

Washington Metropolitan Area Transit Authority
Board Action/Information Summary

☒ Action ☐ Information

MEAD Number:
202259

Resolution:
☒ Yes ☐ No

TITLE:

Six-Year CFA and DC LCFA

PRESENTATION SUMMARY:

Staff recommends entering a six-year Capital Funding Agreement (CFA) and District of Columbia Local Capital Funding Agreement (DC LCFA). This FY2022 to FY2027 document updates roles and responsibilities to reflect current practices and vocabulary and refreshes the commitments of the parties to the current document, originally signed in 2010. The County of Loudoun, Virginia is a new signatory to the CFA.

PURPOSE:

To receive Board approval to execute a six-year CFA and DC LCFA.

DESCRIPTION:

The parties to these agreements are the local governments or governmental agencies responsible for providing funding to the WMATA Capital Budget.

Key Highlights:

Key Highlights:

- The existing capital funding agreements will expire on June 30, 2021.
- The FY2022 through FY2027 CFA established updated roles and responsibilities for the parties and ensure continuation of Jurisdictional Allocated Contributions.
- The FY2022 through FY2027 DC LCFA addresses certain Anti-Deficiency Act and statutory requirements that are specific to DC.

Background and History:

A financial agreement, the CFA provides the framework for jurisdictional investment in the Capital Improvement Program (CIP), including match to federal formula and discretionary grants, additional state and local contributions, and establishes processes for WMATA to issue debt when jurisdictions choose to finance their funding obligations. The most recent CFA was originally established in calendar year 2010 for the FY2011-2016 CIP. WMATA and the jurisdictions previously executed three one-year extensions of the CFA for FY2017, FY2018, and FY2019. Due to a delay in executing an agreement for FY2020, the FY2020 CFA was considered a new agreement rather than

an extension, although it had the effect of extending the agreement on substantially the same terms and conditions. The FY2020 CFA was also extended for an additional year in July 2020. The current agreement, the first amendment to the WMATA FY2020 Capital Funding Agreement, will expire on June 30, 2021.

To address certain concerns specific to the District of Columbia, WMATA and the District of Columbia have historically agreed upon terms for a LCFA. The LCFA provides a District of Columbia-specific agreement address federal anti-deficiency requirements and other statutory requirements unique to DC. The 2020 LCFA also received a one-year extension and will expire on June 30, 2021.

Discussion:

WMATA requires Board approval to enter a six-year extension to the CFA and the DC LCFA. The FY2022 through FY2027 agreement will provide the terms and conditions for receipt of the jurisdictions' allocated contributions associated with the \$2.6 billion FY2022 capital budget and future capital budgets through FY2027.

FUNDING IMPACT:

This is an extension of an existing Capital Funding agreement.

TIMELINE:

Previous Actions	June 2010 - Approval of the CFA and LCFA for FY2011-2016 March 2016 - Approval of one-year extension of CFA and LCFA for FY2017 March 2017 - Approval of second one-year extension of CFA and LCFA for FY2018 March 2018 - Approval of third one-year extension of CFA and LCFA for FY2019 September 2019 – Approval of the FY2020 CFA and LCFA. May 2020- Approval of the First Amendment to the Fiscal Year 2020 Capital Funding Agreement and the First Amendment to the Fiscal Year 2020 District of Columbia Local Capital Funding Agreement
Anticipated actions after presentation	N/A

RECOMMENDATION:

Staff recommends Board approval to enter a six-year CFA and District of Columbia LCFA

SUBJECT: APPROVAL OF THE FISCAL YEAR 2022-2027 CAPITAL FUNDING AGREEMENT AND THE DISTRICT OF COLUMBIA LOCAL CAPITAL FUNDING AGREEMENT

2021-12

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

WHEREAS, The Board of Directors is required to approve any capital funding agreement (Resolution 2011-30, as amended); and

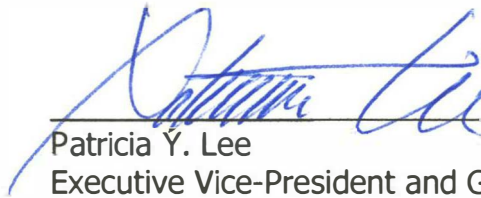
WHEREAS, Metro has negotiated a six-year Capital Funding Agreement with the Contributing jurisdictions and a Local Capital Funding Agreement with the District of Columbia to address certain statutory requirements specific to the District of Columbia, which agreements are set forth in Attachments A and B, respectively;

NOW, THEREFORE, be it

RESOLVED, That the General Manager and Chief Executive Officer, or the Executive Vice President, Strategy, Planning and Program Management, is authorized to negotiate and execute the six-year Capital Funding Agreement and the District of Columbia Local Capital Funding Agreement, substantially in the forms in Attachments A and B, respectively; and be it finally

RESOLVED, That to have the aforementioned capital funding agreements in effect prior to fiscal year 2022, this Resolution shall be effective immediately.

Reviewed as to form and legal sufficiency,



Patricia Y. Lee
Executive Vice-President and General Counsel

WMATA File Structure No.:
4.3.2. Jurisdictional Funding Agreements

**Motioned by Mr. McMillin, seconded by Mr. Bulger
Ayes: 8- Mr. Smedberg, Ms. Gidigbi-Jenkins, Mr. Goldman, Mr. McMillin, Mr. Letourneau, Mr. Bulger,
Mr. Slater and Mr. Rouse**

**CAPITAL FUNDING AGREEMENT
WMATA Fiscal Years 2022 to 2027**

Among

The State of Maryland;

The District of Columbia;

Arlington County, Virginia;

Fairfax County, Virginia;

County of Loudoun, Virginia;

The City of Alexandria, Virginia;

The City of Fairfax, Virginia;

The City of Falls Church, Virginia;

And

The Washington Metropolitan Area Transit Authority

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TABLE OF ATTACHMENTS

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CAPITAL FUNDING AGREEMENT

THIS CAPITAL FUNDING AGREEMENT (Agreement) is made and entered into as of the Effective Date, by and among the Washington Metropolitan Area Transit Authority (WMATA or the Authority), a body corporate and politic created by interstate compact between Maryland, Virginia, and the District of Columbia; the State of Maryland, acting by and through the Washington Suburban Transit District and the Maryland Department of Transportation; the District of Columbia; Arlington County, Virginia; Fairfax County, Virginia; Loudoun County, Virginia; the City of Alexandria, Virginia; the City of Fairfax, Virginia; and the City of Falls Church, Virginia (Contributing Jurisdictions):

RECITALS

1. The WMATA transit system plays a critical role in the growth and prosperity of the National Capital Region and environs, and WMATA's continued economic vitality is essential to the regional transportation system and the environmental quality, economic, educational and cultural life of the Washington region.
2. The WMATA system was built and is operated and maintained through the substantial investment of public funds by the Federal Government, State and local governments in the region and the Contributing Jurisdictions and WMATA recognizes the value of clear and open communications; including regular reporting by WMATA on the sources and uses of funding provided to WMATA.
3. The Parties have entered into multiple, multi-year agreements covering the funding for capital projects. The most recent Capital Funding Agreement will expire on June 30, 2021.

4. During calendar year 2018, the state legislatures of DC, VA, and MD enacted dedicated funding legislation, changing the nature and type of funding received by WMATA and imposing certain terms and conditions on WMATA, requiring a rethinking of budget policy at WMATA and appropriate revisions to the relationship between the Parties.
5. The scope of this Agreement is limited to the planning, budgeting, and funding of Allocated Contributions as defined herein. This Agreement does not address or alter the provision of Dedicated Funding, or Passenger Rail Infrastructure Improvement Act (sometimes called Rail Safety Infrastructure Act) funding.
6. The funding allocations and calculations referenced in this Agreement include the Board resolutions referenced in Attachment 4 and provide for certain exclusions that reduce the funding expected from the County of Loudoun, Virginia. Board resolutions may be revised in the sole discretion of the WMATA Board of Directors.
7. The Parties wish to create a new Capital Funding Agreement covering WMATA fiscal years 2022 through 2027 (FY2022 CFA or this Agreement) on an expenditure basis and to provide an ongoing master agreement, subject to renewal for any successor term of this Agreement, establishing the roles and responsibilities of the Parties for funding WMATA's capital needs.

NOW, THEREFORE, in consideration of the mutual promises and obligations hereinafter set forth, the Parties hereby agree as follows:

SEC. 1 DEFINITIONS

As used in this Agreement, the following terms shall have the following meanings, unless the context otherwise requires:

(a) “2010 Capital Funding Agreement” or “2010 CFA” means the capital funding agreement dated July 1, 2010 by and among the Parties (exclusive of Loudoun County) as was extended and amended through three, one-year extensions covering roles and responsibilities between those Parties for WMATA’s Fiscal Years 2010-2019. For purposes of this Agreement, the defined term “2010 CFA” also includes the one-year capital funding agreement entered into by the Parties, for WMATA’s FY2020 and the amendment thereto covering WMATA’s FY 2021 and each District of Columbia Local Funding Agreement executed concurrently with any Capital Funding Agreement and each amendment thereto.

(b) “Agreement” or “FY2022 CFA” means this 2022 through 2027 Capital Funding Agreement.

(c) “Allocated Contribution” means the share of the Capital Improvement Program funding to be contributed by a Contributing Jurisdiction, in accordance with the terms of this Agreement, but shall not include a) funds provided to match Public Rail Infrastructure Improvement Act (PRIIA) funds as those obligations exist today or may exist under an amended or substitute PRIIA (sometimes referred to as Rail Safety Infrastructure funding or other names as identified in the future by Congress or FTA), b) Dedicated Funding as defined below and provided by either the Commonwealth of Virginia, the State of Maryland, or the District of Columbia, or c) any other specially designated funding created by the WMATA Board of Directors or the FTA including but not limited to project development funding and reimbursable project funding.

(d) “Capital Budget” means the annual plan developed by WMATA on an expenditure basis and approved by the WMATA Board of Directors which identifies the Capital Improvement Program projects and programs to be undertaken in the upcoming fiscal year and the estimated annual funding sources needed to pay the costs of those projects and programs.

(e) “Capital Improvement Program” (“CIP”) means the six-year plan of projects and programs approved by the WMATA Board of Directors each year for planning purposes only and anticipated fund sources for use in supporting the scope, schedule, and budget (expressed in expenditure terms) of Programs and Projects that advance the Authority’s strategic objectives. See Attachment 1 for the FY2022-2027 CIP. The CIP is not considered a payment schedule. The CIP shall be updated annually as described in this Agreement.

(f) “Capital Program” means an on-going effort associated with maintaining a capital asset or assets in a state of good repair. Examples include, but are not limited to, rail tie and running rail replacements, and the bus rolling stock replacement and rehabilitation programs. When combined with Capital Projects, collectively “Programs and Projects”.

(g) “Capital Project” means an action taken over a period of time with a defined start and end date to build, replace, acquire, or repair a capital asset. Capital Projects are distinct from Capital Programs in that they do not recur on an annual basis. Examples include but are not limited to railcar purchases and bus facility constructions or reconstructions. Major Capital Projects are Capital Projects which cost more than \$25 million to complete, and Minor Capital Projects are Capital Projects which cost \$25 million or less to complete. When combined with Capital Programs, collectively “Programs and Projects”.

(h) “Contributing Jurisdictions” means the State of Maryland acting by and through the Washington Suburban Transit District and the Maryland Department of Transportation; the District of Columbia; Arlington County, Virginia; Fairfax County, Virginia; County of Loudoun, Virginia; the City of Alexandria, Virginia; the City of Fairfax, Virginia; and the City of Falls Church, Virginia.

(i) “Days” means calendar days, unless otherwise specifically provided.

(j) “Dedicated Capital Funding” means the amounts received by the Authority under the following legislative enactments: (a) from the District of Columbia under D.C. Official Code § 1-325.401 or any successor statute, as the same may be amended from time to time ; (b) from the State of Maryland under Md. Transportation Code Ann. § 10-205(g) or any successor statute, as the same may be amended from time to time; and (c) from the Commonwealth of Virginia under the Va. Code §33.2-3401 or any successor statute, as the same may be amended from time to time. Dedicated Capital Funding shall also include funds paid by any of the District of Columbia, the State of Maryland, the Commonwealth of Virginia or any other authorized person or entity in-lieu of such amounts.

(k) “Dedicated Capital Funding Debt” means any bond, security, debt issuance, certificate of participation, Grant Anticipation Debt, or other evidence of indebtedness issued by WMATA and secured by Dedicated Funding for purposes of funding Programs and Projects in one or more years of the Capital Budget or refunding debt issued for that purpose, and includes commercial paper, lines of credit, and letters of credit. Dedicated Funding Debt may be classified as either Short-Term Debt or Long-Term Debt.

(l) “Federal Funding” means an award of financial assistance, including formula grants, discretionary grants, and cooperative agreements, in the form of money, or property in lieu of money, by the Federal Government through the Federal Transit Administration or any other federal agency to an eligible grantee. The term does not include technical assistance which provides services instead of money, or other assistance in the form of revenue sharing, loans, loan guarantees, interest subsidies, insurance, or direct appropriations. Also, the term does not include assistance, such as a fellowship or other lump sum award, which the grantee is not required to account for. Finally, the term does not include PRIIA funding.

(m) “FTA” means the Federal Transit Administration.

(n) “Funding Sources” means the various categories of funds to be used to pay for the Programs and Projects covered in the Capital Budget or projected for use in the CIP. These funds may be from any legal source and may include, but are not limited to, Federal Funding, Dedicated Funding, PRIIA, Allocated Contributions, Jurisdictional Capital Contribution Debt, and Dedicated Funding Debt.

(o) “Grant Anticipation Debt” means any debt issuance the principal and interest on which are to be paid with the proceeds of Federal Funding.

(p) “Jurisdictional Allocated Contribution Debt” or “JAC Debt” means any bond, security, debt issuance, certificate of participation, or other evidence of indebtedness issued by WMATA for purposes of funding one or more Contributing Jurisdiction’s Allocated Contribution or refunding debt issued for that purpose. JAC Debt may include, but is not limited to commercial paper, lines of credit, and letters of credit. JAC Debt maybe classified as either Short-Term Debt

or Long-Term Debt. See also WMATA Board Resolution 2020-04 as it may be amended for WMATA's Debt Management Policy.

(q) "Long-Term Debt" means any debt with a maturity greater than 2 years.

(r) "Non-Federal funds" means funds provided by any source other than the Federal government and includes State and local funding and debt proceeds.

(s) "Party" or "Parties" means WMATA and the Contributing Jurisdictions.

(t) "Preventive Maintenance" shall have the same definition of the term as is found in the applicable FTA Circular.

(u) "PRIIA" means those federal funds provided to WMATA under the Passenger Rail Investment and Improvement Act of 2008 (Pub. L. 110-432) sometimes referred to as Rail Safety Infrastructure funding or other names as may be identified in the future by Congress or FTA.

(v) "Short-Term Debt" means interim funding sources including but not limited to one or more letters or lines of credit and related reimbursement agreements, standby bond purchase agreements, commercial paper, or similar agreements or obligations, or any combination of the foregoing, issued to or for WMATA or entered into with WMATA by a bank, insurance company, or other financial institution, or one or more resolutions, indentures, or other security agreements providing for bonds or other evidence of indebtedness of WMATA debt with a maturity of 2 years or less.

(w) "System Performance Funds" means that portion of the Allocated Contribution that is over and above those funds required to match Federal grants and programs anticipated to be used for expenses contained in the Capital Budget. System Performance Funds exclude jurisdictional reimbursable project expenses and project development funding used to fund coordinated planning and review of projects.

(x) “WMATA” or “Authority” means the Washington Metropolitan Area Transit Authority.

SEC. 2 CAPITAL IMPROVEMENT PROGRAM

(a) Agreement of the Parties.

WMATA and the Contributing Jurisdictions hereby agree to the Capital Improvement Program shown on Attachment 1 or as may be updated in the future pursuant to any requirements contained in this Agreement. The Parties further agree to comply with the terms and conditions of this Agreement and to fully and faithfully carry out their respective obligations under this Agreement. Any commitment or agreement of any Contributing Jurisdiction required by this Agreement shall be subject to the annual appropriation of funds and other limitations on expenditures or obligations under the law of the Contributing Jurisdiction or under other applicable law as described in Section 4(b)(3)(B). This Agreement shall not constitute an indebtedness of the Contributing Jurisdictions until funds are duly appropriated by the jurisdictions and quarterly payments become due pursuant to Section 4(b)(3)(C) of this Agreement, nor shall it constitute an obligation for which the Contributing Jurisdictions are obligated to levy or pledge any form of taxation or for which the Contributing Jurisdiction has levied or pledged any form of taxation.

(b) Elements of Capital Improvement Program.

(1) Program Elements. The Capital Improvement Program proposed to be funded by this Agreement consists of those Capital Projects and Capital Programs (collectively “Programs and Projects”) identified for funding along with the sources of that funding in the annually approved CIP and Capital Budget as they are updated in accordance with this Agreement. The CIP may include any Programs and Projects eligible for capital funding and may align the Projects and Programs into categories that reflect the then-current organizational structure of

WMATA and the reporting requirements of applicable agreements and regulations. For example, but without intent to bind WMATA to the use of these categories, Projects and Programs in the WMATA FY20 Budget were invested in the following categories: Railcars; Rail Systems; Track and Structures Rehabilitation; Stations and Passenger Facilities; Bus and Paratransit; Business Support.

(2) Description. Notwithstanding the flexibility provided in section (1) immediately above, WMATA shall provide CIP-level detail as shown in Attachment 2 in each approved fiscal year Capital Budget book including the sources of funding anticipated to support those Projects and Programs; a description of the scope of work, and a schedule.

(c) Cost.

The estimated program cost of the Capital Improvement Program shown in Attachment 1 is approximately \$13.6 billion in year of expenditure dollars and covering a six-year period.

(d) Schedule.

The initial Capital Improvement Program will be implemented over the period beginning WMATA fiscal year 2022 and ending fiscal year 2027. There will be a Capital Budget for each fiscal year, as more specifically described in Section 4 of this Agreement.

SEC. 3 CAPITAL IMPROVEMENT PROGRAM FINANCIAL PLAN

(a) Funding Sources.

The Projects and Programs in the Capital Improvement Program shall be funded in the most cost-effective manner from any legal funding source, including but not limited to one or more Funding Sources. WMATA may employ cash management strategies or financing methods as the

WMATA Board determines to be appropriate to accomplish the Programs and Projects identified in the Capital Improvement Program. The specific amounts estimated from each Funding Source will be set forth in each Capital Budget. The categories, sub-categories, and details of Funding Sources are shown in Attachment 1. In no case may the WMATA Board of Directors adopt a budget without identifying Funding Sources by the categories shown in Attachment 1, provided, however, that 1) WMATA may revise sub-categories and details in future budgets, and 2) WMATA is not required to include any category or sub-category that shows a zero-dollar entry.

(b) Formula for Contributing Jurisdiction Funding.

The Allocated Contributions of the Contributing Jurisdictions for the Capital Budget will be based on the WMATA Board-adopted operating subsidy allocation formulae in effect at the time of each recalculation and any resolutions adopted by the WMATA Board applicable to the formula adjusting the Contribution of a particular jurisdiction (e.g. the County of Loudoun's reduced Contribution due to its opting out of Metrobus service). For each budget cycle WMATA shall apply an up to 3% increase to the Allocated Contributions for the Capital Budget as of July 1st for the then-current FY; for example, for calculating the aggregate Allocated Contributions for FY22 budget cycle, the July 1, 2020 (FY21) approved Allocated Contributions of \$268,377,392 were increased by 3%. Then, WMATA shall allocate that increase by applying the weighted Board approved operating subsidy by mode. For reference only, and subject to change by the WMATA Board of Directors, a list of the Board Resolutions containing the approved operating subsidy allocation formulae is provided as Attachment 4. WMATA will apply the operating subsidy allocations to the Capital Projects and Programs by mode. An average of the Metrorail and

Metrobus allocation formulae will apply to general financing expenditures and for project expenditures that cannot be allocated to a mode with a dedicated formula.

WMATA is not obliged to recalculate the capital subsidy allocations each year. The Parties agree to three recalculations by WMATA during the term of this Agreement: one for each of the WMATA FY22; WMATA FY24; and WMATA FY26 Capital Budgets.

The Parties acknowledge and agree that the up to 3% increases to Jurisdictional Allocated Contribution is evaluated 1) in the aggregate and 2) at the time of budget adoption. The Parties further acknowledge and agree that the up to 3% increase on growth of Allocated Contribution expenses applies solely to that source of funding and is not intended to nor shall it apply to the total Capital Budget. Rather it is anticipated that WMATA will use Dedicated Funding and/or Dedicated Funding Debt to address additional capital funding needs beyond those addressed by Allocated Contributions. The total authorized FY22 Allocated Contribution shall not exceed \$276,428,714 and the total authorized Allocated Contribution for the FY22 through FY27 period shall not exceed \$1,788,054,224.

(c) Debt Service.

Debt service on obligations agreed to by the Contributing Jurisdictions and issued under the 2010 CFA (JAC Debt) shall become obligations issued under this Agreement. The Contributing Jurisdictions shall continue to make any debt service payments as were required under the terms of the 2010 CFA. New debt service for JAC Debt obligations issued under the terms of this Agreement will be funded by the Contributing Jurisdictions as more fully set forth in Section 4(b)(2)(C) of this Agreement. Debt service for Dedicated Funding Debt shall be paid out of Dedicated Funding and shall not be subject to the terms of this Section 3(c).

(d) Existing Capital Projects.

WMATA and the Contributing Jurisdictions agree that all Capital Projects whose initial funding was provided under the 2010 CFA but for which any expenditures will occur during the scope of this Agreement will become Capital Projects under this Agreement and governed by the terms of this Agreement including the funding obligations of the Contributing Jurisdictions thereto. It is the intent of the Parties to terminate the 2010 CFA and incorporate all of its capital commitments into this Agreement.

SEC. 4 IMPLEMENTATION OF CAPITAL IMPROVEMENT PROGRAM

(a) Programmatic Aspects.

(1) Long Term Programming -- The WMATA Board of Directors will approve a six-year capital improvement program each year, superseding the prior year CIP, providing potential funding sources, a description of the project prioritization process, an explanation of how the CIP would further the strategic objectives of WMATA, and an identifying the performance metrics by which the outcome of the CIP will be measured. The prioritization process shall evaluate and select projects based on the projects' support of WMATA's strategic objectives and funding availability.

The annual documentation of the CIP will describe qualitatively and quantitatively the broad outlines of the proposed capital spending and sources for that spending for the forthcoming fiscal year and the outcomes expected to be achieved by the proposed program. The discussion of the proposed spending shall include at least the following: (i) the sources of funds for the proposed spending, (ii) expenditures by mode (e.g. bus, rail, paratransit, administrative), (iii) expenditures by project phase (e.g. planning, design, land acquisition, construction), (iv) the indicators of the

outcomes to be achieved by the proposed projects, and (v) life to date expenditures by project. See Attachment 2 for an example of a Capital Project page from WMATA's FY2021 approved budget book.

(2) Capital Budget. -- The Capital Budget will contain the actual funding requirements and sources of funds for the current fiscal year. WMATA shall, as a part of its annual budget process each year during this Agreement, develop and submit to the Board of Directors with copies to the Contributing Jurisdictions a draft Capital Budget for the next to occur WMATA Fiscal Year. The Capital Budget shall be based upon and be consistent with the updated Capital Improvement Program. The Capital Budget and updated CIP will be submitted to the WMATA Board of Directors for approval with copies to the Contributing Jurisdictions prior to the start of the fiscal year addressed in the Capital Budget.

(3) Contents of Adopted Capital Budget. -- The Capital Budget shall include:

(A) an identification of the Projects and Programs in the Capital Improvement Program for which funds will be obligated or expended during the next WMATA fiscal year;

(B) a budget for the fiscal year that includes a cost estimate and anticipated source of funds for each Projects and Programs by CIP category;

(C) a statement of each Contributing Jurisdiction's required Allocated Contribution for the fiscal year, based on a schedule of projected quarterly cash needs including an identification of what portion of that contribution is a direct capital contribution, and what portion (if any) is to be used by WMATA to pay debt service on WMATA Jurisdictional Capital Contribution Long-Term Debt and

WMATA Jurisdictional Capital Contribution Short-Term Debt (each to be stated separately in the Capital Budget);

(D) a summary of the CIP Projects and Programs undertaken in the then current WMATA fiscal year, together with the costs incurred to date and the estimated remaining costs for those Projects and Programs; and

(E) the results of the Budget Reconciliation process contained in section 5 of this Agreement and a revised plan for the CIP.

(4) Schedule for Approval of CIP and Capital Budget. To ensure coordinated efforts and to prevent conflicting obligations, the Parties agree that each annual process will follow the applicable schedule and policies, if any, established by the WMATA Board of Directors:

(A) On or before October 31st, WMATA will provide the estimated Allocated Contribution to the Jurisdictions for the next to occur WMATA Fiscal Year.

(B) The updated proposed 6-year CIP and Capital Budget will be made available to the Contributing Jurisdictions on or about the time it is provided to the Board and no later than December 31st.

(C) WMATA will also present the capital program and the Capital Budget information to affected legislative bodies as requested.

(D) Comments are due from the Contributing Jurisdictions no later than closing of the applicable WMATA public hearing docket. WMATA may not be able to consider comments received after closing of the

WMATA public hearing docket in the development of the proposed Capital Budget.

(E) The proposed Capital Budget shall be provided to the WMATA Board as soon as possible, and usually in March for adoption by the Board of Directors.

(F) The CIP and Capital Budget will be adopted by the WMATA Board no later than the June meeting.

(5) WMATA Implementation Responsibilities.

(A) General. -- WMATA will administer the Capital Budget and carry out all necessary procurement actions and management oversight. All procurement actions will be undertaken in accordance with WMATA procurement policies and applicable law. WMATA may adjust the program of projects included in the scope of this Agreement, each year as part of the budget implementation process, within the term of this agreement, on a rolling basis, so long as the Allocated Contributions required to meet WMATA's ongoing and updated CIP needs and other capital needs, do not exceed the limitations established in this Agreement and the then-current Capital Budget approved by the Board.

(B) Federal Funding. -- To the extent that Federal financial assistance is provided for any Projects and Programs in the Capital Improvement Program or Capital Budget, WMATA will develop the required Federal grant applications and/or other necessary documentation to meet FTA

or other Federal program requirements, and will carry out the federally assisted project or activity in compliance with all applicable Federal requirements.

(C) Reprogramming and Revisions to the Capital Improvement Program.

The WMATA staff may, as necessary for the efficient prosecution of the approved CIP revise the Programs and Projects within the CIP so long as no additional funding is required from the Contributing Jurisdictions and such revisions are within the authority delegated by the WMATA Board of Directors. Delegated authority is expressed in resolution 2011-30 as amended by 2016-24 and 2017-11. Nothing in this Agreement is intended to or shall limit the discretion of the WMATA Board of Directors to delegate or rescind delegations of authority. These revisions shall be reflected in future CIPs presented to the Board of Directors for adoption as part of the annual budget process. The Parties recognize that the scope, costs, scheduled completion date, or priority of some projects will change during the term of this Agreement. To address these possibilities, WMATA agrees to provide the Contributing Jurisdictions with monthly reports regarding reprogramming of project budgets into or out of Capital Projects or Capital Programs during the term of this Agreement where such reprogramming results in either 1) an increase of the total project budget as shown in the CIP; 2) a revision to the scope of a Capital

Project; 3) a movement of \$5 Million or more between Capital Projects; or 4) creates a new Capital Project. WMATA shall provide notice as soon as practicable when a project or program funded is terminated. Each movement of budget between Capital Projects and/or Capital Programs for cash flow purposes or for schedule adjustments (that do not impact completion date) in an amount of \$1 Million to \$5 Million during the term of this Agreement shall be reported to the Contributing Jurisdictions on a quarterly basis. In no case shall WMATA request an increase in the Allocated Contributions for any fiscal year due to a reprogramming.

- (D) Quarterly Reports. At the conclusion of every quarter, WMATA shall prepare a report on the result of the preceding quarter for submittal to the Parties no later than forty-five (45) days following the close of the quarter, provided however, that the quarterly report for the fourth quarter/WMATA Fiscal Year end shall be due sixty (60) days following the close of the quarter. Such report shall contain a review of capital project scope, cost, and schedule changes; the status of contracts necessary for the implementation of capital projects; the status of year-to-date expenditures relative to budget and the Capital Budget; the status of all cash and debt sources relative to budget and the Capital Budget; updated project cash flow projections and program cash

requirements; and a comparison of the billed amount to amounts actually paid out for the preceding quarter.

(6) Funding Methodology for Projects in the Capital Budget. New projects for the Capital Budget will be listed with their funding identified by both year and Funding Source. A project may be funded by more than one type of funding. If a project is a multi-year project, then in the second and succeeding years, that project will have the first call on that Funding Source unless another funding source is identified. In every case, funds needed for debt service including Short Term Debt and funds needed for annual “state of good repair” items shall have first claim on all funds that may legally be spent on such projects. Projects which are underway, but which have remaining amounts budgeted for them in the Capital Budget shall have the unexpended funds “rolled over” to the succeeding fiscal year. The unexpended funds shall be in addition to the succeeding year’s Allocated Contribution funding requirements and will be used for the approved Capital Improvement Program.

(b) Financial Aspects.

(1) Cash Sources.

(A) Federal Funds. -- WMATA commits to take all necessary and appropriate actions to secure Federal funding in the Capital Budget and CIP to assist in the funding of the Projects and Programs undertaken by the Authority. WMATA will manage the Capital Budget within the funding amounts agreed to by the Contributing Jurisdictions, except as otherwise provided in paragraph (C) of this subsection.

(B) Jurisdictional Commitments.

(i) To the extent applicable, each Contributing Jurisdiction agrees to make its Allocated Contribution to fund the Capital Budget component of the CIP and the CIP as a whole as adjusted annually in accordance with this Agreement. Such contributions shall be made in accordance with the requirements and procedures in subsection (3) of this Section. The source of funds for such capital contributions is in the discretion of each Contributing Jurisdiction; provided that such funds must qualify as local match under applicable FTA or other agency grant program requirements.

(C) Additional Limitations –

(i) WMATA and the District of Columbia have entered into a separate Local Capital Funding Agreement of even date herewith (“DCLCFA”) to address certain issues concerning the implementation of this Agreement that must be handled separately according to District of Columbia law. The implementation of District of Columbia obligations, representations, and warranties under this Agreement shall be controlled by the provisions of the DCLCFA set forth in Attachment 5, as may be amended by WMATA and the District of Columbia. To the extent of any inconsistency between this Agreement and the provisions of the DCLCFA, the DCLCFA shall control.

(ii) The District of Columbia agrees to review its Allocated Contributions annually to determine if any adjustments may be made. If the District of Columbia agrees to increase its Allocated Contributions cap by an amendment to the DCLCFA, then such increase will be incorporated into this Agreement pursuant to the Annual Capital Budget process.

(iii) In the event that (a) WMATA proposes an increase that would cause the District of Columbia’s Allocated Contribution to exceed an aggregate amount of \$631,346,120

over the term of this agreement; and (b) the District of Columbia denies or withholds approval of the increase in excess of that stated amount, then all other Contributing Jurisdictions shall be relieved of any obligation to fund the increase proposed by WMATA in their Allocated Contributions.

(iv) In the event that the District of Columbia denies or withholds approval of such increase, all Parties shall cooperate to develop alternative solutions to any resulting revenue or program shortfalls.

(2) Debt Sources.

(A) General. -- In accordance with the Capital Budget, all or any portion of the Capital Improvement Program may be funded through short- or long-term debt financing as described in this subsection and in accordance with Section 21 and Articles IX and X of the WMATA Compact.

(B) Dedicated Capital Funding Debt. -- WMATA may issue Dedicated Capital Funding Debt to assist in the financing of one or more years of the Capital Budget. The WMATA Board may authorize the issuance of such debt, in one or more issuances during the term of this Agreement, at such times as it determines appropriate, in its discretion, taking into account factors established by the Board in its Debt Management Policy. Any debt issued by WMATA under this subsection may be secured by a lien and pledge of WMATA's Dedicated Capital Funding revenues, or (subject to any required FTA approval) of WMATA's capital assets. Any such debt secured by WMATA's Dedicated Capital Funding revenues may be on

parity with or subordinate to any other debt, including, but not limited to JAC Debt. WMATA shall issue Dedicated Funding Debt in accordance with the then-current, Board-approved WMATA Debt Policy, as may be amended by the Board of Directors. In addition to debt secured by Dedicated Capital Funding revenues or capital assets as described in this paragraph, WMATA may issue debt in accordance with 4(b)(2)(C) or 4(b)(6).

(C) Jurisdictional Allocated Contribution (JAC) Debt – WMATA may issue JAC Debt to assist in the financing of one or more years of the Capital Budget. The WMATA Board may authorize the issuance of such debt, upon request from one or more Contributing Jurisdictions, in one or more issuances during the term of this Agreement, at such times as it determines appropriate, in its discretion, taking into account factors established by the Board in its Debt Policy. Any debt issued by WMATA under this subsection may be secured by a lien and pledge of WMATA's gross revenues (but not Dedicated Capital Funding revenues and as may be further limited by Board Resolution), or of WMATA's capital assets (subject to any required FTA approval). Any such debt secured by WMATA's gross revenues may be on parity with or subordinate to any other debt, including, but not limited to Dedicated Funding Debt. For any debt that is secured by WMATA's capital assets, WMATA will endeavor, consistent with the cash flow needs of the Capital Budget and with market demands, to match the

length of the debt financing to the useful life of the pledged assets, unless WMATA determines that market or other financial considerations make a different debt length more prudent. In addition to debt secured by gross revenues or capital assets as described in this paragraph, WMATA may issue debt in accordance with 4(b)(2)(B) or 4(b)(6).

(D) Contributing Jurisdiction Responsibility. – JAC Debt may be issued pursuant to the procedures shown in Attachment C. When WMATA issues JAC Debt to fund Jurisdictional Contributions, each Jurisdiction participating in the JAC Debt commits, subject to annual appropriations, to make the annual contributions necessary for WMATA to make payments of debt service on related debt issued by WMATA. The obligation to make contributions to pay such debt service, which is in addition to the obligation to provide Allocated Contributions, shall survive the term of this Agreement and shall remain in effect throughout the term of the debt issuance involved.

(3) Contributing Jurisdiction Commitment.

(A) General. – The maximum amount of the Contributing Jurisdictions' Allocated Contribution of the costs of the CIP is subject to the provisions of Section 4(b)(1)(B) of this Agreement. Nothing in this Agreement shall be construed to obligate a Contributing Jurisdiction to have, as of the date that it enters into this Agreement, funding or an appropriation in the full amount of its Allocated Contribution of the costs of the CIP. Each Contributing Jurisdiction commits, subject to its constitutional or legally

equivalent provisions and throughout the term of this Agreement, to use reasonable efforts to obtain funding in the full amount of its Allocated Contribution. Reasonable efforts include, but are not limited to, a request by the responsible official to include the Allocated Contribution as described in the draft Capital Budget in the Contributing Jurisdiction's annual proposed budget or other financial submission to its fiscal authority. Each Contributing Jurisdiction shall be solely responsible for providing its Allocated Contribution to the cost of the Capital Budget, and in no circumstance shall one Contributing Jurisdiction be responsible for the Allocated Contribution or other obligations of any other Contributing Jurisdiction under this Agreement.

(B) Annual Commitment. -- Each Contributing Jurisdiction shall annually provide WMATA with written notice, concurrent with comments on WMATA's proposed budget, that funds have been, are intended to be, or will not be appropriated to cover its Allocated Contribution for WMATA's upcoming fiscal year and committing to make payment of such Allocated Contribution to WMATA. No CIP or Capital Budget shall be approved without the certification of each Contributing Jurisdiction that the funding levels are reasonable and accurate reflections of funds to be made available. If a Contributing Jurisdiction's appropriations process is not completed by June 1, such Contributing Jurisdiction shall provide to WMATA: (i) a written explanation for the failure to make such

submissions by June 1 and confirmation that subject to appropriation amounts equal to its Allocated Contribution have been or will be included in the next fiscal year budget to be considered by the Contributing Jurisdiction's fiscal authority; and (ii) written assurances that all reasonable efforts will be undertaken to secure the ultimate appropriation of funds in a prompt and timely fashion, or if funds will not be appropriated, then the Contributing Jurisdiction shall notify WMATA and all other Contributing Jurisdictions through their representatives listed in section 12 of this Agreement or as may be updated by each Contributing Jurisdiction in the future within five business days of the fiscal body's action. If there is a failure by any Contributing Jurisdiction to appropriate the full annual Allocated Contribution, the Capital Budget shall be revised to conform to the available funds and submitted to the WMATA Board of Directors and the other Contributing Jurisdictions for approval.

(C) Quarterly Payments. -- Each Contributing Jurisdiction's Allocated Contribution shall be based on the approved Capital Budget and any subsequent adjustments derived from the Annual Budget Reconciliation Process for the quarter covered by the invoice, and paid to WMATA on a quarterly basis in advance, no later than the first day of each quarter, throughout the term of this Agreement. Debt service on JAC Debt shall be included in the invoice and shall be separately identified. WMATA shall submit bills to the Contributing Jurisdictions for such quarterly payments

forty-five (45) days prior to the date such payments are due. Thus, for example, for the July-September quarter WMATA will bill the amount in the Capital Budget as approved or adjusted for July-September and send each Contributing Jurisdiction an invoice for its Allocated Contribution no later than the immediately preceding May 15th. Contributing Jurisdiction payments must be received by WMATA no later than July 1. The sum of each Contributing Jurisdiction's quarterly invoices during a given fiscal year shall not exceed that Contributing Jurisdiction's Allocated Contribution in the approved Capital Budget.

(5) Timeliness of Payment.

(A) Treatment of Payments. – Payments received by WMATA shall become WMATA's funds and interest shall accrue on all payments made by a Contributing Jurisdiction until the funds are expended. WMATA shall place contributed funds into an interest earning account, with interest to be compounded on terms and conditions established between WMATA and its financial institution(s). Interest earned on funds contributed by a Contributing Jurisdiction shall not be applied as a credit against future payments for Allocated Contributions due from that jurisdiction under this Agreement, unless otherwise directed in writing by the Board of Directors.

(B) Non-Payment or Late Payments. -- If a Contributing Jurisdiction fails to make a quarterly payment in full to WMATA when such payment is due, WMATA shall notify the other Contributing Jurisdictions and may issue JAC Debt or otherwise advance funds as deemed necessary by the WMATA General Manager and Chief Executive Officer to replace the

amount of payment not timely received. To the extent that WMATA covers a Jurisdictional shortfall, WMATA shall charge such Contributing Jurisdiction an amount equal to the sum of (i) the financing and interest costs and expenses (or lost interest earnings) incurred by or on behalf of WMATA in connection with such debt issuance or advance of funds; (ii) any administrative costs incurred by WMATA in connection with obtaining such replacement funding; and (iii) any penalties or losses incurred by WMATA assessed by a third party as a result of such late or non-payment. The total amount of the charges assessed under this paragraph, together with the unpaid quarterly payment, shall be due and payable to WMATA no later than thirty (30) days after the date of assessment by WMATA plus interest compounded monthly at the WMATA short-term investment earnings rate until the date of full payment.

(6) Short-Term Debt and Security Interests.

(A) Short-Term Debt Authority. -- WMATA is authorized to use Short-Term Debt, including borrowing, on behalf of WMATA in such amounts and at such times as, in the Board's sole judgment, are necessary and appropriate for the purpose of implementing the Projects and Programs in the Capital Improvement Program and any Capital Budget funded through direct capital contributions.

(B) Security Interests. -- WMATA may create security interests in its rights and interests in amounts paid or received as direct capital contributions from the Contributing Jurisdictions under this Agreement, as such amounts shall become available and are paid to or for the account of WMATA under the terms of this Agreement. Such amounts may be pledged as security for the cost of Short-Term Debt. Each Contributing Jurisdiction shall comply with any reasonable and legal request of WMATA to execute, acknowledge, and deliver

appropriate instruments and assurances as may be necessary or desirable and consistent with the obligations in this Agreement to confirm and effectuate any such security interest created by WMATA in connection with Short-Term Debt. Nothing in this subsection shall be construed as requiring any Contributing Jurisdiction to make any payment under this Agreement to anyone other than WMATA. For purposes of this subsection, the “cost of Short-Term Debt” includes payments of principal and interest thereunder and all fees, expenses, and other amounts incurred or payable under any Short-Term Debt.

(C) Limitation. -- The borrowing authority authorized by this subsection may not be used by any Contributing Jurisdiction to satisfy its funding obligations under this Agreement.

(7) WMATA Risk Mitigation. -- Section 22 of the WMATA Compact prohibits WMATA from making any commitment or incurring any obligations with respect to the construction or acquisition of any transit facilities “until funds are available therefor.” The Parties acknowledge that the commitments of the Contributing Jurisdictions under this Agreement are intended to satisfy the requirements of Section 22 under an expenditure-based budget. In order to address the risk of non-appropriation or late payment of funds by a Contributing Jurisdiction or insufficient funding by the Federal Government, and to assure compliance with Section 22 of the WMATA Compact, WMATA intends to continue to maintain a risk mitigation credit facility using one or more of the following: a line of credit, letter of credit, commercial paper program, or other credit facility determined by WMATA in its discretion to be appropriate and feasible. Such risk mitigation credit facility shall be in addition to any other credit facility which may be put in place as a working capital or other cash flow aid.

SEC. 5 ANNUAL BUDGET RECONCILIATION PROCESS

(a) Reconciliation.

As part of its annual budget process in each year during the term of this Agreement, WMATA shall prepare a reconciliation of –

- (1) the actual expenditures for Projects and Programs for the most recently completed fiscal year Capital Budget, as compared to the planned expenditures for such Programs and Projects for the same fiscal year;
- (2) the actual Allocated Contribution of each of the Contributing Jurisdictions to date, as compared to the scheduled Allocated Contribution of each Contributing Jurisdiction for the most recently completed fiscal year Capital Budget;
- (3) the projected Allocated Contributions of each Contributing Jurisdiction for the most recently completed fiscal year Capital Budget;
- (4) the actual amount of Federal grant funds received for the Capital Budget, as compared to the budgeted or projected amount of Federal grant funds for the same fiscal year; and
- (5) the current forecast of expenditures; and
- (6) the estimated cost to complete the remaining Projects and Programs in the current Capital Improvement Program and expected sources of those funds.

(b) Application of Reconciled Payment Amounts.

On or before November 30th of each year, WMATA shall have performed the reconciliation described in the above section, including whether there is a surplus of funds paid in by the Contributing Jurisdictions. The results of this reconciliation shall be used in the Capital Budget

currently under development as well as to review the Capital Budget for the fiscal year then currently in effect at the time that the reconciliation is completed. WMATA shall, to the best of its abilities, use all of the Jurisdictional Contributions in the fiscal year they are provided. The Parties acknowledge and agree that this may not be practical at all times. In the event that WMATA is unable to use all of the System Performance Funding provided to it in the fiscal year received (FY1), WMATA shall use those funds (“Carryover Funds”) as a funding source for the next to occur fiscal year (FY2) as follows:

- (1) first, program those funds to cover accrued expenses from FY1;
- (2) second, program those funds for planned expenses in FY2;
- (3) third, reduce the Dedicated Funding Debt to be issued in FY2;
- (4) fourth, in the event that no Dedicated Funding Debt is issued to fund projects in the then-current fiscal year, use the Carryover funds as a funding source in the next to occur fiscal year (FY3);
- (5) Finally, in the event that Carryover Funding exceeds the Dedicated Funding Debt to be issued in FY3, reduce the Allocated Contribution by the amount of Carryover Funding that exceeds the anticipated Dedicated Funding Debt in FY3.

(c) **Revenue Shortfalls.**

If the reconciliation process conducted under subsection (a) of this Section reveals that there are shortfalls in revenues for the Capital Improvement Program due to late or insufficient contributions by a Contributing Jurisdiction or to the receipt of less than the assumed level of Federal funds, or other funds that support the CIP, WMATA shall develop a recovery plan for addressing such shortfalls. Such recovery plan, as approved by the WMATA Board of Directors through its annual

budget process, shall include one or more of the following alternatives: (1) utilization of Short-Term Debt or other Funding Sources; (2) value engineering, project re-design, or other cost reduction measures for future Projects and Programs; (3) re-scheduling of Projects and Programs in the Capital Improvement Program; (4) subject to agreement of the Contributing Jurisdictions, increasing the levels of Allocated Contributions from the Contributing Jurisdictions; and/or (5) the implementation of Project Deferrals under subsection (e) of this Section.

(d) Revenue Increases.

If the reconciliation process conducted under subsection (a) of this Section reveals that Federal or other funds, excluding Allocated Contributions, have been received which substantially exceed the assumed level of funding, such excess funds shall be applied (1) to the unfunded priorities in the Capital Improvement Program or to other needs identified by the WMATA Board; or (2) to any outstanding Dedicated Funding Debt or Short-Term Debt thereby increasing the funding available to implement the CIP, as determined by the WMATA Board of Directors through its annual budget process.

(e) Project Deferrals.

If WMATA is unable to satisfactorily address revenue shortfalls under subsection (c) of this Section, the WMATA Board may, through the next WMATA budget process, or through the Capital Budget modification process, modify the Capital Improvement Program to defer certain Projects or Programs in order to assure that the Capital Improvement Program can be funded during the term of this Agreement within the amount of available financial resources.

(f) Financial Records.

(1) Maintenance of Records. -- During the term of this Agreement, WMATA agrees to maintain separate and complete accounting records which are consistent with generally accepted governmental accounting procedures and which accurately reflect all income and expenditures of funds which may be provided under this Agreement. WMATA will retain all such CIP records for the same period that records are required to be kept for the FTA or other federal grants, unless there is an outstanding written Contributing Jurisdiction or FTA financial or audit question, which is not resolved by the Contributing Jurisdiction or FTA auditor. The records of WMATA must be in sufficient detail to determine the character and timing of fund items; and of contract obligation and expenditure transactions authorized by this Agreement.

(2) Litigation Records. -- In addition to the foregoing, in the event that any Contributing Jurisdiction's bond, the proceeds of which were used to meet the funding obligation of the Agreement or any transaction pertaining to such Contributing Jurisdiction's bond, is the subject of any tax, securities or similar federal or state law investigation, inquiry or suit, WMATA shall promptly allow the Contributing Jurisdiction access, at the Contributing Jurisdiction's expense, to any record, not otherwise protected by a legal privilege, it may have relating to WMATA's use of the proceeds of such Contributing Jurisdiction's bond so that the Contributing Jurisdiction may participate and respond to any aspect of such investigation, inquiry or suit. In the event WMATA is notified that any Contributing Jurisdiction's bond, the proceeds of which were used to meet funding obligations of this Agreement or any transaction pertaining to any such Contributing Jurisdiction's bond, is the subject of any tax, securities or similar federal or state law investigation, inquiry or suit, WMATA shall promptly notify the Contributing Jurisdiction of such

occurrence a shall advise the Contributing Jurisdiction of all aspects of the conduct or any response WMATA may make in such regard.

(3) Audits.

(A) Timing for Performance. -- A Contributing Jurisdiction or its agent may perform an audit of WMATA's expenditures of funds provided by this Agreement. The request for the performance of such audit may cover a period of up to six (6) audited fiscal years immediately preceding such request. Any such audit shall be commenced within sixty (60) days after the date of the request. The Contributing Jurisdiction will assume all financial responsibility for any costs associated with the performance of such audits. If more than one Contributing Jurisdiction initiates an audit under this paragraph, the audits may be consolidated, at the Contributing Jurisdictions' election, into a single audit for the applicable fiscal years and the Contributing Jurisdictions participating in the audit shall share in the cost of the audit. WMATA agrees to cooperate fully with the Contributing Jurisdiction(s) or its authorized agent(s) in the conduct of any audit carried out in accordance with this paragraph.

(B) Audit Results. -- If it is determined by the auditor as a result of such audit under this section that funds provided by the Contributing Jurisdiction have not been expended pursuant to the terms and conditions of this Agreement and CIP or have been administered in a way contrary to law, WMATA shall make appropriate accounting adjustments consistent with final audit findings. Appropriate adjustments will be made in the amounts due to WMATA from such Contributing Jurisdiction, in the next fiscal year in order to make said Contributing Jurisdiction whole. If it is determined that one or more Contributing Jurisdictions has underpaid, WMATA shall make appropriate accounting adjustments in the amount due to WMATA from

such Contributing Jurisdiction(s) in the next fiscal year in order to make WMATA whole. The Contributing Jurisdictions agree that any such 'make-whole' amounts shall not count against the up to 3% increases on Allocated Contribution increases. In the event that an audit results in WMATA being instructed to increase or decrease the funding provided by another Contributing Jurisdiction(s) WMATA shall provide a corrective plan to the Contributing Jurisdictions, regarding credits and debits to be applied to the next fiscal year Allocated Contributions. WMATA shall implement the corrective plan unless any of the Contributing Jurisdictions provide notice of an objection to the plan within thirty (30) days of WMATA sending the corrective plan. Should any Contributing Jurisdiction provide notice of an objection to the corrective plan, any Contributing Jurisdiction may begin the dispute resolution process contained in this Agreement.

(C) Audit Findings. – Any issue identified by the auditor during the course of the audit that may result in a finding will be discussed with WMATA management, who may provide additional input or information to the auditor. If WMATA management disagrees with a preliminary audit finding, reasonable efforts shall be made to resolve the dispute before the final audit report is issued. The auditor's final report will contain the audit findings along with a response from WMATA and, if appropriate, any rebuttal from the auditor.

SEC. 6 IMPLEMENTATION AND DISPUTE RESOLUTION

(a) Implementation of this Agreement.

The Parties intend to coordinate the activities undertaken pursuant to this Agreement through the Jurisdictional Coordinating Committee (JCC) as that committee may exist during the term of this Agreement. The person or persons serving on the JCC shall be the single point of contact for coordinating dissemination of information received pursuant to this Agreement from the other

Parties amongst and within members of their organization who require or request access to such information. Notwithstanding the foregoing, in the event of a dispute or other event requiring formal notice pursuant to this Agreement, such notice shall be provided to the persons identified in Section 12.

(b) Informal Resolution.

The Parties agree to use all reasonable efforts to resolve any disputes, which arise under or otherwise relate to this Agreement. If the Parties, at staff level, cannot resolve such a dispute through initial discussions within thirty (30) days after the date it first arises, then the Party seeking a resolution shall, provide notice to the other Parties. The written notice shall include the nature of the dispute, the issues involved, and shall include the name of a person authorized to lead the dispute resolution. Each Party shall respond within thirty (30) days, stating their position on the issue presented, their proposal for resolution, and the name of a person authorized to lead the dispute resolution. The identified persons shall then meet within the next thirty (30) days in an attempt to resolve the dispute. If the dispute is not resolved within thirty (30) days following the date of the last meeting, any Party to the dispute may refer the matter to the WMATA Board for resolution.

(c) Alternative Resolution.

If a dispute arising under this Agreement is not resolved pursuant to subsection (b) of this Section, the Parties thereto may agree to pursue a mutually acceptable alternative dispute resolution procedure. If such a procedure is not utilized or does not result in a final and binding resolution of the dispute, any Party thereto may pursue a civil action for appropriate relief in a court of competent jurisdiction.

SEC. 7 REPRESENTATIONS AND WARRANTIES

(a) By WMATA.

WMATA makes the following representations as of the Effective Date of this Agreement as a basis for the undertakings pursuant to this Agreement.

- (1) WMATA has full power and authority to enter into the transactions contemplated by this Agreement and to carry out its obligations hereunder;
- (2) WMATA by proper WMATA Board action has duly authorized the execution and delivery of this Agreement;
- (3) When executed and delivered by the Contributing Jurisdictions and by WMATA, this Agreement will constitute the legal, valid and binding obligation of WMATA enforceable in accordance with its terms, except as such enforceability is limited by annual appropriations, bankruptcy, reorganization, insolvency, moratorium or other laws affecting the enforcement of creditors' rights generally.
- (4) No director, officer, or employee of WMATA who exercises or has exercised any functions or responsibilities over any procurement contract in connection with the Capital Improvement Program shall have or obtain a personal or financial interest or benefit from any activity in connection with the procurement contract or have an interest in any contract, subcontract, or agreement with respect thereto during the term of this Agreement.

(b) By Contributing Jurisdictions.

Each Contributing Jurisdiction makes the following representations as of the Effective Date of this Agreement as a basis for the undertakings pursuant to this Agreement.

- (1) The Contributing Jurisdiction has all necessary power and authority to enter into the transactions contemplated by this Agreement and to carry out its individual obligations hereunder;
- (2) Such Contributing Jurisdiction has individually duly authorized the execution and delivery of this Agreement;
- (3) When executed and delivered by all Contributing Jurisdictions, this Agreement will constitute the legal, valid and binding obligation of the individual entity enforceable in accordance with its terms, except as such enforceability is limited by annual appropriations, bankruptcy, reorganization, insolvency, moratorium or other laws affecting the enforcement of creditors' rights generally;
- (4) No officer or employee of any Contributing Jurisdiction who exercises or has exercised any functions or responsibilities over a procurement contract in connection with the Capital Improvement Program shall have or obtain a personal or financial interest or benefit from any activity in connection with the procurement contract or have an interest in any contract, subcontract, or agreement with respect therewith during the term of this Agreement.

SEC. 8 EFFECTIVE DATE AND TERM OF AGREEMENT

(a) Effective Date.

This Agreement shall be entered upon the date of execution by the last signatory and shall be effective as of July 1, 2021.

(b) Term.

The term of this Agreement shall begin on the Effective Date and shall terminate on June 30, 2027. Where there are projects which have been started during the term of the Agreement or where bonds or other financial instruments have been issued pursuant to the 2010 CFA (for those Contributing Jurisdictions who did not opt out of the Long Term Debt issuance) or pursuant to this Agreement, the Contributing Jurisdictions, subject to annual appropriations, agree to continue to make their Allocated Contributions for those projects or debt service until the conclusion of the projects or the final maturity of the bonds or other financial instruments.

(c) Future Negotiations.

No later than June 30, 2026, WMATA and the Contributing Jurisdictions agree to commence discussions for a successor capital funding agreement. WMATA will ask each Contributing Jurisdiction for an affirmative response to whether it wishes to participate in a successor agreement. Each Contributing Jurisdictions shall give an affirmative notice in accordance with Section 12 of this Agreement no later than October 1, 2026, either that: (1) it intends to continue under the Agreement, subject to amendment only of the projects included in the CIP and the cost of a new 6 year CIP and the renegotiation of the Local Funding Agreement with the District of Columbia (2) it requests negotiation of additional terms of the agreement in addition to those specified in the preceding clause or (3) it wishes to terminate the agreement as of June 30, 2027. It is the Parties' desire to limit negotiations only to the items listed in clause (1) if at all possible. A failure to timely respond will be deemed an election to terminate the Agreement. If a Contributing Jurisdiction gives or is deemed to give the required notice that it is terminating its participation in this Agreement, then the Agreement shall terminate as of June 30, 2027, except as covered by subsection (b), above.

(d) Final Distribution.

In the event that this Agreement is terminated pursuant to this section 8, any amounts remaining at the expiration of this Agreement shall be first used to fund any remaining unfunded Projects and Programs in the Capital Improvement Program as indicated in the attached Capital Improvement Program, and then, if any funds remain, will be credited or refunded to the Contributing Jurisdictions, as directed by the Contributing Jurisdictions.

SEC. 9 RECITALS

The Recitals set forth in this Agreement are material parts of this Agreement and are binding on the Parties to the same extent as the other terms and conditions hereof.

SEC. 10 NO THIRD PARTY BENEFICIARIES

The Parties to this Agreement do not intend any non-signatory to this Agreement or any other third Party to be a third Party beneficiary to this Agreement, nor do the Parties intend for any such third Party to have any rights or benefits under this Agreement or to have standing to bring an action or claim in any court or other forum to enforce any provision of this Agreement.

SEC. 11 AMENDMENTS

This Agreement may be amended or modified only by written agreement duly executed by all the Parties.

SEC. 12 NOTICES

All notices under this Agreement shall be in writing and shall be deemed to have been sufficiently given or served when presented personally or sent by the U.S. Postal Service or by a courier service or national overnight delivery service or via electronic mail, to any Party as follows:

To the State of Maryland:

Department of Transportation:
Director, Washington Area Transit Office
Maryland Department of Transportation
4351 Garden City Drive, Suite 305
Hyattsville, MD 20785

With copies to:
Chairman, Washington Suburban Transit
Commission
4351 Garden City Drive, Suite 305
Hyattsville, MD 20785

and

Secretary
Maryland Department of Transportation
7201 Corporate Center Drive
Hanover, MD 21076

To Arlington County, Virginia:

Director
Department of Management and Finance
2100 Clarendon Boulevard, Suite 501
Arlington, VA 22201

With a copy to:

Director
Department of Environmental Services
2100 Clarendon Boulevard, Suite 900
Arlington, VA 22201

To the District of Columbia:

Director
District Department of Transportation
250 M St. SE
Washington, D.C. 20003

With copies to:

Chief Financial Officer for the District of Columbia
John A. Wilson Building, Room 203
1350 Pennsylvania Avenue, N.W.
Washington, DC 20004

and

Attorney General for the District of Columbia
John A. Wilson Building, Room 409
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

To Fairfax County, Virginia:

Director
Fairfax County Department of Transportation
4050 Legato Road, 4th Floor

With a copy to:
Chief, Coordination and Funding Division
Fairfax County Department of Transportation
4050 Legato Road, 4th Floor
Fairfax, VA 22035

Fairfax, VA 22035-5511

Attn: Todd Wigglesworth (or designee)
Email: Todd.Wigglesworth@fairfaxcounty.gov

To County of Loudoun, Virginia:

With a copy to:

County Administrator
County of Loudoun
1 Harrison Street, S.E., 5th Floor
P. O. Box 7000
Leesburg VA 20175

Director
Loudoun County Department of Transportation
and Capital Infrastructure
101 Blue Seal Drive, S.E.
Suite 102, MSC #64
P. O. Box 7500
Leesburg, VA 20177

And
Assistant Director
Transportation Services
Department of Transportation and Capital
Infrastructure
Loudoun County Government
101 Blue Seal Drive, S.E. Suite 102
Leesburg, Virginia 20177-7500
Att: Penny S. Newquist
Email: Penny.Newquist@Loudoun.gov

To the City of Falls Church, Virginia:

City Manager
City of Falls Church
300 Park Avenue
Falls Church, VA 22046

To the City of Alexandria, Virginia:

With a copy to:

City Manager
City of Alexandria
301 King Street
Alexandria, VA 22314

Director of Transportation & Environmental
Services
City of Alexandria
301 King Street
Alexandria, VA 22314

To the City of Fairfax, Virginia:

With a copy to:

Mayor
City of Fairfax
10455 Armstrong Street

Transportation Director
City of Fairfax
10455 Armstrong Street

Fairfax, VA 22030

Fairfax, VA 22030

**To the Washington Metropolitan Area
Transit Authority:**

General Manager and Chief Executive Officer
Washington Metropolitan Area Transit
Authority
600 Fifth Street, N.W.
Washington, D.C. 20001

With a copy to:

The General Counsel
Washington Metropolitan Area Transit Authority
600 Fifth Street, N.W., Second Floor
Washington, D.C. 20001

SEC. 13 SUCCESSORS AND ASSIGNS

This Agreement shall be binding on the successors and assigns of the Contributing Jurisdictions and WMATA.

SEC. 14 NO DEBT GUARANTEES

No Contributing Jurisdiction guarantees the debt of WMATA or any other Contributing Jurisdiction, nor any obligation of WMATA or any other Contributing Jurisdiction.

SEC. 15 REQUIREMENT FOR ANNUAL APPROPRIATIONS

Notwithstanding any other provisions of this Agreement, all obligations of the Contributing Jurisdictions are subject to discretionary annual appropriation of funds by the governing bodies thereof or other appropriate legislative bodies thereof and shall be consistent with the anti-deficiency laws applicable to each Contributing Jurisdiction.

SEC. 16 COUNTERPARTS

This Agreement may be executed in identical counterparts, each of which shall constitute an original and all of which shall constitute, collectively, one agreement. The counterpart with the

most recent date shall determine the date of entry of this Agreement by the Parties listed on page one.

DRAFT

IN WITNESS WHEREOF, WMATA and the Contributing Jurisdictions have executed this Agreement as of the Effective Date.

**WASHINGTON METROPOLITAN AREA
TRANSIT AUTHORITY**

Attest:

By:

Witness

Thomas J. Webster, Executive Vice President
Strategy, Planning and Program Management

Dated: _____

[signatures continued on following page]

STATE OF MARYLAND

acting by and through the Washington Suburban Transit District and the Department of
Transportation

**MARYLAND DEPARTMENT OF
TRANSPORTATION**

Attest:

By:

Witness

Secretary [Seal]

and

**WASHINGTON SUBURBAN
TRANSIT DISTRICT**

Attest:

By:

Witness

Chairman [Seal]

Dated: _____

[signatures continued on following page]

DISTRICT OF COLUMBIA

Attest:

By:

Witness

Mayor [Seal]

Dated: _____

[signatures continued on following page]

**COUNTY BOARD OF ARLINGTON
COUNTY, VIRGINIA**

Attest:

By:

Clerk to the County Board

Chair
County Board
Arlington County, Virginia

[Seal]

Dated: _____

[signatures continued on following page]

FAIRFAX COUNTY, VIRGINIA

Attest:

By:

Clerk to the Board of Supervisors

County Executive
Fairfax County, Virginia

[Seal]

Dated: _____

[signatures continued on following page]

COUNTY OF LOUDOUN, VIRGINIA

Attest:

By:

Clerk to the Board of Supervisors

County Administrator
Loudoun County, Virginia

[Seal]

Dated: _____

[signatures continued on following page]

CITY OF ALEXANDRIA, VIRGINIA

Attest:

By:

City Clerk

_____[Seal]
City Manager

Dated: _____

[signatures continued on following page]

DRAFT

CITY OF FAIRFAX, VIRGINIA

Attest:

By:

City Clerk

Mayor [Seal]

Dated: _____

[signatures continued on following page]

CITY OF FALLS CHURCH, VIRGINIA

Attest:

By:

City Clerk

City Manager

[Seal]

Dated: _____

DRAFT

Attachment 1 – FY2022 to FY2027 CIP Sources and Uses of Funds

Financial Plan - Allocation of State & Local Contributions

	FY2022 Budget	FY2023 Plan	FY2024 Plan	FY2025 Plan	FY2026 Plan	FY2027 Plan	6 Year Total
Federal Funding							
Federal Formula Programs	324,703,720	321,106,774	321,106,774	321,106,774	321,106,774	321,106,774	1,930,237,590
Federal RSI/PRIIA	148,500,000	-	-	-	-	-	148,500,000
Other Federal Grants	15,712,966	11,531,543	10,606,785	4,006,854	6,000,000	5,100,000	52,958,147
Total - Federal Grants	488,916,686	332,638,317	331,713,559	325,113,628	327,106,774	326,206,774	2,131,695,737
State & Local Funding Contributions							
District of Columbia							
Formula Match & System Performance	99,663,709	102,157,842	104,659,263	106,800,042	107,065,870	110,999,394	631,346,120
RSI/PRIIA	49,500,000	49,500,000	49,500,000	49,500,000	49,500,000	49,500,000	297,000,000
Dedicated Funding	178,500,000	178,500,000	178,500,000	178,500,000	178,500,000	178,500,000	1,071,000,000
Subtotal - District of Columbia	327,663,709	330,157,842	332,659,263	334,800,042	335,065,870	338,999,394	1,999,346,120
State of Maryland							
Montgomery County	46,334,910	47,902,028	49,518,478	51,332,737	53,837,692	55,210,140	304,135,985
Prince George's County	47,477,330	48,572,081	49,929,973	51,118,402	51,764,301	53,607,263	302,469,350
Maryland RSI/PRIIA	49,500,000	49,500,000	49,500,000	49,500,000	49,500,000	49,500,000	297,000,000
Maryland Dedicated Funding	167,000,000	167,000,000	167,000,000	167,000,000	167,000,000	167,000,000	1,002,000,000
Subtotal - Maryland	310,312,240	312,974,109	315,948,451	318,951,139	322,101,993	325,317,403	1,905,605,335
Commonwealth of Virginia							
City of Alexandria	12,599,122	13,005,424	13,394,167	13,809,767	14,261,824	14,671,606	81,741,910
Arlington County	22,791,984	23,652,841	24,470,494	25,441,423	26,893,536	27,506,783	150,757,061
City of Fairfax	713,407	743,237	773,845	812,411	881,830	896,891	4,821,622
Fairfax County	40,600,208	42,091,821	43,589,161	45,349,846	48,036,448	49,131,907	268,799,391
City of Falls Church	776,099	795,954	815,052	831,454	832,652	863,231	4,914,442
Loudoun County	5,471,946	5,800,347	6,112,790	6,565,037	7,548,799	7,569,426	39,068,344
Virginia RSI/PRIIA	49,500,000	49,500,000	49,500,000	49,500,000	49,500,000	49,500,000	297,000,000
Virginia Dedicated Funding - Unrestricted	122,883,455	122,883,455	122,883,455	122,883,455	122,883,455	122,883,455	737,300,730
Virginia Dedicated Funding - Restricted	31,616,545	31,616,545	31,616,545	31,616,545	31,616,545	31,616,545	189,699,270
Congestion Mitigation and Air Quality (CMAQ)	1,016,889	645,768	626,951	601,713	763,000	763,000	4,417,323
Subtotal - Virginia	287,969,654	290,735,393	293,782,459	297,411,652	303,218,089	305,402,845	1,778,520,093

Jurisdiction Planning Projects	3,000,000	3,000,000	3,000,000	3,000,000	3,000,000	3,000,000	18,000,000
Silver Line (MWAA)	12,951,000	867,000	-	-	-	41,133,000	54,951,000
Potomac Yard (Alexandria)	149,500,000	18,987,000	-	-	-	-	168,487,000
Purple Line (MDOT)	4,068,000	-	-	-	-	-	4,068,000
Subtotal - Jurisdictional Reimbursable	169,519,000	22,854,000	3,000,000	3,000,000	3,000,000	44,133,000	245,506,000
Total - State & Local	1,095,464,603	956,721,344	945,390,174	954,162,833	963,385,953	1,013,852,641	5,928,977,547
Debt	1,023,474,711	1,341,813,591	995,432,848	937,698,099	663,892,396	605,858,090	5,568,169,736
Grand Total Funding *	2,607,856,000	2,631,173,252	2,272,536,581	2,216,974,559	1,954,385,123	1,945,917,506	13,628,843,021

* Total funding requirement includes capital program expenditures, debt service, and estimated revenue loss from major shutdowns

Note: Does not assume reauthorization of Federal PRIIA beyond FY2022

Financial Plan by Investment Category

<i>(Dollars in Millions)</i>	FY2022 Budget	FY2023 Plan	FY2024 Plan	FY2025 Plan	FY2026 Plan	FY2027 Plan	6-Year Total
Railcars	\$342	\$346	\$437	\$530	\$517	\$423	\$2,595
Rail Systems	272	337	308	257	203	213	1,590
Track and Structures	343	476	259	236	237	247	1,798
Stations and Passenger Facilities	572	369	328	302	268	272	2,111
Bus and Paratransit	515	550	492	418	184	196	2,354
Business Support	547	448	239	206	220	227	1,888
Total Capital Program	\$2,591	\$2,526	\$2,064	\$1,949	\$1,628	\$1,578	\$12,336
Revenue Loss from Capital Projects	17	10	10	10	10	10	67
Debt Service-Dedicated Funding ¹	0	95	199	258	316	358	1,226
Total Capital Program Cost	\$2,608	\$2,631	\$2,273	\$2,217	\$1,954	\$1,946	\$13,629

¹ Projections subject to change based on actual debt requirements and terms of future debt issuance

(CIP0029) Warehouse Vertical Store Unit

Initiative Type: Project
Invest. Category: Business Support Investments

Mode: Systemwide
Invest. Program: Support Equipment/Services

Description

This project installs and reorganizes vertical and horizontal storage units, shelving and racking for storage of repair parts in order to allow greater storage capacity, inventory accuracy and enhanced safety. This project also upgrades parts storage systems with bar code systems for better parts location features.

**Strategic Objectives Supported**

Safety



Cust. Sat.



Reliability



Ridership



Op. Impact

Location

Metro Supply Facility

Various Storerooms at Railyards and Bus Garages

Outcome

In FY2021, this project will fund the procurement and replacement of vertical and horizontal storage units, warehouse security systems, and inventory control systems at the Metro Supply Facility and various storerooms located at railyards and bus garages. This project supports Metro's state of good repair.

Cost (\$M)

Fiscal Year	Budget	Actual
LTD Expenses		9.0
FY2020	0.2	
FY2021	1.8	
FY2022	0.0	
FY2023	0.0	
FY2024	0.0	
FY2025	0.0	
FY2026	0.0	
FY2021-2026 Total	1.8	
Total Cost	11.0	

Anticipated Funding Sources

Funding Source(s) for FY2021	Amount (\$M)
Dedicated Funding	1.8
Total Project Cost	1.8

Fiscal Year	FY20	FY21	FY22	FY23	FY24	FY25	FY26	FY27	FY28	FY29	FY30
PLANNING											
Needs Identification											
Development and Evaluation	✓										
EXECUTION											
Project Development	✓	✓									
Implementation	✓	✓									

Attachment 3 – JAC Debt Process

I. Existing JAC Debt

- A. As of the date of this Agreement, one or more Contributing Jurisdictions have participated in (formerly “opted-in”) to debt issuances made by WMATA in lieu of making their Allocated Contributions in cash.
- B. Those Opt-In Jurisdictions hereby authorize WMATA, subject to applicable requirements of the WMATA Board of Directors and the WMATA Compact, to refinance, buy-down, redeem, or undertake other transactions related to all JAC Debt currently outstanding so long as the actions taken result in no net increase to the debt service required from any one Opt-In Jurisdiction and the following procedures are undertaken:
 - 1. WMATA shall provide sixty (60) calendar days’ notice to any Jurisdiction impacted by a refinancing of JAC Debt undertaken pursuant to this authorization.
 - 2. The notice shall include any changes to the anticipated yearly payments, term of debt, and net present value associated with the JAC Debt being refinanced.
 - 3. Any Jurisdiction choosing not to participate in the JAC Debt Refinance shall make payment to WMATA sufficient to cover their share in the outstanding JAC Debt three-days before the scheduled closing on the JAC Debt Refinance.
- C. Notwithstanding the above, the Opt-In Jurisdictions may authorize WMATA to refinance existing JAC Debt on terms that increase debt service.

II. New JAC Debt

- A. WMATA will issue new JAC Debt as a means for a Contributing Jurisdiction to provide their Allocated Contribution in lieu of cash payments when:
 - 1. The requesting Contributing Jurisdiction makes a written request to WMATA stating the amount of JAC Debt to be issued;
 - 2. WMATA GM/CEO and the WMATA Board have approved the request; and
 - 3. All other Contributing Jurisdictions have had no less than forty-five (45) calendar days, as established by WMATA’s notice of intent to issue, to opt-in to the new JAC Debt. Parties not affirmatively opting-in to the new debt shall be excluded from the issuance and shall make their Allocated Contribution payments as scheduled.
- B. In no case will WMATA be required to issue JAC Debt more than once in a WMATA Fiscal Year.
- C. The terms of any New JAC Debt issuance shall be set by the WMATA Board of Directors in conjunction with the jurisdictions participating in the JAC Debt issuance.
- D. Participants in new JAC Debt shall be responsible for all required debt service payments through the end of the term of the issuance.

Attachment 4 – Board Resolutions

List of Board Resolutions that create the Operating Subsidy Formula as of the Effective Date, as may be amended or revised by action of the Board.

95-14	APPROVAL OF SUBSIDY ALLOCATION FORMULAS
98-27	APPROVAL OF METROBUS SUBSIDY ALLOCATION FORMULA
98-32	APPROVAL OF NON-REGIONAL METROBUS SUBSIDY ALLOCATION
99-31	APPROVAL OF PARATRANSIT FORMULA
2019-34	APPROVAL OF CHANGE TO REGIONAL METROBUS SUBSIDY ALLOCATION FORMULA FOR LOUDOUN COUNTY

PRESENTED & ADOPTED: MAY 11, 1995
SUBJECT: APPROVAL OF SUBSIDY ALLOCATION FORMULAS

#95-14
RESOLUTION
OF THE
BOARD OF DIRECTORS
OF THE
WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

WHEREAS, Metrobus, Metrorail and Paratransit operating costs are expected to exceed the respective operating revenues; and

WHEREAS, the Board of Directors, the Budget Committee, the staffs of the local jurisdictions and WMATA staff have over the last several years analyzed the various factors used to distribute Metrobus and Paratransit costs and revenues, and the Metrorail subsidy.

NOW THEREFORE BE IT RESOLVED that the Metrobus and Paratransit costs and revenues and the Metrorail operating assistance shall be allocated among the jurisdictions using the formulas in effect in Fiscal 1995 and as stated in Attachment I of this Resolution commencing with FY 1996 and continuing until changed by the Board of Directors.

BE IT FURTHER RESOLVED, that this resolution shall be effective July 1, 1995.

Reviewed as to form and legal sufficiency.



Robert L. Polk
General Counsel

Motion by Mr. Barnett, seconded by Mrs. Mack, and unanimously approved, as amended.

Ayes: 6 - Mr. Wineland, Mrs. Whipple, Mr. Evans, Mr. Barnett, Mrs. Mack, and Mr. Berger

ATTACHMENT I

I. METROBUS

A cost-revenue formula is used to allocate jurisdiction subsidy for Metrobus operations. Metrobus costs net of subcontract charter are assigned to one of three categories - fixed, mileage, or hourly. Fixed costs, as defined for allocation purposes, include all expenses for overhead, operator training and utility payhours, wages for service vehicle mechanics, general insurance premiums, security, safety, revenue collection, scheduling, residual liabilities, and all supervisory costs except lead mechanic wages and a portion of the salary for the garage shift supervisors. Mileage-related costs include revenue vehicle mechanic wages and overtime, current year expenses for workers' compensation for operators and third party claims, general liability insurance, and all revenue vehicle costs for diesel fuel, tire rental, and parts. Hourly-related costs are primarily operator wages and related fringe benefits plus workers' compensation for all personnel other than bus operators.

Each allocation cost category is charged to the jurisdictions as follows:

- (a) All fixed costs are charged to the District, the two Maryland Counties, and Northern Virginia based on the percent distribution of 1975 peak period buses. Fixed costs are allocated among the Virginia jurisdictions in proportion to the variable cost allocation within Virginia.
- (b) All mileage-related costs are allocated in proportion to each jurisdiction's share of platform miles.
- (c) All hourly-related costs are allocated in proportion to each jurisdiction's share of platform hours.

Platform miles and platform hours are measured from the time a bus leaves a garage until it returns to a garage. This data is compiled for each route and route variation and within each jurisdiction where operated. The platform miles and hours are associated with either a revenue trip (in-service) or a non-revenue trip (deadhead). All revenue trips are assigned, a "dedication" code that specifies (1) which jurisdiction(s) is charged for the miles and hours and (2) for trips serving more than one jurisdiction, how the miles and hours are shared. The miles and hours for all deadhead trips and layover time on a given bus line are prorated among the jurisdictions in accordance with each jurisdiction's share of revenue miles and hours for that line. The sum, by jurisdiction, of all miles and hours scheduled for regular route service is computed for the fiscal year, taking into consideration all scheduled service adjustments and running time adjustments.

For each revenue bus trip that a jurisdiction pays for (cost), the jurisdiction receives credit for all or a portion of the revenue collected on that trip, based on the dedication code of the trip. The allocated passenger revenues are subtracted from each jurisdiction's allocated cost to determine the jurisdiction bus subsidy. The Authority contracts for a bus passenger survey every one or two years to determine the appropriate share of revenue for each jurisdiction. The sampling techniques, survey design, and revenue allocation procedures have all been reviewed and validated by the University of Maryland Transportation Department and are incorporated into the scope of services. The accuracy objectives for the survey and revenue allocations are ± 5 percent for each jurisdiction and ± 3 percent for the system with a 95 percent confidence level. This has traditionally required a survey sample of approximately 2,600 weekday and 1,500 weekend revenue trips selected at random within a stratified universe file of 16,000 weekday and weekend trips. The passengers on each sampled trip are asked to complete a questionnaire. The questionnaire asks for each passenger's location of boarding and alighting, the method of fare payment, and the passenger type. The passenger response rate is then factored to the total data collected on sampled trips. Revenues are distributed among the jurisdictions using the data collected from the survey, plus passenger revenue computations, garage revenue collections, and flash pass sales.

The following revenue allocation rules have been approved by the Board and are applied as follows:

- All farebox revenues from service dedicated to a single jurisdiction are allocated to that jurisdiction, unless a transfer is made to service dedicated to another jurisdiction.
- In the District of Columbia and Maryland, the farebox revenues of passengers transferring from service dedicated to one jurisdiction to service dedicated to another jurisdiction are allocated in proportion to the fares which would be charged from origin to the transfer point and from the transfer point to the destination.
- Metrobus revenues from interstate non-dedicated service are assigned on the basis of the passenger's miles in each state.
- Within Virginia, Metrobus revenues are (a) dedicated to one jurisdiction, or (b) assigned to the boarding jurisdiction, or (c) assigned to the alighting jurisdiction, or (d) joint dedicated to two or more jurisdictions.
- MD base flash pass revenues are assigned to Maryland and VA base flash pass revenues to Virginia. DC base flash passes may be used for the base fare in any jurisdiction and revenues are allocated based on Metrobus trip patterns of users of these passes as determined by the passenger survey.

- Revenues from the interstate flash passes are distributed based on Metrobus trip patterns of the users of these passes as developed from the Bus Passenger Survey.
- The intra-Virginia distribution of the revenues from the VA base pass and the intra-Maryland distribution of revenues from the MD base pass also use the results from the Bus Passenger Survey.

The WMATA Board of Directors on May 10, 1984 adopted resolutions regarding the bus transfer arrangement with Ride-On and the bus transfer agreement and acceptance of flash passes by Alexandria Transit Company and the Fairfax Connector. The revenue allocation programs are designed to comply with these resolutions.

II. METRORAIL

Two allocation formulas are used to determine the subsidy for each jurisdiction - the rail subsidy allocation formula and the max fare subsidy formula.

(A) Metrorail Subsidy

Each jurisdiction's share is determined as follows:

- One-third of the subsidy is distributed on the basis of the relative number of stations in operation in each jurisdiction. This factor includes all stations in the system with the exception of the Arlington Cemetery Station.
- One-third of the subsidy is distributed on the basis of a weighted average of urbanized area population and population density using the most current census data and the most current census population definition of the urbanized area.
- One-third of the subsidy is distributed on the basis of the weekday Metrorail passengers by jurisdiction of residence. This factor is computed using data from the most recent Metrorail Passenger Survey.

(B) Max Fare Subsidy

The max fare subsidy is one-half the revenue differential between what riders travelling more than six composite miles actually pay and what they would have paid without a tapered mileage charge or a fare cap. The max fare subsidy by jurisdiction is determined from the Metrorail passenger survey. The charge to each jurisdiction reflects the residence of the riders receiving the benefit of the reduced peak period fares and the value of the benefit received.

III. PARATRANSIT¹

The costs to the Authority for providing paratransit services shall be divided among four tiers:

TIER 1 - FIXED COSTS

Fixed costs are continuing fixed overhead costs that do not fluctuate relative to the level of paratransit service that is operated. The allocation of fixed costs will be allocated based on the proportion of ADA-certifications by jurisdiction of residence of the participating jurisdictions.

TIER 2 - ALLOCATED ADMINISTRATIVE COSTS

Allocated administrative costs are continuing overhead costs that fluctuate and are related to the level of paratransit service provided. The allocation of allocated administrative costs will be based on actual demand (trips requested) for the regional paratransit system.

TIER 3 - DIRECT OPERATING SUBSIDIES

Direct operating subsidies are the direct paratransit-related operating costs, including costs paid to regional paratransit contractors less revenues collected from patrons. These subsidies will be allocated on the basis of actual usage of the regional paratransit system by the jurisdiction of residence of the user.

TIER 4 - VISITOR TRIP SUBSIDIES

Visitor trips are those trips taken by a non-resident of the participating jurisdictions who utilize the 21-day visitor temporary certification allowed by the ADA regulations. The subsidies (costs less revenues) of trips provided to visitors will be allocated based on the origin of boarding of each one-way trip.

¹ Prior to Fiscal 1995 all costs incurred by the Department of ADA were distributed by the paratransit formula, regardless of whether the costs were paratransit costs. Paratransit costs incurred by other departments within the Authority were not distributed by this formula. In Fiscal 1995, the paratransit formula was modified to eliminate all departmental restrictions - all departments can now charge appropriate expenses and staff time to paratransit and the Department of ADA can charge non-paratransit costs to the other appropriate modes. This is consistent with the way all other charges are distributed by formula.

PRESENTED & ADOPTED: JUNE 25, 1998

SUBJECT: APPROVAL OF METROBUS SUBSIDY ALLOCATION FORMULA

#98-27
RESOLUTION
OF THE
BOARD OF DIRECTORS
OF THE
WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

WHEREAS, the Regional Mobility Panel (RMP), created in January 1997, was charged with devising a plan to stabilize and enhance bus services in the National Capital Region; and

WHEREAS, in reviewing the current Metrobus Subsidy Allocation Formula and its impact on the future of Metrobus services in the National Capital Region, the RMP concluded the following in regard to the current formula:

- it relies on outdated information and reduces management's ability to implement system cost savings because these actions may result in cost increases in some jurisdictions; and
- jurisdictions that reduce bus service save more than the resulting system savings and jurisdictions that increase bus service pay more than the resulting system increases; and
- as Metrobus service is reduced in any one jurisdiction, the unit costs for all remaining bus service increases resulting in cost increases in jurisdictions that do not change their service; and

WHEREAS, the RMP has recommended, and the Board of Directors has agreed, that a revised Metrobus subsidy allocation formula for regional Metrobus service be implemented beginning in Fiscal 1999; and

WHEREAS, the Board anticipates that the Member Jurisdictions will agree that conversion to the new Metrobus Subsidy Allocation Formula will begin in Fiscal 1999 with phased transition limits during the period of Fiscal 1999-2002 (as previously

adopted by the Regional Mobility Panel) and that the phased non-federal share of funding for the \$100 million rehabilitation and replacement shortfall requirements will begin in Fiscal 2000 and continue through Fiscal 2003. Beginning in Fiscal 1999, and in every year thereafter, the benefit to all Member Jurisdictions from the application of phased transition limits in the new Regional Bus Service Operating Subsidy Allocation Formula will be reduced proportionate to the lowest percentage contribution made by any benefitting Member Jurisdiction to the phased non-federal shortfall in the Rehabilitation and Replacement Program, including any state funds attributable to that jurisdiction.

NOW, THEREFORE BE IT RESOLVED that the current Metrobus subsidy allocation formula be revised, as recommended by the RMP and agreed to by the Board of Directors, and that a new Metrobus subsidy allocation formula be implemented through a transition plan beginning in Fiscal 1999 and continuing through Fiscal 2002; and

BE IT FURTHER RESOLVED that the Board of Directors adopts a new Metrobus Subsidy Allocation Formula that: allocates the regional Metrobus subsidy on a regional basis; uses data that can be periodically updated; allocates the Metrobus subsidy based on benefits received in each jurisdiction; and evaluates carefully the mechanisms to implement a ridership incentive factor; and

BE IT FURTHER RESOLVED that the following Metrobus Subsidy Allocation Formula for regional Metrobus services shall be adopted based on each jurisdiction's share of the following four factors:

- 25% of Subsidy - a weighted average of urbanized population and population density using 1990 census data and the 1990 population definition of the urbanized area;
- 15% of Subsidy - weekday ridership on the regional routes by jurisdiction of residence;
- 35% of Subsidy - annual revenue miles for the regional routes; and
- 25% of Subsidy - annual revenue hours for the regional routes.

BE IT FURTHER RESOLVED that the Board of Directors adopts the attached transition limits to be applied to each jurisdiction for Fiscal 1999 through Fiscal 2002 as the basis for phasing in the revised Metrobus Regional Subsidy Allocation Formula; and

BE IT FURTHER RESOLVED that the revised Metrobus Subsidy Allocation Formula, as modified by the transition limits prescribed for Fiscal 1999 through Fiscal 2002 attached hereto, shall become effective in Fiscal 1999 and shall remain in effect until changed by the Board of Directors; and

BE IT FURTHER RESOLVED that this resolution shall become effective immediately.

Reviewed as to form and legal sufficiency.

A handwritten signature in dark ink, appearing to read "Robert L. Polk", written over a horizontal line.

Robert L. Polk
General Counsel

Motion by Mrs. Mack, seconded by Mr. Wineland, and unanimously approved.
Ayes: 6 - Mr. Barnett, Mrs. Hanley, Mrs. Mack, Mr. Wineland, Mrs. Walker
and Mr. Kinlow

Jurisdiction	Annual Regional Metrobus Subsidies With Transition Limit			
	Fiscal 1999	Fiscal 2000	Fiscal 2001	Fiscal 2002
District of Columbia	65,136	65,095	65,054	65,013
Montgomery County	17,686	18,430	19,174	19,918
Prince George's County	20,350	21,241	22,132	23,023
Maryland	38,036	39,671	41,306	42,941
Alexandria	8,402	8,084	7,765	7,447
Arlington County	13,013	12,491	11,970	11,448
Fairfax City	45	90	135	180
Fairfax County	18,877	18,148	17,420	16,691
Falls Church	790	719	649	578
Virginia	41,127	39,533	37,938	36,344
Total	144,298	144,298	144,298	144,298

APPROVED FISCAL 1999 SUMMARY OF STATE/LOCAL OPERATING REQUIREMENTS
METROBUS REGIONAL OPERATING SUBSIDY ALLOCATION BY JURISDICTION

	DISTRICT OF COLUMBIA	MONTGOMERY COUNTY	PRINCE GEORGE'S COUNTY	CITY OF ALEXANDRIA	ARLINGTON COUNTY	FAIRFAX CITY	FAIRFAX COUNTY	FALLS CHURCH	TOTAL
REGIONAL SUBSIDY	\$65,135,780	\$17,685,619	\$20,349,608	\$8,402,053	\$13,012,890	\$44,993	\$18,877,219	\$790,038	\$144,298,200
NON-REGIONAL SUBSIDY	<u>12,975,919</u>	<u>3,930,347</u>	<u>9,214,738</u>	<u>594,462</u>	<u>0</u>	<u>0</u>	<u>5,247,334</u>	<u>0</u>	<u>31,962,800</u>
TOTAL METROBUS SUBSIDY	\$78,111,699	\$21,615,966	\$29,564,346	\$8,996,515	\$13,012,890	\$44,993	\$24,124,553	\$790,038	\$176,261,000

PRESENTED: JUNE 25, 1998

ADOPTED; JULY 9, 1998

SUBJECT: APPROVAL OF NON-REGIONAL METROBUS SUBSIDY ALLOCATION

#98-32
RESOLUTION
OF THE
BOARD OF DIRECTORS
OF THE
WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

WHEREAS, the Regional Mobility Panel (RMP), created in January 1997, was charged with devising a plan to stabilize and enhance bus services in the National Capital Region; and

WHEREAS, the RMP recommended a new Metrobus service plan based on the development of regional and non-regional bus routes so that neither the regional bus subsidy nor any individual jurisdiction's subsidy is affected by any change that might occur in non-regional services except for the jurisdiction proposing the change; and

WHEREAS, in reviewing the current Metrobus Subsidy Allocation Formula and its impact on the future of Metrobus services in the National Capital Region, the RMP proposed a new Metrobus Subsidy Allocation Formula for regional Metrobus services beginning in Fiscal 1999 and continuing through Fiscal 2002, with specified annual transition limits; and

WHEREAS, based on the recommendations of the RMP, the Board of Directors has approved a revised Metrobus Subsidy Allocation Formula for regional Metrobus service to be implemented through a transition plan beginning in Fiscal 1999 and continuing through Fiscal 2002; and

WHEREAS, Metrobus subsidies are determined separately for regional and non-regional Metrobus services; and

WHEREAS, as a result of approval by the Board of Directors of a new Metrobus Subsidy Allocation Formula for Regional Metrobus service only, a new subsidy allocation mechanism for non-regional Metrobus services must be approved beginning in Fiscal 1999.

NOW, THEREFORE BE IT RESOLVED that the Metrobus subsidy for non-regional Metrobus service shall be computed by utilizing the following steps:

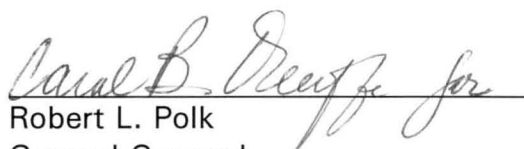
1. Identify the costs of all Metrobus service, regional and non-regional;
2. Identify the costs which would accrue for regional Metrobus service if no non-regional bus service were provided;
3. Determine the costs of non-regional service by subtracting the regional Metrobus costs from the costs of all Metrobus service;
4. Divide the costs for non-regional service as computed in step three by total platform hours for non-regional service;
5. Identify the non-regional platform hours for each jurisdiction;
6. Multiply the platform hours for each jurisdiction by the hourly rate.
7. Determine the revenue for each jurisdiction; and
8. Subtract the revenue as determined in step seven from costs.

The product from the process, as outlined above, equals subsidy by jurisdiction.

BE IT FURTHER RESOLVED that the revised Metrobus Subsidy Allocation process for Non-Regional Metrobus services shall become effective in Fiscal 1999 and shall remain in effect until changed by the Board of Directors; and

BE IT FURTHER RESOLVED that this resolution shall become effective immediately.

Reviewed as to form and legal sufficiency.


Robert L. Polk
General Counsel

Motion by Mrs. Mack, seconded by Mr. Wineland, and unanimously approved.

Ayes: 6 - Mr. Barnett, Mrs. Hanley, Mrs. Mack, Mr. Wineland, Mr. Zimmerman, and Mr. Evans

APPROVED FISCAL 1999 SUMMARY OF STATE/LOCAL OPERATING REQUIREMENTS
METROBUS REGIONAL OPERATING SUBSIDY ALLOCATION BY JURISDICTION

	DISTRICT OF COLUMBIA	MONTGOMERY COUNTY	PRINCE GEORGE'S COUNTY	CITY OF ALEXANDRIA	ARLINGTON COUNTY	FAIRFAX CITY	FAIRFAX COUNTY	FALLS CHURCH	TOTAL
PLATFORM HOURS	310,577	81,365	203,292	13,308	0	0	99,074	0	707,616
NON-REGIONAL COSTS	\$19,942,132	\$5,224,470	\$13,053,350	\$854,532	\$0	\$0	\$6,361,516	\$0	\$45,436,000
NON-REGIONAL REVENUES	<u>(6,966,213)</u>	<u>(1,294,123)</u>	<u>(3,838,612)</u>	<u>(260,070)</u>	<u>0</u>	<u>0</u>	<u>(1,114,182)</u>	<u>0</u>	<u>(13,473,200)</u>
NON-REGIONAL SUBSIDY	\$12,975,919	\$3,930,347	\$9,214,738	\$594,462	\$0	\$0	\$5,247,334	\$0	\$31,962,800

PRESENTED & ADOPTED: JUNE 10, 1999

SUBJECT: APPROVAL OF PARATRANSIT FORMULA

99-31
RESOLUTION
OF THE
BOARD OF DIRECTORS
OF THE
WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

WHEREAS, the Regional Paratransit Coordinating Committee has reviewed the current four-tiered formula used to determine each jurisdiction's share of the MetroAccess subsidy and has concluded that a new allocation formula is needed; and

WHEREAS, the Board Budget Committee has reviewed and agrees with changes to the MetroAccess formula as proposed by the Regional Paratransit Coordinating Committee; and

WHEREAS, the proposed MetroAccess formula more accurately assigns the cost of the MetroAccess service to the jurisdiction served.

NOW, THEREFORE BE IT RESOLVED, that, beginning with fiscal 2000, WMATA's MetroAccess costs will be allocated among the District of Columbia, Montgomery and Prince George's Counties in Maryland, and Northern Virginia as an entity, as follows:

- Direct Costs - the contract carriers' actual per trip, reservation, and eligibility charges will be allocated directly to jurisdictions; and
- Overhead Costs - all other costs of the paratransit program will be allocated in proportion to the direct costs; and

BE IT FURTHER RESOLVED, that the Northern Virginia jurisdictions of Arlington and Fairfax Counties, and the Cities of Alexandria, Fairfax, and Falls Church have determined an appropriate procedure for WMATA to further allocate costs within Northern Virginia:

- Direct Costs - per trip charges will be adjusted to reflect the average time of trips provided for each jurisdiction; and
- Overhead Costs - these costs will be allocated within Northern Virginia based on the direct costs as calculated for each jurisdiction; and

BE IT FURTHER RESOLVED, that this resolution shall become effective for fiscal 2000 and shall remain in effect for subsequent fiscal years unless changed by the Board of Directors; and

BE IT FURTHER RESOLVED that this resolution shall become effective immediately.

Reviewed as to form and legal sufficiency.


Cheryl C. Burke
General Counsel

Motion by Mrs. Mack, seconded by Mr. Zimmerman, and unanimously approved.
Ayes: 6 - Mrs. Hanley, Mrs. Mack, Mr. Trotter, Mr. Zimmerman, Mr. Graham and Mr. Barnett

PRESENTED AND ADOPTED: September 26, 2019

**SUBJECT: APPROVAL OF CHANGE TO REGIONAL METROBUS SUBSIDY ALLOCATION
FORMULA FOR LOUDOUN COUNTY**

2019-34

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

WHEREAS, Pursuant to Resolution 98-27, Board approval is required to change the regional Metrobus subsidy allocation formula for Loudoun County, Virginia; and

WHEREAS, With the addition of Metrorail Silver Line Phase 2 service, Loudoun County will become a funding jurisdiction; and

WHEREAS, Loudoun County has not requested Metrobus service and no Metrobus service is planned for Loudoun County; and

WHEREAS, The Board has requested that WMATA exclude the population density factor in Resolution 98-27 from its regional Metrobus subsidy calculation for Loudoun County; and

WHEREAS, The subsidy contribution for Loudoun County's population density will be provided by the other contributing jurisdictions as applicable;

NOW, THEREFORE, be it

RESOLVED, That Loudoun County shall not be charged any subsidy for the population density component of the regional Metrobus subsidy formula contained in Resolution 98-27, with such subsidy amount being assigned to the other jurisdictions pursuant to the applicable subsidy allocation formula; and be it further

RESOLVED, That all remaining factors in the subsidy allocation formula previously adopted by the Board shall remain in effect for all funding jurisdictions; and be it further

RESOLVED, That the funding obligations under the subsidy allocation formula shall be effective in the WMATA fiscal year containing the Revenue Operations Date for Metrorail Silver Line Phase 2; and be it finally

Motioned by Mr. Smedberg, seconded by Mr. Dorsey

Ayes: 8- Mr. Smedberg, Mr. Bulger, Mr. Goldman, Mr. Horner, Mr. Dorsey, Mr. Marootian, Mr. Rahn and Mr. McMillin

RESOLVED, That this Resolution shall be effective 30 days after adoption in accordance with Compact Section 8(b).

Reviewed as to form and legal sufficiency,



Patricia Y. Lee
General Counsel

WMATA File Structure No.:
9.10 Jurisdictional Billing and Payments

Attachment B – District of Columbia Local Capital Funding Agreement

LOCAL CAPITAL FUNDING AGREEMENT

By and Between

The District of Columbia

And

The Washington Metropolitan Area Transit Authority

LOCAL CAPITAL FUNDING AGREEMENT

THIS LOCAL CAPITAL FUNDING AGREEMENT (DCLCFA) is made and entered into this ____ day of _____, 2021, by and between **the Washington Metropolitan Area Transit Authority (WMATA)**, a body corporate and politic created by interstate compact between Maryland, Virginia, and the District of Columbia; **and the District of Columbia**, a municipal corporation (**District of Columbia**).

RECITALS

1. WMATA and the District of Columbia, the State of Maryland; Arlington County, Virginia; Fairfax County, Virginia; County of Loudoun, Virginia; the City of Alexandria, Virginia; the City of Fairfax, Virginia; and the City of Falls Church, Virginia are parties to that 2022 to 2027 Capital Funding Agreement (CFA).

2. The District of Columbia requires a separate agreement to address certain statutory requirements applicable solely to the District of Columbia.

3. The Parties to this DCLCFA intend that this agreement be read as controlling over any obligations, roles, or responsibilities undertaken by the District of Columbia in the CFA.

NOW, THEREFORE, in consideration of the mutual promises and obligations hereinafter set forth, WMATA and the District of Columbia hereby enter into this Local Capital Funding Agreement, as follows:

I. Incorporation by Reference

- a. The CFA is hereby incorporated by reference as a binding agreement between the Parties, subject to the terms and conditions contained in this DCLCFA.

II. Definitions

- a. Unless a specific definition is provided in this DCLCFA all terms used in this agreement shall have the same definition as found in the CFA, unless context demands otherwise.

III. Limitations on District of Columbia CFA Obligations

The Parties to this DCLCFA agree that the obligations undertaken by the District of Columbia in the CFA are subject to the following conditions and requirements:

- a. Anti-Deficiency Requirements.

- i. Pursuant to the provisions of (A) the federal Anti-Deficiency Act, 31 U.S.C. §§ 1341, 1342, 1349-1351 1511-1519 (2008) (the “**Federal ADA**”), and D.C. Official Code §§ 1-206.03(e) and 47-105; (B) the District of Columbia Anti-Deficiency Act, D.C. Official Code §§ 47-355.01 – 355.08 (the “**D.C. ADA**” and (A) and (B) collectively, as amended from time to time, the “**Anti-Deficiency Acts**”); and (C) Section 446 of the District of Columbia Home Rule Act, D.C. Official Code § 1-204.46, the District cannot obligate itself to any financial commitment in any present or future year unless the necessary funds to pay that commitment have been lawfully appropriated and are lawfully available for the purpose committed. Thus, pursuant to the Anti-Deficiency Acts, nothing in this Agreement creates an obligation of the District in anticipation of an appropriation for such purpose, and the District’s legal liability for the payment of any amount under this Agreement does not and may not arise or obtain in advance of the lawful availability of appropriated funds for the applicable fiscal year.

ii. During the term of this Agreement, the Mayor of the District of Columbia or other appropriate official shall, for each fiscal period, include in the appropriate budget application submitted to the Council of the District of Columbia the amount necessary to fund the District's known potential financial obligations under this Agreement for such fiscal period. In addition, in the event that the District proposes to issue bonds or notes to refund the bonds subject to this Agreement, the Mayor of the District of Columbia or other appropriate official, if any payments under this Agreement have not been made, shall include in a budget application submitted to the Council of the District of Columbia the amount necessary to fund the District's known unpaid amounts. In the event that a request for such appropriations is excluded from the budget approved by the Council for the applicable fiscal year, or if the Congress of the United States appropriates funds for the District for the applicable fiscal year and no appropriation is made by Congress to pay any amount under this Agreement, and in the event appropriated funds for such purposes are not otherwise lawfully available, the District will not be liable to make any payment under this Agreement upon the expiration of any then-existing appropriation.

iii. Notwithstanding the foregoing, no officer, employee, director, member or other natural person or agent of the District shall have any personal liability in connection with the breach of the provisions of this Section or in the event of a Default by the District under this Agreement.

- iv. This Agreement shall not constitute an indebtedness of the District nor shall it constitute an obligation for which the District is obligated to levy or pledge any form of taxation or for which the District has levied or pledged any form of taxation. No District of Columbia Official or employee is authorized to obligate or expend any amount under this Agreement unless such amount has been lawfully appropriated and is lawfully available.

IN ACCORDANCE WITH § 446 OF THE HOME RULE ACT, D.C. OFFICIAL CODE § 1-204.46, NO DISTRICT OFFICIAL IS AUTHORIZED TO OBLIGATE OR EXPEND ANY AMOUNT UNDER THIS AGREEMENT UNLESS SUCH AMOUNT HAS BEEN LAWFULLY APPROVED AND APPROPRIATED.

- v. Notwithstanding anything to the contrary herein, the maximum amount of the District of Columbia's financial share of the cost of the six-year Allocated Contribution for WMATA's Fiscal Year 2022 through 2027 Capital Improvement Program (CIP) as initially adopted by the Board of Directors and subsequently modified by the Board of Directors in succeeding years of this Agreement shall not exceed \$631,346,120. The District's Allocated Contribution may not be increased above the aggregate amount of \$631,346,120 except by an amendment to this DCLCFA. Payments for JAC Debt in place as of the date of this agreement, or as maybe issued at the request of the District after the date of this agreement are not included in the cap created by this DCLCFA.

- b. **Use of DC Funding** -- DC funding may be used only for those projects in the CIP which meet the definition of “Capital Project” and/or “Capital Program” contained in the CFA.

IV. RECITALS

The Recitals set forth in this Agreement are material parts of this Agreement and are binding on the Parties to the same extent as the other terms and conditions hereof.

V. TERM

- a. Effective Date. This DCLCFA shall take effect on July 1, 2021.
- b. The term of this DCLCFA shall begin on the Effective Date and shall terminate on June 30, 2027, unless amended by the Parties in writing. Where there are projects which have been started during the term of this DCLCFA or where bonds or other financial instruments have been issued pursuant to the 2010 CFA for which the District is obliged to make payments, the District agrees to continue to make its Allocated Contribution for those projects or debt service until the conclusion of the projects or the final maturity of the bonds or financial instruments.

VI. NO THIRD-PARTY BENEFICIARIES

The Parties to this Agreement do not intend any non-signatory to this Agreement or any other third party to be a third-party beneficiary to this Agreement, nor do the Parties intend for any such third party to have any rights or benefits under this Agreement or to have standing to bring an action or claim in any court or other forum to enforce any provision of this Agreement.

VII. AMENDMENTS

This Agreement may be amended or modified only by written agreement duly executed by all the Parties.

VIII. NOTICES

All notices under this Agreement shall be in writing and shall be deemed to have been sufficiently given or served when presented personally or sent by the U.S. Postal Service or by a courier service or national overnight delivery service, to WMATA or the District of Columbia as follows:

To the District of Columbia:

Director
District Department of
Transportation
250 M St. SE
Washington, D.C. 20003

To the Washington Metropolitan Area
Transit Authority:

General Manager and Chief
Executive Officer
600 Fifth Street, N.W.,
Washington, D.C. 20001

With copies to:

Chief Financial Officer for the
District of Columbia
John A. Wilson Building, Room 203
1350 Pennsylvania Avenue, N.W.
Washington, DC 20004

Attorney General for the District of
Columbia
John A. Wilson Building, Room 409
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

with a copy to:

Office of General Counsel
Washington Metropolitan Area
Transit Authority
600 Fifth Street, N.W., Second Floor
Washington, D.C. 20001

IX. SUCCESSORS AND ASSIGNS

This Agreement shall be binding on the successors and assigns of the District of Columbia and WMATA.

X. NO DEBT GUARANTEES

The District of Columbia does not guarantee the debt or any other obligation of WMATA; the Federal Government; the State of Maryland; Arlington County, Virginia; Fairfax County, Virginia; County of Loudoun, Virginia; the City of Alexandria, Virginia; the City of Fairfax, Virginia; or the City of Falls Church, Virginia.

XI. REQUIREMENT FOR ANNUAL APPROPRIATIONS

Notwithstanding any other provisions of this Agreement, all obligations of the District of Columbia are subject to discretionary annual appropriation of funds by the governing bodies thereof or other appropriate legislative bodies thereof and shall be consistent with the anti-deficiency laws applicable to the District of Columbia.

XII. COUNTERPARTS

This Agreement may be executed in two (2) identical counterparts, each of which shall constitute an original and all of which shall constitute, collectively, one agreement.

IN WITNESS WHEREOF, WMATA and the District of Columbia have executed this Agreement
on this _____ day of _____, 2021.

WASHINGTON METROPOLITAN AREA
TRANSIT AUTHORITY

Attest:

By:

Witness

Thomas J. Webster, Executive Vice President
Strategy, Planning and Program Management

DISTRICT OF COLUMBIA

Attest:

Witness

By: _____

Mayor