes subject to the number of bus-mounted camera monitoring systems available and Metrobus dispatch requirements. The Parties shall collectively agree on the allocation and installation of VDS on Metrobuses in the District.
- B. Legal Notice. Public notice regarding any applicable District of Columbia law, statute, or regulation which authorizes the enforcement of Bus Priority Infrastructure within the District of Columbia and applicable dates, times streets or routes, subject to such VDS enforcement is the sole and exclusive responsibility of DDOT.
- C. VDS Portal. DDOT shall be provided with VDS Portal unlimited access WMATA or its vendor shall provide training on the use of the VDS Central System at no cost to DDOT and DDOT shall designate persons to attend such training.

ARTICLE 4 - FUNDING REQUIREMENTS.

- A. Total cost for goods and services under this Agreement for DC Fiscal Year 2023 shall not exceed **Nine hundred and four thousand, five hundred and thirty-three dollars (\$904,533)**. For DC Fiscal Year 2023, DDOT shall provide prepayment of funds contemplated by this Agreement immediately upon execution of this Agreement by DDOT and without invoice from WMATA ("Prepayment"). WMATA shall segregate the funds in

a separate VDS Account and restrict the use of funds to the payment of actual costs under this Agreement. In the event that this Agreement is renewed pursuant to Article 10, the Prepayment for such renewal term shall be the sum of the estimated Operation Costs for the term.

- B. Funding for goods and/or services shall not exceed the actual Operation Costs, for each bus-mounted camera monitoring systems.
- C. WMATA shall notify DDOT within forty-five (45) calendar days of the end of the current fiscal year if it has reason to believe that all of the Prepayment will not be spent during the current fiscal year.
- D. DDOT acknowledges and agrees that funding requirements pursuant to this Agreement may be recalculated by WMATA upon the execution of any other agreement related to VDS operations or enforcement in areas outside of the District's geographic boundaries.

ARTICLE 5 - INVOICES

- A. WMATA agrees to submit quarterly invoices to DDOT for actual Operation Costs and shall include an itemized list of cameras by serial number which are subject to DDOT's VDS Contract. WMATA shall be authorized to drawdown the full invoice amount from VDS Account funds within five (5) days of sending the invoice to DDOT.
- B. If at any time, the VDS Account has an insufficient fund balance to pay any quarterly invoice due and owing for VDS Operation Costs, WMATA shall provide written notice to DDOT to immediately deposit funds in the VDS Account in not less than an amount equal to pay any invoices due and owing plus the next quarterly payment. Subject to Article 8 Anti-Deficiency Considerations, DDOT shall transfer such amount to WMATA within five (5) days or as soon as possible.
- C. WMATA may concurrently suspend transmission of reports under Article 7 of this Agreement until such time that WMATA receives payment from DDOT for all invoices due and owing to cover all past due amounts, plus additional funding equal to the estimated amount to fund Operation Costs for the next quarterly payment.

ARTICLE 6 - RECONCILIATION.

WMATA shall perform an annual reconciliation by June 30 of each year on the receipt of funds paid into the VDS Account less Operation Costs paid from the VDS Account and provide a reconciliation report to DDOT as soon as practicable. A credit or debit to the VDS Account shall be made in an amount equal to any variation determined through reconciliation by the Parties. Any overpayment from the VDS Account received by WMATA identified through reconciliation shall be credited back to the account not later than September 30 of the then current year.

Pursuant to Article 8, the District shall pay any debit identified through reconciliation of the VDS Account not later than September 30 of the then current year.

ARTICLE 7 - REPORTS AND DATA SHARING.

- A. Subject to Article 5 (C), WMATA shall provide DDOT with the following reports.
 - 1. Annually, WMATA shall provide the estimated costs associated with the VDS Contract for DDOT's next fiscal year.
 - 2. Quarterly, WMATA shall provide to DDOT reports for actual Operation Costs and receipts of the same.
 - 3. Daily, WMATA through its Vendor shall transmit VDS Evidence Packages to DDOT.
- B. DDOT shall provide to WMATA the following reports.
 - 1. Annually, DDOT shall provide to WMATA a report detailing the number of citations issued during the prior year, if any, by Metrobus route number and the percentage of such citations that were paid.
 - 2. Monthly, DDOT shall provide to WMATA a report of violations of Bus Priority Infrastructure by Metrobus route number or corridor.

ARTICLE 8 - ANTI-DEFICIENCY CONSIDERATIONS.

The Parties acknowledge and agree that nothing in this Agreement creates a financial obligation of either Party in anticipation of an appropriation and that all provisions of this Agreement or any subsequent agreement entered into by the Parties pursuant to this Agreement is subject to the approved funding. The District and DDOT shall remain subject to the provisions of (i) the federal Anti-Deficiency Act, 31 U.S.C. §§ 1341, 1342, 1349, 1351, (ii) the District of Columbia Anti-Deficiency Act, D.C. Official Code §§ 47-355.01-355.08, (iii) D.C. Official Code § 47-105, and (iv) D.C. Official Code § 1-204.46, as the foregoing statutes may be amended from time to time, regardless of whether a particular obligation has been expressly so conditioned. Nothing in this Agreement shall require WMATA to violate the WMATA Compact, including Section 22. To the extent that funds in the VDS Account are insufficient to pay VDS Operation Costs, WMATA will not be required to operate VDS.

ARTICLE 9 - LIMITATION OF LIABILITY.

In no event shall WMATA be liable to the District or any third party, whether in contract or in tort or in any other legal theory (including, without limitation, strict liability, or negligence) for any claims, damages, losses, liabilities, or expenses arising out of or in connection with the performance of this Agreement, including but not limited to the District's enforcement of violations of its Bus Priority Infrastructure.

ARTICLE 10 - TERM.

This Agreement shall be effective on the Effective Date and shall remain in effect until September 30, 2023, unless terminated sooner in accordance with Article 11 of this Agreement. Notwithstanding the preceding sentence, this Agreement may be renewed for nine (9) successive one (1) year terms by mutual written agreement of the Parties forty-five (45) calendar days, unless terminated sooner.

ARTICLE 11 - TERMINATION.

Either Party may terminate this Agreement for any reason and at any time by giving the other Party forty-five (45) calendar days written notice. Any payments or monies due and owing to WMATA shall be paid by DDOT upon termination. Upon termination of this Agreement, the operation of VDS in the District as provided under this Agreement will be terminated upon the earlier of the termination date or when the VDS Account at WMATA is depleted.

ARTICLE 12 - GENERAL MATTERS.

- A. **Dispute Resolution.** In the event of a dispute under this Agreement, the chief executives or equivalent (or their designees) of each Party shall attempt in good faith to resolve the dispute. If the dispute is not resolved within fifteen (15) business days, then either Party is free to pursue whatever remedies it may have in law or equity, including all judicial remedies.
- B. **Governing Law.** This Agreement shall be governed by the laws of the District of Columbia, except where any law conflicts with the WMATA Compact, the WMATA Compact shall control. Each Party agrees to submit any action or proceeding relating to the subject matter of this Agreement to the sole and exclusive jurisdiction of the U.S. District Court for the District of Columbia.
- C. **Amendments and Modifications.** This Agreement may be amended or modified only upon a written agreement signed by both Parties. Any amendments or modifications to this Agreement that would exceed ONE MILLION DOLLARS (\$1,000,000), for any fiscal year, may not be made unless the Mayor of the District of Columbia submits this Agreement to District Council for its approval and District Council approves the amendment to the Agreement. The WMATA Board of Directors must approve any amendment that would exceed FIVE HUNDRED THOUSAND DOLLARS (\$500,000).

- D. Assignment. No transfer or assignment of this Agreement, or of any part thereof or interest therein, directly, or indirectly, voluntarily, or involuntarily, shall be made unless consent for such transfer or assignment is first approved in writing by the Parties.
- E. Notices. Any notice required or permitted to a Party shall be in writing and shall be delivered by hand, sent electronically, by courier, sent by prepaid registered or certified mail with return receipt requested and addressed as appropriate to the following addresses (or to such other or further addresses as the Parties may designate by notice given in accordance with this paragraph). Such correspondence shall be deemed delivered, upon the earlier to occur of the following: the day delivered by e-mail or hand delivery; the third business day following the day on which the same shall have been mailed by U.S. registered or certified mail, return receipt requested, with all postal charges prepaid, to the respective addresses set forth below; or actual receipt at the Parties' addresses.

Washington Metropolitan Area Transit Authority

Office of the Treasurer
Washington Metropolitan Area Transit Authority
300 7th Street SW
Washington, DC 20024

with copies to:

General Counsel
Washington Metropolitan Area Transit Authority
300 7th Street SW
Washington, DC 20024

and

Executive Vice President
Department of Strategy, Planning and Program Management
Washington Metropolitan Area Transit Authority
300 7th Street SW
Washington, DC 20024

For material sent via US Mail to reach WMATA, use:

PO BOX 44390
WASHINGTON DC 20026-4390

District Department of Transportation

Charles Turner
Automated Traffic Enforcement Division
District Department of Transportation
250 M Street SE, Suite 400
Washington, D.C. 20003
charles.turner@dc.gov
(202) 541-5494

- F. Non-Discrimination. The Parties shall abide by the provisions of Executive Order 11246, as amended; Title VI of the Civil Rights Act of 1964, as amended (78 Stat. 252; 42 U.S.C. §§ 2000d *et seq.*); Title V, Section 504 of the Rehabilitation Act of 1973, as amended (87 Stat. 394; 29 U.S.C. § 794); the Americans With Disabilities Act (104 Stat. 327; 42 U.S.C. §§ 12103 *et seq.*), the Age Discrimination Act of 1975, as amended (89 Stat. 728; 42 U.S.C. §§ 6101 *et seq.*); and with all other federal laws and regulations prohibiting discrimination on the grounds of race, color, national origin, disability, religion, or sex, in employment and in providing facilities and services to the public. Nothing in the advertising for employees shall be done which prevent those covered by these laws from qualifying for employment.
- G. Severance of Terms and Compliance with Applicable Law. The Parties shall comply with all applicable laws, regulations, and rules. If any term or provision of this Agreement is held to be invalid or illegal, such term or provision shall not affect the validity or enforceability of the remaining terms and provisions of this Agreement.
- H. Captions. The headings throughout this Agreement are for convenience and reference only and shall in no way be held to explain, modify, amplify, or aid in the interpretation, construction, or meaning of the provisions of this Agreement.
- I. Interest of Members of Congress. Nothing herein contained shall be deemed to be inconsistent with or contrary to the purpose or intent of any Act of Congress or WMATA Compact and the law of the District of Columbia establishing, affecting, or relating to this agreement. Pursuant to 41 USC § 22, no member of Congress shall be permitted to any share or part of this agreement, or to any benefits that may arise therefrom.
- J. Counterparts. This Agreement may be signed in one or more identical counterparts, whether transmitted by electronic mail or otherwise. Each such counterpart shall be deemed an original for purposes of this Agreement.

K. Confidentiality.

1. The Parties shall not authorize the release of, or otherwise make public, any details of the terms and conditions of this Agreement except as may be mutually agreed to in writing or as required by law, court order or regulation.
2. "Confidential and Proprietary Information" means this Agreement, its terms, and any other non-public proprietary information, including but not limited to the products, business, marketing plans, financial information, strategies, and policies of a Party, any Affiliates of a Party or of a third party ("Providing Party") to whom a Party owes a duty of confidentiality and shall include all such information (1) supplied to or observed by the receiving Party ("Receiving Party"), (2) acquired by the Receiving Party in the course of performing hereunder, and (3) disclosed at the direction of the Providing Party, by inspection or otherwise. Confidential and Proprietary Information may be in any form whatsoever, including but not limited to oral, written, digital, email, code, database, drawing or other media.
3. During and after the Term, neither Party shall use any Confidential and Proprietary Information for any purpose other than in furtherance of performance under this Agreement and shall not disclose any Confidential and Proprietary information to any third party (other than by either Party to its Affiliates, officers, attorneys, employees and agents ("Representatives") who have a need to know in connection with this Agreement, and only after informing any of its Representatives of the confidential nature of the Confidential and Proprietary Information. Each Party shall be responsible for any use or disclosure of Confidential and Proprietary Information by any of its Representatives. The obligations of this section shall survive the expiration and/or earlier termination of this Agreement. The term "Confidential and Proprietary Information" shall not include information that (a) is or becomes publicly known by lawful means or (b) was lawfully in the Receiving Party's possession prior to receiving it from the Providing Party or (c) becomes known to the Receiving Party through no fault of the Receiving Party by way of a third party that is not subject to a requirement of keeping such information confidential or (d) is independently created by the Receiving Party without using the Confidential and Proprietary Information of the Providing Party.
4. The Parties will not make any press release or public statement in connection with this Agreement without the prior written approval of the other Party nor shall such approval be withheld without reasonable cause.
5. If either Party is required by law, legal process (e.g., by interrogatories, requests for information or documents, subpoena, testimony, civil investigative demand or similar process), or WMATA's Public Access to Records Policy ("PARP") to disclose any Confidential and Proprietary Information, it will, to the extent not prohibited by law, immediately notify the other Party in writing of such requirement, and cooperate with

all efforts by the other Party to seek an appropriate protective order or to object to such request prior to disclosing any Confidential and Proprietary Information. In the event the Receiving Party is compelled to disclose any Confidential and Proprietary Information, it shall only disclose that portion of Confidential and Proprietary Information which, in the opinion of its counsel it is required to do so by law.

6. After termination or expiration of the Agreement or upon a Providing Party's request any Confidential and Proprietary Information in the Receiving Party's possession, including any physical, digital tangible form will upon request be returned to Providing Party or destroyed, at the election of Providing Party. Upon completing the foregoing, the Receiving Party shall give the Providing Party a certificate signed by an officer of the Receiving Party, confirming its compliance with this section. In the event a Receiving Party does not receive a request by the Providing Party to return Confidential and Proprietary Information, after the termination of this Agreement, the obligations of this section shall continue to apply to such Confidential and Proprietary Information. Subject to the terms of this Agreement, the Receiving Party may destroy such Confidential and Proprietary Information, to the extent allowed by law.
 7. The Parties acknowledge that the disclosure of Confidential and Proprietary Information could cause the Providing Party or the non-disclosing Party harm for which an adequate and/or quantifiable remedy would not exist at law. Therefore, Providing Party or the non-disclosing Party will be entitled, as a non-exclusive remedy, to seek injunctive relief for any breach of this section.
- L. No Waiver of Sovereign Immunity. Nothing in this Agreement shall be deemed or construed to constitute a waiver of WMATA's sovereign immunity or any other applicable immunity, privilege, or protection.
- M. Cumulative Remedies. Except as specifically identified as the Party's sole remedy, any rights or remedies prescribed in this Agreement are cumulative and are not exclusive of any other remedies to which a Party may be entitled to at law, in contract, or in equity. The election of any one or more remedies shall not constitute a waiver of the right to pursue other remedies.
- N. Entire Agreement. This Agreement, including all attachments, purchase orders, exhibits, and schedules, which shall be incorporated herein by this reference, contains the entire agreement between the Parties. This Agreement supersedes all prior or contemporaneous communications, representations, or agreements, whether oral or written, with respect to the subject matter hereof, and may not be modified or rescinded except in writing and signed by both Parties.
- O. Independent Contractors. The Parties are and shall be independent contractors to one another, and nothing herein shall be deemed to create an agency, partnership, employment, or joint venture between the Parties. Each Party's personnel shall be considered solely

employees or agents of that Party and not employees or agents of the other Party. Neither Party has the authority to bind the other to any third party nor otherwise to act in any way as the representative of the other, unless otherwise expressly agreed to in writing and signed by both Parties.

- P. No Waiver. WMATA's or the District's failure in any instance to object to or to take affirmative action with respect to an act or omission of the other which violates the terms of this Agreement shall not be construed as a waiver of that or any future violation.

Q. Warranties & Representations

1. WMATA represents and warrants:

- i. It has the power and authority to enter into this Agreement, execute, deliver, and perform the Agreement.
- ii. During the Term, WMATA shall comply with all applicable laws that are associated with WMATA's performance of its obligations and rights granted to Counterparty under this Agreement.
- iii. The execution, delivery, and performance of this Agreement by WMATA does not and will not result in any violation of any laws applicable to WMATA.
- iv. DISCLAIMER OF WARRANTIES. EXCEPT FOR THE SPECIFIC WARRANTIES SET FORTH IN THIS SECTION 12.Q, WMATA DISCLAIMS ANY AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

2. The District represents and warrants:

- i. It has the power and authority to enter into this Agreement, execute, deliver, and perform the Agreement.
- ii. During the Term, the District shall comply with all applicable laws that are associated with the District's performance of its obligations under this Agreement.
- iii. The execution, delivery, and performance of this Agreement by the District does not and will not result in any violation of any laws applicable to the District.

- R. No Rights in Third Parties. The Parties agree that no provision of this Agreement shall create in the public, or in any person or entity other than the Parties, any right as a third-party beneficiary hereunder.

[Signature Page Follows.]

IN WITNESS THEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized officials as of the date first set forth above.

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

By: _____

Date: _____

DISTRICT OF COLUMBIA DEPARTMENT OF TRANSPORTATION

By:  _____

Date: 1/26/2023

Attachment 1: Operation Costs

DDOT Fiscal Year ¹	Total Number of Buses equipped with VDS	Direct Operating Costs ²
FY 23	140	\$ 904,533
FY 24	140	\$ 1,774,367
FY 25	210	\$ 2,358,863
FY 26	280	\$ 3,159,988
FY 27	350	\$ 3,944,488
FY 28	400	\$ 4,561,863
FY 29	450	\$ 5,096,175
FY 30	500	\$ 5,634,175
FY 31	550	\$ 6,063,800
FY 32	600	\$ 6,574,300
FY 33 ³	600	\$ 1,677,950
Total	600	\$ 41,750,500

¹ FY 24 through 33 are subject to the District of Columbia's exercise of additional option periods

² Includes Licensing, Cellular, Software Fees, Route configuration, and the Maximum Incentive of \$16,800 per year

³ Partial cost for FY 33 to cover Year 10 (Option 4) of the vendor contract, if exercised