

Consent Item (B) 11-21-2024

Washington Metropolitan Area Transit Authority Board Action/Information Summary

☒ Action ☐ Information

Document
Number:
211874

Resolution:
☒ Yes ☐ No

Presentation Name:

Approval of the WMATA FY2025 & FY2026 VA State Operating Funding Agrmt

Project Manager:

Yetunde Olumide

Project Department:

Finance

Purpose/Key Highlights:

The Virginia Department of Rail and Public Transportation (DRPT) requires an agreement to implement the additional operating subsidy funds provided in the Virginia state budget for Metro's FY2025 and FY2026, including an indemnification requirement and reimbursable agreement elements.

Interested Parties:

No interested parties identified.

Background:

Metro's FY2025 budget is a collaborative effort that requires contributions from all stakeholders. Aggressive expense management by Metro keeps FY2025 gross expenses at FY2024 levels (0% growth). Higher fares also went into effect in July, with a 12.5 percent fare increase on Metrobus, Metrorail, and MetroAccess, and up to 25 percent on late nights and weekends. Additionally, significant jurisdictional investment replaces expiring federal funding while adjusting for ridership and inflation.

As part of the increased jurisdictional investment in FY2025, the Virginia Department of Rail and Public Transportation requires an agreement to implement the additional operating subsidy funds provided in the Virginia state budget for Metro's use.

Resolution 2011-30 requires approval by the Board to indemnify a counterparty.

Discussion:

Virginia's Biennial Budget for FY2024 - FY2026 appropriated \$60.2 million for FY2025 and \$84.5 million in FY2026 from the general fund for additional operating assistance for Metro, and temporarily suspended Virginia's requirement that limits the annual growth of Virginia operating assistance to no more than three percent. To receive the additional operating funds, the Virginia Department of Rail and Public Transportation requires an agreement. The proposed agreement requires Metro to indemnify the Commonwealth and DRPT.

The FY2025 funding also includes up to \$0.5 million in reimbursable funding for consultant services to conduct a review of Metro's operations and financial status. The consultant will be selected by and report to the Virginia Secretary of Transportation's designee to the WMATA Board of Directors.

Funding Impact:

The agreement would provide operating funding totaling \$60.2 million in FY2025 and \$84.5 million in FY2026.

Previous Actions:

Board adopted FY2025 Budget on April 25, 2024

Next Steps:

If the Board approves this action, then Metro and DRPT will be able to move forward with finalizing the proposed operating funding agreement, and WMATA will be able to start receiving the additional operating assistance from the Commonwealth that was included in the FY2025 and FY2026 Budget Plan.

Recommendation:

Approval to: Negotiate and execute the WMATA FY2025 & FY2026 Virginia State Operating Funding Agreement and provide the required indemnification

PRESENTED AND ADOPTED: November 21, 2024

SUBJECT: APPROVAL OF THE WMATA FY 2025 & FY 2026 VIRGINIA STATE OPERATING FUNDING AGREEMENT THAT CONTAINS A REIMBURSABLE ELEMENT AND AN INDEMNITY IN FAVOR OF THE COMMONWEALTH OF VIRGINIA AND THE VIRGINIA DEPARTMENT OF RAIL AND PUBLIC TRANSPORTATION

2024-34

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

WHEREAS, Resolution 2011-30, as amended, requires the Board of Directors to approve reimbursable agreements over \$500,000, and non-procurement agreements that require WMATA to indemnify a counterparty; and

WHEREAS, The Virginia Department of Rail and Public Transportation ("DRPT") requires an agreement, the proposed WMATA FY 2025 & FY 2026 Virginia State Operating Funding Agreement (the "Operating Funding Agreement"), for WMATA to receive the additional operating subsidy funds provided in the Virginia state budget; and

WHEREAS, Staff recommends entering into the Operating Funding Agreement, which includes a provision for reimbursing certain WMATA costs, and a term that requires WMATA to indemnify DRPT, substantially in the form included in Attachment A;

NOW, THEREFORE, be it

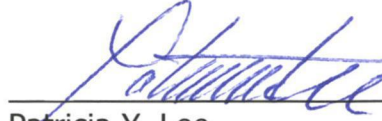
RESOLVED, That the Board of Directors authorizes the General Manager and Chief Executive Officer or the Executive Vice President and Chief Financial Officer to negotiate and execute the WMATA FY 2025 & FY 2026 Virginia State Operating Funding Agreement with the Virginia Department of Rail and Public Transportation ("DRPT"), in substantially the form shown in Attachment A to this Resolution, that includes a provision for reimbursing certain WMATA costs, and a term that requires WMATA to indemnify the Commonwealth of Virginia and DRPT; and be it finally

Motioned by Ms. Santos, seconded by Mr. Smedberg

Ayes: 7- Ms. Santos, Mr. Smedberg, Mr. McAndrew, Ms. Kline, Dr. Hadden Loh, Mr. Drummer and Ms. Martin-Proctor

RESOLVED, That in order to timely draw the funds provided for the WMATA Operating budget, this Resolution shall be effective immediately.

Reviewed as to form and legal sufficiency,



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

WMATA File Structure No.:
4.3.2 Jurisdictional Funding Agreements

**WMATA FY 2025 & FY 2026
VIRGINIA STATE OPERATING FUNDING AGREEMENT**

Between

The Commonwealth of Virginia, Department of Rail and Public Transportation

And

The Washington Metropolitan Area Transit Authority

Contents

RECITALS	3	
SEC. 1	DEFINITIONS	4
SEC. 2	AGREEMENT OF THE PARTIES	5
SEC. 3	WMATA ANNUAL OPERATING BUDGET AND REPORTING	6
SEC. 4	DRPT RESPONSIBILITY	6
SEC. 5	WMATA RESPONSIBILITY	10
SEC. 6	FINAL DISTRIBUTION	11
SEC. 7	FINANCIAL RECORDS	11
SEC. 8	OPERATIONAL ANALYSIS	12
SEC. 9	NON-COMPLIANCE & TERMINATION	14
SEC. 10	REPRESENTATIONS AND WARRANTIES	14
SEC. 11	EFFECTIVE DATE, TERM OF AGREEMENT	16
SEC. 12	NO THIRD PARTY BENEFICIARIES	17
SEC. 13	AMENDMENTS	17
SEC. 14	NOTICES	17
SEC. 15	SUCCESSORS AND ASSIGNS	18
SEC. 16	NO DEBT GUARANTEES	17
SEC. 17	REQUIREMENT FOR ANNUAL APPROPRIATIONS	17
SEC. 18	MISCELLANEOUS PROVISIONS	17
APPENDIX A: PAYMENT SCHEDULE		22

THIS AGREEMENT is made and entered into this____, day of _____, 2024, by and between the **Washington Metropolitan Area Transit Authority (WMATA)**, a body corporate and politic created by an interstate compact among the District of Columbia, State of Maryland, and Commonwealth of Virginia, and **the Commonwealth of Virginia (Commonwealth), Department of Rail and Public Transportation (DRPT)**, collectively, the “Parties.”

RECITALS

1. The WMATA transit system plays a critical role in the growth and prosperity of the National Capital Region, and WMATA’s continued economic vitality contributes to creating vibrant, livable, and sustainable communities.

2. The WMATA transit system was built and is operated through the substantial investment of public funds by the Federal Government and by State and local governments in the region.

3. Virginia’s Biennial Budget for fiscal years (“FY”) 2024 – 2026 appropriated \$60,200,000 in FY 2025 and \$84,500,000 in FY 2026 from the general fund for additional operating assistance for the Washington Metropolitan Area Transit Authority (“WMATA”), while temporarily suspending the provisions of § 33.2-1526.1(K) of the Code of Virginia (“Code”) for fiscal years 2025 and 2026. This temporary Code change provides a two-year suspension of the requirement that limits the annual Virginia operating assistance for WMATA to no more than three percent over the prior year's approved budget.

4. Virginia’s Biennial Budget for FY 2024 – 2026 states that the Washington

Metropolitan Area Transit Authority shall complete a comparison of its total costs and overhead costs, defined as general administration and non-vehicle maintenance costs, against the cost of similar transit systems providing service in the cities of Boston, MA; Chicago, IL; New York, NY; Philadelphia, PA; San Francisco, CA; and Washington, DC, and submit this comparison to the Joint Subcommittee on Northern Virginia Public Transit (also known as the Northern Virginia Growing Needs of Public Transit Joint Subcommittee).

5. Funding for FY 2025 includes \$500,000 which would be available to contract for a thorough review of WMATA's operations and financial status.

NOW, THEREFORE, in consideration of the mutual promises and obligations set forth in this Agreement, the sufficiency of which is acknowledged, the Parties 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. " Agreement" means this WMATA FY 2025 & 2026 VIRGINIA STATE OPERATING FUNDING AGREEMENT.
- B. "Benchmarking Assessment" means the cost comparison referenced in Recital 4.
- C. "Board" means WMATA Board of Directors
- D. "Code" means the Code of Virginia (1950), as amended.
- E. "Commonwealth " means the Commonwealth of Virginia.
- F. "Contribution" means the \$60.2 million of FY 2025 funding and the \$84.5 million

of FY 2026 funding to be disbursed to WMATA by DRPT paid with funds from the General Fund in accordance with Virginia's Biennial Budget for FY 2024 – 2026 pursuant to Va. Code § 2.2-1500, *et seq.*

G. "Days" means calendar days.

H. "DRPT" means the Virginia Department of Rail and Public Transportation.

I. "Effective Date" means the date on which this Agreement becomes effective, as further defined in Section 11 of this Agreement.

J. "Electronic Means" shall mean the following communications methods: e-mail, secure electronic transmission containing applicable authorization codes, passwords and/or authentication keys, or another method or system specified by the Parties as available for use in connection with this Agreement.

K. "Fiscal Year" means each of DRPT's and WMATA's fiscal years beginning on July 1 and ending June 30.

L. "Operational Analysis" means the thorough review of WMATA's operations and financial status referenced in Recital 5, on which WMATA shall not be required to spend more than the total reimbursement amount referenced in Recital 5.

M. "Party" means a party to this Agreement. WMATA and DRPT, individually are a Party and collectively are the Parties.

N. "WMATA" or "Authority" means the Washington Metropolitan Area Transit Authority.

SEC. 2 AGREEMENT OF THE PARTIES

WMATA and DRPT agree to comply with the terms and conditions of this

Agreement and to carry out their respective obligations fully and faithfully under this Agreement. Any commitment or agreement of DRPT required by this Agreement shall be subject to the annual appropriation and allocation of funds and other limitations on expenditures or obligations under the law of the Commonwealth or under other applicable law. This Agreement shall not constitute an indebtedness of the Commonwealth or DRPT until funds are duly appropriated and allocated and quarterly payments become due pursuant to Section 4 of this Agreement, nor shall it constitute an obligation for which the Commonwealth is obligated to levy or pledge any form of taxation.

SEC. 3 WMATA ANNUAL OPERATING BUDGET AND REPORTING

The WMATA Board of Directors adopts an Annual Operating Budget each year. At the conclusion of every quarter, WMATA shall prepare and provide to DRPT a report on the Year-to-Date financial results for submittal to DRPT 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 total system ridership by mode compared to the prior year; total passenger revenues for the quarter; total operating revenues for the quarter; total operating expenses for the quarter; cost recovery ratio; farebox recovery ratio; headcount relative to total authorized positions; and a favorable/unfavorable comparison of the total passenger revenues, total operating revenues and total operating expenses to the Annual Operating Budget.

SEC. 4 DRPT RESPONSIBILITY

A. FY 2026 Commitment Letter. Subject to allocation and appropriation, and the other requirements contained in the Code, DRPT shall provide WMATA with written notice that funds have been, are intended to be, or will not be appropriated to cover its Contribution for FY 2026 and committing to disburse such Contribution to WMATA per the terms of this Agreement. If the Commonwealth's appropriations process is not completed by June 1, 2025, DRPT shall provide to WMATA: (i) a written explanation for the failure to make such submissions by June 1 and confirmation that an amount equal to its Contribution has been or will be included in the next Fiscal Year budget to be considered by the Commonwealth'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. If funds will not be appropriated, then DRPT shall notify WMATA within five (5) business days of the fiscal body's action.

B. Disbursement of Contribution.

Subject to allocation and appropriation, and the other requirements contained in the Code and this Agreement, DRPT shall disburse the Contribution as follows:

- (1) Quarterly Disbursements. DRPT shall make quarterly disbursements to WMATA for additional operating assistance. Subject to allocation and appropriation, and the other requirements contained in the Code, DRPT shall disburse the Contribution, in advance, each quarter in tranches per Appendix A. The funding provided by DRPT pursuant to this section will total \$59.7 million in FY 2025 and \$84.5 million in FY 2026.

(2) Reimbursement. DRPT will reimburse WMATA \$500,000, upon completion of the Operational Analysis per the following requirements:

- a) WMATA shall submit a single reimbursement request within 90 calendar days following completion of the Operational Analysis.
- b) The reimbursement request must be supported by documentation of actual expenditures and payments to contractors. Subject to approval by DRPT for payment, reimbursement will be made within 30 calendar days of receipt of the request.
- c) An incomplete reimbursement request or one not adequately supported with documentation may result in a delayed or a partial reimbursement to WMATA.
- d) Any expenditures reimbursed to WMATA subsequently found not to be in accordance with the provisions of this Agreement or Federal, State, or local law will be repaid to DRPT within 60 calendar days of such notice.
- e) WMATA shall submit a reimbursement request only after payment has been made to its contractors.

(3) Availability of Funding. Subject to allocation and appropriation, and other requirements contained in the Code, the quarterly disbursement of the Contribution shall be made pursuant to Appendix A, unless the funding available to DRPT is not sufficient to cover the disbursement amount, in which event DRPT shall disburse to WMATA the entire balance available. DRPT shall continue to disburse the entire funding available until such time as the disbursement has returned to the scheduled quarterly amounts and prior

disbursements have been made whole.

(4) Notice of Insufficient Funds. Notwithstanding any other provision of this Agreement, if at any time DRPT determines that the funds allocated for the purposes of state WMATA operating funding will not be sufficient to pay in full the Contribution, the following shall occur: (a) DRPT shall notify WMATA in writing that the available funds are expected to be insufficient to satisfy the current Contribution amount; (b) the written notification shall include a new Contribution amount; and (c) the remaining quarterly payments for that year combined with the payments made prior to notification of the new Contribution amount shall not exceed the new Contribution amount. Under no circumstance will DRPT be obligated under this Agreement to pay more than what is authorized and appropriated for this purpose.

C. General. Nothing in this Agreement shall be construed to obligate DRPT to have, as of the Effective Date, funding, or an appropriation in the full amount of the Contribution. Subject to allocation and appropriation, DRPT shall be solely responsible for the Contribution. DRPT commits, subject to its constitutional or legally equivalent provisions and throughout the term of this Agreement, to use all reasonable efforts including, but not limited to, a request by the responsible official to include the Contribution in DRPT's annual proposed budget or other financial submission to its fiscal authority and to pursue all legally available means to secure the necessary and appropriate budget, legislative, appropriation, and allocation actions in order to obtain funding in the full amount of its Contribution.

SEC. 5 WMATA RESPONSIBILITY

- A. Allocation of Payment. WMATA shall apply DRPT's Contribution for additional operating assistance under this Agreement to items identified in the approved WMATA Operating Budget. The payments shall be credited toward the Virginia jurisdictional operating funding requirements for the fiscal year.
- B. Debt Service Prohibition. WMATA shall not use state operating funding appropriated under Item 433 of the Biennial Budget for fiscal years 2024 through 2026 for the payment of, or security for, debt service on bonds or other indebtedness of WMATA.
- C. Reporting. At the conclusion of every quarter, WMATA shall prepare and provide to DRPT a report on WMATA financials of as required by Section 3 of this Agreement. Subject to the conditions of this Agreement, if a quarterly report is received less than fifteen (15) Days before payment is due, DRPT reserves the right to delay payment for each day that the quarterly report is late. Delaying the payment as provided in this section will not constitute a breach of the Agreement.
- D. Benchmarking Assessment. WMATA shall complete the required Benchmarking Assessment within 30 days of the execution of this Agreement, and submit it to the Northern Virginia Growing Needs of Transit Committee, unless a written extension request is approved by the Director. A copy of the transmittal must be provided to the DRPT Director. DRPT's FY 2026 Contribution is subject to the fulfillment of this requirement.
- E. Interest on Payments. In the case of a prepayment of funds due from DRPT

interest shall accrue on all deposits made by DRPT under this Agreement to WMATA from the date of prepayment until the due date of the payment and the accrued interest will be credited to future payments due from DRPT.

- F. WMATA shall invoice DRPT 45 days prior to the beginning of the next quarter per Disbursement Schedule in Appendix A.

SEC. 6 FINAL DISTRIBUTION

In the event that this Agreement is terminated pursuant to Section 9 of this Agreement, any amounts remaining on hand at WMATA on the termination date, except for any amounts incurred but not drawn, shall be credited or refunded to DRPT, as directed by DRPT and reverted to the General Fund.

SEC. 7 FINANCIAL RECORDS

- A. Maintenance of Records. During the term of this Agreement, WMATA agrees to maintain complete accounting records which are consistent with U.S. generally accepted accounting principles, and which accurately reflect all income and expenditures of funds which may be provided under this Agreement. WMATA will retain all such records for four years from the end of the state fiscal year (June 30), in which the final payment is made. The records of WMATA must be in sufficient detail to determine the character and timing of funded items and of contract obligation and expenditure transactions authorized by this Agreement.

- B. Audits

- (1) Timing for Performance. DRPT or its agent may perform an audit of WMATA's expenditures of funds and the sources of those funds provided by

this Agreement. Any such audit shall be commenced within 60 days after the date of the request and shall be completed (to the maximum extent practicable) within 180 days after the date it is commenced. DRPT or its agent will assume all financial responsibility for any costs associated with the performance of such audit, exclusive of WMATA's internal costs. WMATA agrees to cooperate fully with DRPT or its agent in the conduct of any such audit carried out in accordance with this paragraph.

(2) Audit Results. If it is determined by the Commonwealth or its agent as a result of such audit under this section that funds provided by DRPT have not been administered pursuant to the terms and conditions of this Agreement or contrary to law, WMATA shall make appropriate accounting adjustments, within the next fiscal year, or remit payment due to DRPT. The audit rights provided under this paragraph shall survive for three audited fiscal years from the termination date of this Agreement and shall not limit any other rights of DRPT under this Agreement.

(3) This section does not supersede the Office of State Inspector General's (OSIG) authority to review the program.

SEC. 8 OPERATIONAL ANALYSIS

A. Purpose. Recognizing it is the intent of the Virginia General Assembly, WMATA shall use \$500,000 of the amounts made available in FY 2025 to engage a consultant to conduct a thorough analysis of WMATA's operations and financial status. The analysis will identify opportunities for WMATA to realize ongoing cost efficiencies and enhance self-generated revenues to substantially close its

operating deficit, with a focus on functions and processes that can be eliminated, restructured, or significantly improved through modernization or automation.

B. Consultant Selection. The consultant will be selected by and report to the Virginia Secretary of Transportation's designee to the WMATA Board of Directors. The consultant shall have recognized experience in expense restructuring, revenue generation, and organizational transformation for public infrastructure agencies.

C. Scope Development.

(1) Within sixty (60) days of the effective date of this agreement, WMATA shall submit a draft scope of work governing the consultant engagement to the DRPT Director for approval. The scope of work shall require the consultant to identify an explicit dollar-figure target for cost savings and revenue enhancements the analysis will strive to identify.

(2) The DRPT Director will have ten business days to review and grant approval to the scope of work. Should the Director not grant approval to the scope of work, the parties agree to use all reasonable efforts to develop a scope of work agreeable to both parties within 30 days. Failure to reach an agreement within the 30-day window, may be grounds for non-compliance with this agreement, unless a written extension is provided by the Director.

D. Presentation of Findings. The consultant will deliver final findings to the Virginia Secretary of Transportation's designee to the WMATA Board of Directors and DRPT no later than three months after its engagement commences. During the engagement, the consultant shall report to and consult with DRPT on a regular

basis, to be determined by DRPT based on the length of the engagement.

SEC. 9 NON-COMPLIANCE & TERMINATION

In the event either Party determines that the other Party to the Agreement is not complying with the terms of this Agreement, the complaining Party shall notify the other Party in writing of its complaint and the basis for it. The Parties agree to use all reasonable efforts to resolve any such issues which arise under or otherwise relate to this Agreement. If the Parties, at staff level, cannot resolve such matters through initial discussions within 30 Days after receipt of the written notification, then executive level staff of each Party shall meet to resolve the matter within 60 additional Days. In the event that the Parties are unable to resolve the dispute within 60 additional Days, either Party may provide notice to the Chief Executive of the other Party of the dispute and their intent to give notice of termination. For purposes of this section, the Chief Executive of WMATA is the GM/CEO and the Chief Executive of DRPT is the Director. The Chief Executives shall have no less than 30 Days but no more than 120 Days to attempt to resolve the issue before either Party provides notice of termination. If no satisfactory resolution is achieved by the Chief Executives within the 30-120 Day window, either Party may, upon 30 Days' written notice to the other Party, terminate this Agreement in whole or in part.

SEC. 10 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 this Agreement, the transactions contemplated by this Agreement, and to carry out its obligations hereunder;

(2) When executed and delivered by DRPT 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, allocations, bankruptcy, reorganization, insolvency, moratorium or other laws affecting the enforcement of creditors' rights generally.

(3) WMATA procurement contracts shall be administered pursuant to applicable WMATA procurement requirements, the WMATA Code of Ethics, and Compact Section 10. For example:

a) No Director, officer or employee shall:

- i. be financially interested, either directly or indirectly, in any contract, sale, purchase, lease or transfer of real or personal property to which the Board or the Authority is a party;
- ii. in connection with services performed within the scope of his official duties, solicit or accept money or any other thing of value in addition to the compensation or expenses paid to him by the Authority;

- iii. offer money or any thing of value for or in consideration of obtaining an appointment, promotion, or privilege in his employment with the Authority.

B. By DRPT. DRPT makes the following representations as of the Effective Date of this Agreement as a basis for the undertakings pursuant to this Agreement:

(1) DRPT has all necessary power and authority to enter into this Agreement, the transactions contemplated by this Agreement, and to carry out its individual obligations hereunder;

(2) When executed and delivered by DRPT and by WMATA, this Agreement will constitute the legal, valid and binding obligation of DRPT enforceable in accordance with its terms, except as such enforceability is limited by annual appropriations, allocations, bankruptcy, reorganization, insolvency, moratorium or other laws affecting the enforcement of creditors' rights generally.

SEC. 11 EFFECTIVE DATE, TERM OF AGREEMENT

- A. Effective Date. This Agreement shall take effect on the date of execution by the last signatory to this Agreement.
- B. 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.
- C. Term. The term of this Agreement shall be for the period July 1, 2024 through and including June 30, 2026. The Agreement shall terminate at the end of its term.

SEC. 12 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. 13 AMENDMENTS

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

SEC. 14 NOTICES

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

To the Commonwealth of Virginia, Department of Rail and Public Transportation:

Director
Virginia Department of Rail and Public
Transportation
600 East Main Street, Suite 2102
Richmond, VA 23219

with a copy to:

Chief of Public Transportation
Virginia Department of Rail and Public
Transportation
600 East Main Street, Suite 2102

Richmond, VA 23219

and

Chief Financial Officer
Virginia Department of Rail and Public
Transportation
600 East Main Street, Suite 2102
Richmond, VA 23219

and

NOVA Senior Program Manager Major
Capital Investments (WMATA)
Virginia Department of Rail and Public
Transportation
1725 Duke Street, Suite 675
Alexandria, VA 22314

Transportation Section Chief
Office of the Attorney General
202 N. 9th Street
Richmond, VA 23219

and

To the Washington Metropolitan Area Transit Authority:

General Manager and CEO
Washington Metropolitan Area Transit
Authority
300 7th Street SW
Washington, DC 20024

Washington, DC 20024

and

Executive Vice President
and Chief Planning and Performance
Officer
Washington
Metropolitan Area
Transit Authority
300 7th Street SW
Washington, DC 20024

with copies to:

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

and

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

PO BOX 44390
WASHINGTON DC 20026-4390

Chief Financial Officer
Washington
Metropolitan Area
Transit Authority
300 7th Street SW

SEC. 15 SUCCESSORS AND ASSIGNS

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

SEC. 16 NO DEBT GUARANTEES

DRPT does not guarantee the debt of WMATA, nor any obligation of WMATA.

SEC. 17 REQUIREMENT FOR ANNUAL APPROPRIATIONS

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

SEC. 18 MISCELLANEOUS PROVISIONS

A. COVENANT AGAINST CONTINGENT FEES

WMATA warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for WMATA, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for WMATA, any fee, commission, percentage, brokerage fee, or other considerations, contingent upon or resulting from the award or making of this Agreement.

B. SPECIAL PROVISIONS

WMATA shall permit DRPT or its authorized representatives to inspect at any reasonable time, with reasonable prior notice and subject to WMATA safety requirements, all relevant data and records pertaining to the approved WMATA Operating Budget.

C. APPLICABLE LAW

(1) This Agreement shall be governed by the laws of the Commonwealth of

Virginia.

(2) Nothing in this Agreement shall constitute a waiver of DRPT's or WMATA's sovereign immunity.

(3) The Parties acknowledge and agree that each shall comply with all applicable local, state, and federal laws, regulations, and ordinances. Nothing in this Agreement shall require WMATA to violate the WMATA Compact or applicable laws, regulations, or ordinances, or require DRPT to violate any applicable laws, regulations, or ordinances.

D. SEVERABILITY OF PROVISIONS

If any term or provision of this Agreement is determined to be invalid, illegal or unenforceable, it shall not affect the legality or validity or enforceability of any other part of this Agreement, and the remaining parts of this Agreement shall be binding upon the Parties.

E. RECITALS

The Recitals are incorporated and made a part of this Agreement.

F. INDEMNIFICATION AND INSURANCE

(1) WMATA shall indemnify, defend, and hold harmless the Commonwealth and DRPT, and their directors, officers, agents, and employees, from and against all claims, suits, judgments, actions, losses, damages, liabilities, costs and expenses of every name and description, including but not limited to reasonable attorney's fees and costs, brought by any third party caused by a

negligent act or omission by WMATA, its contractors, subcontractors, agents, or employees in the performance of work covered by this Agreement.

- (2) WMATA shall either be sufficiently self-insured or carry insurance to cover the risks for WMATA, its employees, agents, contractors and subcontractors, performing work covered by this Agreement. WMATA shall require all commercial insurance policies obtained by WMATA to satisfy its obligations under this section to list the Commonwealth, DRPT, and their respective officers, agents, and employees as Additional Insureds. WMATA certifies that as of the Effective Date of this Agreement, all commercial insurance and self-insurance lists the Commonwealth, DRPT, and their respective officers, agents, and employees as Additional Insureds. WMATA shall not remove the Commonwealth, DRPT, or their respective officers, agents, and employees as Additional Insureds for any self-insurance without the written consent of the Commonwealth and/or DRPT.
- (3) In the event WMATA receives notice from an insurer that any insurance policy is going to be, or has been, subject to cancellation, nonrenewal, or material adverse changes to the insurance contract, WMATA shall provide DRPT with prompt notice. WMATA shall provide 30-days advance written notice to DRPT of any cancellation or material adverse change to any self-insurance.
- (4) For all self-insurance and commercial insurance, WMATA shall provide Certificates of Insurance listing the Commonwealth, DRPT, and their respective officers, agents, and employees, as Additional Insureds.
- (5) In lieu of carrying insurance for the contractor and any subcontractor hired by the contractor to perform the Operational Analysis required under this

Agreement, WMATA may require the contractor or subcontractors performing any work or activity of any type for the Operational Analysis to carry insurance sufficient to cover the risks for all damage to persons and property due to work under this Agreement. However, such insurance does not relieve WMATA of the burden of being self-insured and/or carrying insurance to cover the actions of its employees. WMATA shall require of its contractor and subcontractors that the Commonwealth, DRPT, and their respective officers, agents, and employees, are identified as Additional Insureds on all such insurance policies obtained in lieu of WMATA providing such insurance for the Operational Analysis contractors or subcontractors, and WMATA shall require that its Operational Analysis contractor, and any subcontractors provide Certificates of Insurance listing the Commonwealth, DRPT and their respective officers, agents, and employees as Additional Insureds for any such insurance policies.

- (6) Payment of any funds by DRPT shall not waive any of the rights of DPRT contained in this section nor release WMATA from any responsibilities or duties contained in this Agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, WMATA and DRPT have executed this Agreement on
this _____ day of _____ 2024.

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

Attest:

By:

(Witness/Title)

Yetunde Olumide, Executive Vice President
and Chief Financial Officer

COMMONWEALTH OF VIRGINIA, DEPARTMENT OF RAIL AND PUBLIC
TRANSPORTATION

Attest:

By:

(Witness/Title)

(Name/Title)

APPENDIX A: PAYMENT SCHEDULE

July 1, 2024	\$14,925,000
October 1, 2024	\$14,925,000
January 1, 2025	\$14,925,000
April 1, 2025	\$14,925,000
July 1, 2025	\$21,125,000
October 1, 2025	\$21,125,000
January 1, 2026	\$21,125,000
April 1, 2026	\$21,125,000