Washington Metropolitan Area Transit Authority

Board Action/Information Summary

◉ Action ○ Information	MEAD Number: 100985	Resolution: ◉ Yes ○ No

TITLE:

Approval of TOC / WMATA MOU

PURPOSE:

To obtain Board approval for the General Manager to execute the Memorandum of Understanding between the Tri-State Oversight Commitee and Metro.

DESCRIPTION:

The Memorandum of Understanding (MOU) between the Tri-State Oversight Committee (TOC) and Metro has been created to enhance and facilitate effective safety and security oversight, prescribe lines of authority, communication and responsibility within the TOC Program Standards.

The MOU will facilitate and ensure communication and lines of responsibility are clear and that safety and security oversight is adequately addressed.

FUNDING IMPACT:

No impact on funding.

RECOMMENDATION:

Approval for the General Manager to execute the Memorandum of Understanding between the Tri-State Oversight Committee and Metro.

Tri-State Oversight Committee Memorandum of Understanding

Safety and Security Committee

December 16, 2010

Tri-State Oversight Committee Memorandum Of Understanding

- Background
  - The Tri-State Oversight Committee (TOC) was created on March 7, 1997 pursuant to a Memorandum of Understanding (MOU) between the District, Maryland and Virginia
  - In compliance with FTA regulations, TOC provides safety and security oversight of Metrorail
  - WMATA and TOC recognize the importance of oversight and effective communication in strengthening Metrorail safety

Tri-State Oversight Committee Memorandum Of Understanding

- Purpose of MOU:
  - Clarify roles and obligations of parties
  - Establish clear expectations and time frames for both parties
  - Address NTSB findings for improving TOC Oversight
  - Enhance safety and security for Metrorail riders

Tri-State Oversight Committee Memorandum Of Understanding

- Requirements of TOC's Current Program Standard
  - Accident/Incident Notification
  - Accident/Incident and Hazardous Condition Investigations
  - Status Updates
  - Development of Corrective Action Plans

Tri-State Oversight Committee Memorandum Of Understanding

- Communication with executive level management
- Communication with WMATA Board
- WMATA organizational structure
- Access to WMATA facilities
- General safety oversight
  - On major capital projects, 10 day final review period for TOC of WMATA Safety Certification

Tri-State Oversight Committee Memorandum Of Understanding

- Access to Information
  - Guarantees TOC access to Rail Accident/Incident and Hazardous Condition Reports
  - Reciprocal obligations to notify each other of public information requests and provide copies of disclosures
  - WMATA shall provide same information to TOC as it does to WMATA Board regarding safety or security issues prior to responding to the media

Tri-State Oversight Committee Memorandum Of Understanding

- Dispute Resolution
  - TOC may identify a condition or practice which could reasonably be expected to cause death or serious physical harm and give WMATA notice to abate
  - TOC Executive Committee has the right to suspend/cancel funding to WMATA in the event that there is no satisfactory resolution of the identified problem

Attachments

SUBJECT: AUTHORIZATION TO ENTER INTO MEMORANDUM OF UNDERSTANDING WITH TRI-STATE OVERSIGHT COMMITTEE

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

WHEREAS, The Washington Metropolitan Area Transit Authority (WMATA) and the Tri-State Oversight Committee (TOC), which is composed of the Commonwealth of Virginia through the Virginia Department of Rail and Public Transportation (VDRPT), the State of Maryland through the Maryland Department of Transportation (MDOT), and the District of Columbia through the District Department of Transportation (DDOT), have mutually decided to enter into an agreement; and

WHEREAS, Section 3028 of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) requires that the Federal Transit Administration (FTA) implement the requirements of 49 U.S.C. § 5330 known as 49 C.F.R. Part 659 (as revised on April 29, 2005) requiring states to designate an agency to oversee the safety and security of rail fixed guideway systems operating in the State; and

WHEREAS, In the interest of public safety and security, the Commonwealth of Virginia, the State of Maryland, and the District of Columbia agreed to participate collectively and for the common good to implement the requirements of 49 C.F.R. Part 659 and created a single entity to provide oversight of Metrorail known as the TOC that is able to effectively carry out its oversight duties transparently, independently, and with adequate authority; and

WHEREAS, VDRPT, by § 33.1-391.5 of the *Code of Virginia 1950*, as amended, MDOT, by §§ 2-102 – 2-103 of the Transportation Article of the *Maryland Code*, and DDOT, by *Official Code* §§ 9-1109.01 – 9-1109.07 (D.C. Law 11-261), *Mayor's Order* 97-13 (January 24, 1997), and *D.C. Official Code* §§ 50-921.02(b) and 50-921.05 (D.C. Law 14-137), have been duly designated as the agencies responsible for the safety and security oversight required by 49 C.F.R. Part 659; and

WHEREAS, The Secretary of Transportation of the Commonwealth of Virginia, the Secretary of Transportation of the State of Maryland, and the Director of DDOT comprise the TOC Executive Committee, which provides guidance and direction for TOC; and

WHEREAS, WMATA operates the Metrorail system, a rail fixed guideway system that operates within and between the Commonwealth of Virginia, the State of Maryland, and the District of Columbia, whose collective action created WMATA by means of the WMATA Compact; and

WHEREAS, Pursuant to 49 C.F.R. Part 659, TOC performs safety and security oversight in accordance with the TOC Program Standards and Procedures, and the Internal TOC Operations Manual; and

WHEREAS, TOC has been in continuous operation performing safety and security oversight of the WMATA Metrorail system since a Memorandum of Understanding between the Commonwealth of Virginia, the State of Maryland, and the District of Columbia (TOC MOU) was entered into on March 7, 1997 and revised on September 13, 2010; and

WHEREAS, Recent events have demonstrated that an agreement between TOC and WMATA is necessary to enhance and facilitate effective safety and security oversight of the WMATA Metrorail system, and to prescribe lines of authority, communication, and responsibility, subject to federal and state requirements; now, therefore be it

RESOLVED, That the WMATA Board of Directors authorizes the General Manager to execute a Memorandum of Understanding Between WMATA and the Tri-State Oversight Committee; and be it finally

RESOLVED, That this Resolution shall be effective immediately.

Reviewed as to form and legal sufficiency,

Carol B. O'Keeffe
General Counsel

PROPOSED

MEMORANDUM OF UNDERSTANDING
BY AND BETWEEN THE WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY AND THE TRI-STATE OVERSIGHT COMMITTEE

This AGREEMENT, made and entered into this _____ day of December, 2010, by and between the Washington Area Metropolitan Transit Authority ("WMATA") and the Tri-State Oversight Committee ("TOC"), which is composed of the Commonwealth of Virginia through the Virginia Department of Rail and Public Transportation ("VDRPT"), the State of Maryland through the Maryland Department of Transportation ("MDOT"), and the District of Columbia through the District Department of Transportation ("DDOT"),

WHEREAS, Section 3028 of the Intermodal Surface Transportation Efficiency Act of 1991 ("ISTEA") requires that the Federal Transit Administration ("FTA") implement the requirements of 49 U.S.C. § 5330 known as 49 C.F.R. Part 659 (as revised on April 29, 2005) requiring states to designate an agency to oversee the safety and security of rail fixed guideway systems operating in the State; and

WHEREAS, in the interest of public safety and security, the Commonwealth of Virginia, the State of Maryland, and the District of Columbia have agreed to participate collectively and for the common good to implement the requirements of 49 C.F.R. Part 659 by creating a single oversight entity known as the TOC that is able to effectively carry out its oversight duties transparently, independently, and with adequate authority; and

WHEREAS, VDRPT, by § 33.1-391.5 of the *Code of Virginia 1950*, as amended, MDOT, by §§ 2-102 – 2-103 of the Transportation Article of the *Maryland Code*, and DDOT, by *Official Code* §§ 9-1109.01 – 9-1109.07 (D.C. Law 11-261), *Mayor's Order* 97-13 (January 24, 1997), and *D.C. Official Code* §§ 50-921.02(b) and 50-921.05 (D.C. Law 14-137), have been duly designated as the agencies responsible for the safety and security oversight required by 49 C.F.R. Part 659; and

WHEREAS, the Secretary of Transportation of the Commonwealth of Virginia, the Secretary of Transportation of the State of Maryland, and the Director of DDOT comprise the TOC Executive Committee, which provides guidance and direction for TOC; and

WHEREAS, WMATA operates the Metrorail system, a rail fixed guideway system that operates within and between the Commonwealth of Virginia, the State of Maryland, and the District of Columbia, whose collective action created WMATA by means of the WMATA compact; and

WHEREAS, under 49 C.F.R. Part 659, TOC has the authority and duty to perform safety and security oversight over WMATA; and

WHEREAS, pursuant to 49 C.F.R. Part 659, TOC performs safety and security oversight in accordance with the TOC Program Standards and Procedures, and the Internal TOC Operations Manual; and

WHEREAS, TOC has been in continuous operation performing safety and security oversight of the WMATA Metrorail system since a Memorandum of Understanding between the Commonwealth of Virginia, the State of Maryland, and the District of Columbia ("TOC MOU") was entered into on March 7, 1997 and revised on September 13, 2010; and

WHEREAS, recent events have demonstrated that an agreement between TOC and WMATA must be created to enhance and facilitate effective safety and security oversight of the WMATA Metrorail system, and to prescribe lines of authority, communication, and responsibility, subject to federal, regional, state, actions and decisions.

NOW, THEREFORE, in consideration of the promises and undertakings of the other as herein provided and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties do hereby covenant and agree as follows:

ARTICLE 1
STATE SAFETY AND SECURITY OVERSIGHT: SCOPE, PROGRAM REQUIREMENTS AND DEFINITIONS

§1.1 This Agreement applies solely to the conduct of safety and security oversight of the Metrorail system and facilities as contained in the Adopted Regional System (ARS), a rail fixed guideway system, as required pursuant to 49 C.F.R. Part 659.

§1.2 Before January 1 of each year, WMATA shall review and, if appropriate, update and submit to TOC the WMATA System Safety Program Plan ("SSPP") and Security and Emergency Preparedness Plan ("SEPP") in accordance with the requirements set forth in Section 14, *Annual Review of the SSPP and SEPP*, of the TOC Program Standards and Procedures. TOC shall review the WMATA SSPP and SEPP, and shall provide WMATA with a response within forty five (45) calendar days of January 1 of each year. TOC's response shall indicate whether it approves the SSPP and SEPP. TOC shall include with its response the checklist(s) used to complete the reviews of the SSPP and SEPP, and any noted deficiencies preventing approval. If TOC does not approve the SSPP or SEPP, WMATA shall have thirty (30) calendar days to address deficiencies or requested changes in the plan(s) noted by TOC and submit a revised plan(s) to TOC, or otherwise state its objections and suggest an alternative. WMATA shall work with TOC to resolve any disagreements regarding the SSPP and SEPP. Review shall be for substantive purposes, and it is understood that matters of style and format are the province of the initiating office.

§1.3 From time to time, TOC shall make changes to the TOC MOU, Program Standard and Procedures, and Internal TOC Operations Manual, according to the requirements set forth in the TOC Program Standards and Procedures. WMATA shall be given sufficient opportunity to review and provide comments to the TOC on proposed changes to the Program Standard and Procedures, at TOC's request. Final approval of changes to these documents shall be made by the TOC Executive Committee.

§1.4 Definitions

(a) "Major Capital Project" refers to any project covered by the definition of major capital project contained in 49 C.F.R. 633.5.
(b) "Parties" refers to WMATA and TOC.
(c) "Unacceptable Hazardous Condition" refers to the level of urgency in the application of risk suppression countermeasures. Using the Hazard Identification/Resolution Matrix contained in the TOC Program Standards and Procedures, Section 10.6 it refers to conditions that could yield Catastrophic or Critical results and are likely to occur on a minimally occasional basis.

ARTICLE 2
ACCIDENT/INCIDENT AND HAZARD NOTIFICATION, INVESTIGATION, MONITORING, AND REPORTING

§2.1 WMATA shall (a) notify TOC no later than two hours after the occurrence of certain accidents, incidents, or the detection of an Unacceptable Hazardous Condition that meets the thresholds as defined and set forth in Section 8, *Accident/Incident and Hazard Notification, Investigation, Monitoring and Reporting* and Section 10.6, *Hazard Management Program, Requirements for Ongoing Reporting*, of the TOC Program Standards and Procedures, and (b) submit to the TOC, no later than one (1) week after the occurrence of an accident, incident, or the detection of an Unacceptable Hazardous Condition (1) a comprehensive analysis of the hazard, including documentation of steps taken since the occurrence, and any amendments or additions to future plans, and (2) an assessment of any communications problems which contributed to any delay in communicating the occurrence identified by WMATA or the TOC, and a plan for eliminating them. WMATA shall also follow the notification procedures set forth in Section 8, *Accident/Incident and Hazard Notification, Investigation, Monitoring and Reporting*, of the TOC Program Standards and Procedures, including, but not limited to, the telephone and email notification requirements.

§2.2 TOC shall be responsible for the investigation of all accidents, incidents, and Unacceptable Hazardous Conditions meeting the thresholds set forth in Sections 8 and 10 of the TOC Program Standards and Procedures, and in doing so, may deputize WMATA to conduct such investigations, as authorized by 49 C.F.R. Part 659 and provided in §§2.3 and 2.4 below. The parties shall work

diligently together to facilitate the investigation of all accidents, incidents, and Unacceptable Hazardous Conditions as requested by TOC.

§2.3 In accordance with Section 9, *Accident/Incident Investigation*, of the TOC Program Standards and Procedures and this Agreement, TOC may deputize WMATA to conduct, on TOC's behalf, the investigation of accidents, incidents, and Unacceptable Hazardous Conditions that meet the reporting and investigation thresholds set forth in Sections 8, 9, and 10.6 of the TOC Program Standards and Procedures. WMATA shall submit a Preliminary Report to TOC within three (3) business days of the occurrence. WMATA shall submit a Draft Final Investigation Report for TOC review and approval within thirty (30) days of the occurrence. If the investigation is not concluded within thirty (30) days of the occurrence, TOC may request an Investigation Status Report. TOC shall review the Draft Final Investigation Report and approve it or provide comments to WMATA within ten (10) days of receipt. If TOC approves the Draft Final Investigation Report, TOC shall adopt the report as its own, and the report will become the TOC Final Investigation Report. Upon notice of approval, WMATA shall provide TOC with an unalterable copy of the approved Final Investigation Report and adopt as its own all such investigation reports. If TOC is unable to adopt an investigation report, it shall communicate its comments to WMATA. WMATA shall then have fifteen (15) calendar days from the date of TOC notification to develop and submit a revised report to TOC. The parties shall work together in good faith to resolve any disagreements regarding the investigation of an accident/incident/hazardous condition. As necessary and appropriate, and based upon the totality of the circumstances, TOC may modify these deadlines in a particular case to allow for additional time.

§2.4 Since TOC reserves the right to deputize WMATA to investigate accidents, incidents, and Unacceptable Hazardous Conditions meeting the thresholds specified above, WMATA shall provide any revisions and/or updates to its accident/incident/hazardous condition investigation procedures to TOC for formal review and approval. TOC shall provide any comments or changes to WMATA within fifteen (15) days of receipt or it shall be regarded as having accepted the revisions and/or updates. The parties shall work together to resolve any outstanding issues in developing acceptable investigation procedures.

§2.5 WMATA shall provide a written monthly progress report to the TOC and TOC Executive Committee on the implementation of measures that are intended to conclude all (a) open accident, incident, and Unacceptable Hazardous Condition investigations meeting the notification and investigation thresholds set forth in Sections 8, 9, and 10.6 of the TOC Program Standards and Procedures that TOC has not been able to adopt and (b) open Corrective Action Plans ("CAPs"). For all open accident, incident, and Unacceptable Hazardous Condition investigations that have not been completed within six (6) months, WMATA shall develop a recovery plan to complete them. TOC shall review the recovery plan and approve it or provide comments to WMATA within ten (10)

days of receipt. If TOC is unable to adopt a recovery plan, it shall communicate its comments to WMATA. WMATA shall then have fifteen (15) calendar days from the date of TOC notification to develop and submit a revised recovery plan to TOC. The parties shall work together in good faith to resolve any disagreements regarding the recovery plan. As necessary and appropriate, and based upon the totality of the circumstances, TOC may modify these deadlines in a particular case to allow for additional time.

§2.6 WMATA shall monitor all identified hazardous conditions on its Metrorail system and shall maintain hazard log(s) in accordance with Section 10.5, *Hazard Management Program*, of the TOC Program Standards and Procedures. WMATA shall actively address the identified hazardous conditions and work to close all open items on the hazard log as required by Section 10.6 of the TOC Program Standards and Procedures. On a monthly basis, WMATA shall submit the hazard log(s) to TOC. TOC shall review the WMATA logs, and shall provide written comments and guidance to WMATA to assist in the remediation of hazards. WMATA shall address all TOC comments in writing in the monthly hazard log submittal to TOC. For all open hazard log items that have not been closed within six (6) months, WMATA shall develop a recovery plan to close them. TOC shall review the recovery plan and approve it or provide comments to WMATA within ten (10) days of receipt. If TOC is unable to adopt WMATA's recovery plan, it shall communicate its comments to WMATA. WMATA shall then have fifteen (15) calendar days from the date of TOC notification to develop and submit a revised recovery plan to TOC. The parties shall work together in good faith to resolve any disagreements regarding the recovery plan. As necessary and appropriate, and based upon the totality of the circumstances, TOC may modify these deadlines in a particular case to allow for additional time.

ARTICLE 3
INTERNAL AND EXTERNAL SAFETY AND SECURITY REVIEWS, AUDITS, AND CERTIFICATION

§3.1 WMATA shall implement Internal Safety and Security Audit programs that meet the requirements set forth in Section 6, *Internal Safety and Security Audits*, of the TOC Program Standards and Procedures. The Internal Safety and Security Audit Programs shall audit the implementation of all the elements set forth in the WMATA SSPP and SEPP. WMATA shall maintain Internal Safety and Security Audit Program Procedures, and shall submit these Procedures to TOC for review and approval. WMATA shall develop checklists for all Internal Safety and Security Audits, and submit these checklists to TOC. TOC shall be given adequate notice and the opportunity to participate in all WMATA Internal Safety and Security Audits. Upon completion of each internal audit, WMATA shall develop a safety or security audit report, and provide the report to TOC. On an annual basis, WMATA shall submit an Annual Internal Safety and Security Audit Report to TOC that meets the requirements set forth in Section 6, *Internal Safety and Security Audits*, of the TOC Program Standards and Procedures.

WMATA shall develop an internal WMATA safety audit recovery plan for all open Internal Safety and Security Audit items that have not been closed within six (6) months, which TOC shall review and approve.

§3.2 The WMATA General Manager shall certify compliance with all elements of the WMATA SSPP and SEPP on an annual basis. This certification shall be provided to TOC in the form of a formal letter signed by the WMATA General Manager. Alternatively, in the event that the WMATA General Manager is unable to certify compliance with all elements of the WMATA SSPP and SEPP, WMATA shall provide a letter to TOC, signed by the WMATA General Manager, indicating the specific actions that WMATA is implementing in order to achieve full compliance with its SSPP and SEPP.

§3.3 TOC shall be responsible for the conduct of an On-Site Safety and Security Review every three (3) years, at a minimum, as specified in Section 7, *TOC Triennial On-Site Safety and Security Review*, of the TOC Program Standards and Procedures. TOC shall review the implementation of all elements of the WMATA SSPP and SEPP. WMATA shall work cooperatively with TOC to facilitate an effective and successful review. A draft report of the results of the review shall be prepared by TOC. WMATA shall provide written comments to TOC on the draft report within thirty (30) days of receipt. As appropriate, the TOC will incorporate WMATA comments into its final report. Whether or not comments are accepted, the TOC will acknowledge all substantive WMATA comments in its final report.

§3.4 WMATA shall develop CAPs in accordance with the requirements set forth in Section 11, *Corrective Actions*, of the TOC Program Standards and Procedures. WMATA shall develop CAPs responding to all deficiencies identified through the following: the On-Site Safety and Security Review; Accident/Incident/Hazardous condition investigations; Internal Safety and Security Audits; and other means by which a deficiency may be identified, such as industry peer reviews. WMATA shall include the following information with all CAPs: identification of the noted hazard or deficiency and its source; the date the CAP was opened; the process, plan, or mechanism to address and resolve the deficiency; the deadline for implementation of the plan of action; and the department(s) and person(s) responsible for implementation of the CAP. WMATA shall submit all CAPs to TOC for review and formal approval in accordance with the timeframes set forth in Section 11, *Corrective Actions*, of the TOC Program Standards and Procedures. If TOC is unable to approve a CAP, it shall develop comments and submit them to WMATA according to the established timeframe. WMATA shall respond to all written TOC comments, and consistent with WMATA's responsibility to accept a residual level of risk, shall provide TOC with a revised CAP. TOC shall document the CAP review process described herein in TOC's Program Standard and Procedures and WMATA shall document the same process described herein in WMATA's SSPP. WMATA shall maintain a CAP log that contains all of the above-described information, and that

contains a status report on all open CAPs. WMATA shall submit the CAP log to TOC on a monthly basis. WMATA shall work with TOC to facilitate the monitoring of open CAPs. Once a CAP has been implemented, WMATA shall provide TOC with verification documentation. Once TOC is able to verify that a CAP has been completed, TOC will consider the CAP closed and so notify WMATA. As necessary and appropriate, and based upon the totality of the circumstances, TOC may modify the time requirements for the submittal of CAPs to allow for additional time.

§3.5 TOC shall provide WMATA with a copy of the TOC Action Items List on a monthly basis, as specified in Section 11, *Corrective Actions*, of the TOC Program Standards and Procedures. WMATA shall monitor the TOC Action Items List and work to address open items for which WMATA is responsible as quickly as possible. WMATA shall suggest updates and revisions to the TOC Action Items List, as appropriate. TOC shall work with WMATA to evaluate CAP alternatives that may be necessary as a result of capital and operating program resource limitations.

§3.6 WMATA shall provide TOC with all requested information in support of TOC Annual Reports that must be submitted to FTA, FTA audits of TOC's oversight program, open FTA audit findings, and special studies conducted by TOC. TOC shall work with WMATA to establish timelines for all such information requests.

ARTICLE 4
CAPITAL PROJECT OVERSIGHT

§4.1 WMATA shall communicate progress on and shall facilitate TOC oversight of Major Capital Projects involving Safety and Security Certification to assure compliance with FTA Circular 5800.1. WMATA shall ensure that TOC has a full opportunity to observe and to review any and all development phases of any Major Capital Project including: project planning, preliminary engineering, final design, procurement, construction, operations and maintenance procedures and plans, training, testing, and start-up. At the conclusion of this process, TOC shall review and shall comment within ten (10) days on any of WMATA's proposed safety certifications. TOC shall be invited to participate in all FTA Quarterly Review Meetings and monthly WMATA Safety Certification Review Committee ("SCRC") Meetings.

§4.2 TOC shall conduct Pre-Revenue Service Assessments of all Major Capital Projects, including New Starts and extensions to verify completion of the Safety and Security Certification process or, alternatively, implementation of appropriate workarounds or mitigation strategies, and to determine overall operational readiness. TOC shall work with WMATA to establish timeframes and reporting for such assessments. WMATA shall comment on all TOC draft reports related to

Pre-Revenue Service Assessments, and shall address all TOC Findings through the established CAP process.

ARTICLE 5
COMMUNICATIONS, MEETINGS AND PERFORMANCE MANAGEMENT

Communications

§5.1 All formal correspondence between TOC and WMATA requiring actions or responses authorized by the WMATA General Manager shall be between the WMATA General Manager and the TOC Chair or their respective designees. For all other communications, TOC shall interface with the WMATA Chief Safety Officer who is the primary safety and security points of contact, as designated by the WMATA General Manager under §5.2 below. TOC may also interface with the Chief of Police on system security and emergency preparedness. The TOC Chair or designee may also communicate with other WMATA executive or management level personnel as appropriate or necessary based upon the unique circumstances or criticality of the issue and shall, in good faith, inform the WMATA Chief Safety Officer of such communications, except that TOC may communicate with a member of the Board of Directors, the General Counsel or the Inspector General without notice to the Chief Safety Officer. For all correspondence between the TOC Executive Committee and WMATA on matters relating to the TOC, the TOC Chair shall be the primary point of contact for the TOC Executive Committee.

§5.2 The Chief Safety Officer has been designated by the General Manager as the primary point of contact for safety and security, and shall notify TOC immediately of any changes in personnel affecting TOC communication with WMATA.

§5.3 TOC shall submit to the WMATA General Manager and Board of Directors monthly reports that may identify current activities, outstanding safety issues, unresolved deficient conditions at WMATA, status of accident and incident investigations, and updates on the implementation of CAPs subsequent to submission and review by the TOC Executive Committee.

§5.4 The parties recognize that TOC is entitled to review all documents relevant to safety and security issues under its SSO authority. This includes, but is not limited to, all reportable rail incidents and hazardous conditions. Since the respective TOC jurisdictions' Public Information Acts (PIAs) and Freedom of Information Acts (FOIAs) recognize that certain information, including, but not limited to, accident/incident documents preliminary to a final decision, documents containing Sensitive Security Information (SSI) and Critical Infrastructure Information (CII), and proprietary financial information, is not appropriate for public disclosure, the parties may agree upon procedures regarding the release of

such information which are in compliance with the FOIAs and PIAs of the three TOC jurisdictions.

§5.5 The TOC Chair shall (a) elevate critical unresolved WMATA safety concerns to the TOC Executive Committee and communicate TOC Executive Committee decisions and requests on their behalf to WMATA, (b) request WMATA to initiate investigations of accidents and hazardous conditions on behalf of the TOC and TOC Executive Committee, (c) address immediate and time-sensitive safety situations or incidents at WMATA which fall under TOC jurisdiction, (d) meet with appropriate WMATA personnel in order to address Findings, Corrective Action Plans, and other key issues, (e) notify the Chief Safety Officer within 10 days of the appointment of a new member of the TOC or of the Executive Committee, (f) inform the Chief Safety Officer of all communication between TOC members and other WMATA personnel and (g) take temporary actions on behalf of the TOC, until such time as a quorum of the TOC can take official actions. In these and other situations in which coordinated action is needed to allow the TOC to respond quickly and professionally and implement decisions more efficiently and effectively, WMATA shall cooperate with the TOC Chair to pursue activities within the scope of TOC's duties as a State Safety Oversight agency.

§5.6 WMATA shall communicate with TOC in the same time, fashion, and detail as it communicates with the WMATA Board of Directors before transmitting or responding to or from the media or the general public in any Press Release or public information relating to safety or security incidents or issues.

§5.7 Under the MOU between the three jurisdictions which defines TOC, each jurisdiction is responsible for responding to PIA and FOIA requests under the laws and regulations of each jurisdiction. TOC shall provide the WMATA Chief Safety Officer with copies of any FOIA, PIA, or other such request received within five (5) days of receipt of the request by the TOC and shall provide WMATA with copies of any response to such a request. In a reciprocal manner, the WMATA Chief Safety Officer shall provide the TOC Chair with copies of any request involving a matter within the jurisdiction of TOC received by WMATA pursuant to its Public Access to Records Policy (PARP) within five (5) days of the PARP Administrator's receipt of the request and shall provide the TOC Chair with copies of any response to such a request.

Meetings

§5.8 WMATA shall provide a formal presentation to the WMATA Board of Directors and the TOC Executive Committee on an annual basis on safety issues and performance.

§5.9 TOC, at its discretion, may develop and provide updates on its safety and security oversight efforts of WMATA to the WMATA Board of Directors at the Board's regularly scheduled monthly meetings.

§5.10 TOC and/or the TOC Executive Committee shall hold formal meetings with the WMATA General Manager on at least a quarterly basis to review significant safety and security events, and to assess the effectiveness of WMATA's safety and security policies, programs and performance. WMATA shall work with TOC to facilitate such meetings at the TOC's request.

§5.11 WMATA shall invite TOC to participate in the Executive Safety Committee ("ESC"). WMATA shall provide a copy of the minutes from all ESC meetings to TOC.

§5.12 TOC and WMATA shall conduct monthly working meetings to address specific topics, including, but not limited to, open accident, incident, and hazard investigations; and open CAPs. WMATA will work with TOC to facilitate such working meetings and ensure that appropriate representatives from various WMATA divisions and departments are present for such meetings. The goal of such meetings is to facilitate the completion and adoption of investigation reports by TOC and the closing of CAPs by TOC. TOC may request additional meetings based on specific circumstances which shall be identified so that the meetings can be appropriately staffed.

§5.13 TOC and WMATA shall conduct State Safety and Security Oversight coordination meetings on a monthly basis. The meeting shall take place in a location in the Washington metropolitan area agreed upon by TOC and WMATA that is accessible to all required participants via the Metrorail system. Representatives from all three (3) TOC jurisdictions shall participate in each meeting. Representatives from WMATA's Department of System Safety and Environmental Management ("SAFE"), Metro Transit Police Department ("MTPD"), and Emergency Management shall participate in each meeting in person. The WMATA Chief Safety Officer shall participate in each monthly meeting, and shall appear in person at the meeting on at least a quarterly basis. From time to time, TOC may request and WMATA shall mandate the participation of representatives from other WMATA divisions and departments, including, but not limited to, Rail Transportation, Capital Projects, and Track/Structures/Systems Maintenance, to the extent issues requiring their particular attention are on the meeting agenda. TOC shall invite representatives from FTA, the Transportation Security Administration ("TSA"), and, as deemed appropriate by TOC, the National Transportation Safety Board ("NTSB") to participate in each meeting. The TOC Chairman shall develop a draft agenda in collaboration with WMATA and TOC members. Meeting minutes shall be taken, and final draft meeting minutes shall be developed by the TOC Chair in collaboration with WMATA and TOC to be formally voted on for adoption at the

next TOC meeting. A final version, including appropriate meeting handouts, shall be saved in an unalterable format and provided to all attendees for their record.

Performance Management

§5.14 WMATA has implemented and will continue to implement a performance management system making safety a factor in evaluating all non-represented employees. The General Manager is conducting and will continue to conduct monthly accountability meetings to review organizational progress. At the annual meeting mandated by paragraph 5.8, WMATA shall report on the results of its effort to link performance goals to safety and security measures.

§5.15 WMATA shall make publicly available on its website meaningful performance metrics reflecting safety and security on Metrorail, including crime rates, employee accident rates, customer injury rates and revenue rail accident rates.

ARTICLE 6
WMATA STRUCTURE AND GOVERNANCE

§6.1 WMATA's safety and police functions shall have direct reporting relationships to the WMATA General Manager.

§6.2 The WMATA General Manager shall, on an annual basis, work with the Chair of the WMATA Board of Directors to ensure that safety and security are represented in the WMATA Board of Directors' Committee structure, assignments, and meetings for the purpose of assisting in the coordination of TOC interactions with WMATA, and to ensure the involvement of the WMATA Board of Directors in the WMATA Safety Program.

ARTICLE 7
ACCESS TO FACILITIES

§7.1 TOC, and their duly authorized agents, shall be granted access to the WMATA operating system and facilities at any time requested by TOC in the course of TOC official business. WMATA shall provide TOC with all specialized training required to gain access to the WMATA operating system and facilities such that TOC may conduct its required field verification activities of all safety- and security-critical operations and maintenance functions, and conduct special studies as deemed necessary by TOC. TOC access to WMATA facilities shall include, but not be limited to: observations of operational rules and procedures compliance from the operating cab of a revenue train, limited to no more than one (1) TOC representative at a time; observations by a trained and qualified TOC representative of systems and infrastructure maintenance and inspection rules and procedures compliance in WMATA maintenance facilities and along the WMATA right-of-way; and observations by a trained and qualified

TOC representative of roadway worker protection ("RWP") rules compliance along an active WMATA right-of-way. In routine situations, TOC shall notify WMATA of its intent to gain such access at least twenty four (24) hours in advance of the proposed observation date. An authorized and qualified WMATA representative shall accompany TOC on all such observations. TOC shall follow all established WMATA rules and procedures in conducting such observations and special studies. However, TOC may request immediate access to facilities without giving twenty four (24) hours' notice on a case-by-case basis at its sole discretion based upon the totality of the circumstances, in non-routine situations.

ARTICLE 8
WMATA BUDGET DEVELOPMENT

§8.1 In order to participate in the development of WMATA's annual Operating and Capital Budgets, TOC shall designate a representative to attend and participate in meetings of the Jurisdictional Coordinating Committee (JCC).

ARTICLE 9
DISPUTE RESOLUTION

§9.1 As the designated State Safety Oversight agency for WMATA, TOC is responsible for the independent evaluation of safety and security issues related to the WMATA rail system. In undertaking its defined oversight duties, TOC shall act in good faith to carry out its activities and WMATA shall likewise act in good faith in meeting and responding to TOC's oversight authority. TOC and WMATA agree to work cooperatively and diligently to meet the oversight requirements and to address issues raised in the oversight process.

§9.2 If the TOC Executive Committee determines that there are any conditions or practices in any Metrorail transit facility which present a danger which could reasonably be expected to cause death or serious physical harm and which WMATA has failed to timely abate, following notice from the TOC, the TOC Executive Committee may communicate its concerns to the WMATA General Manager and Board of Directors and the appointing authorities of the Board members to resolve such outstanding issues. At the request of either party, a joint meeting of the WMATA Board of Directors and of the TOC Executive Committee shall be held to resolve any such dispute. If notwithstanding these efforts, the matter is not resolved to the satisfaction of the TOC Executive Committee, the TOC Executive Committee, may, by unanimous vote, take any action that is permitted by law, including, but not limited to, the delay, suspension or cancelling of funding to WMATA.

ARTICLE 10
AMENDMENTS

§10.1 This Memorandum of Understanding may be amended by a writing signed by all of the Parties. Upon the passage of federal legislation and promulgation of implementing Federal Transit Administration regulations affecting regulation of fixed guideway rail systems, or upon significant changes to the structure or governance of the TOC or WMATA the parties will meet to review this Agreement and to determine whether changes are necessary.

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IN WITNESS WHEREOF, this Memorandum of Understanding has been executed as of the day first mentioned on the part of the Tri-State Oversight Committee (which body being composed of the Commonwealth of Virginia, through the Virginia Department of Rail and Public Transportation; the State of Maryland, through the Maryland Department of Transportation; and the District of Columbia, through the District of Columbia Department of Transportation) and the Washington Metropolitan Area Transit Authority by their duly authorized officials

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF RAIL AND
PUBLIC TRANSPORTATION

BY:_____
DIRECTOR

WITNESS:

_____

STATE OF MARYLAND
DEPARTMENT OF TRANSPORTATION

BY: _____
SECRETARY OF TRANSPORTATION

WITNESS:

_____

DISTRICT OF COLUMBIA
DEPARTMENT OF TRANSPORTATION

BY: _____
DIRECTOR

WITNESS:

_____

WASHINGTON METROPOLITAN AREA
TRANSIT AUTHORITY

BY: _____
GENERAL MANAGER

WITNESS:

_____