

Washington Metropolitan Area Transit Authority  
**Board Action/Information Summary**

Action  Information

MEAD Number:  
200455

Resolution:  
 Yes  No

**TITLE:**

Restatement of WMATA Deferred Comp. Plan & Trust

**PRESENTATION SUMMARY:**

This presentation will provide the Committee with an overview of the new provisions incorporated in the restatement of the WMATA Deferred Compensation Plan and Trust.

**PURPOSE:**

To obtain Board of Directors approval of the resolution for the restatement the WMATA Deferred Compensation Plan and Trust.

**DESCRIPTION:**

**Key Highlights:**

The WMATA Deferred Compensation Plan and Trust (“the 457 Plan”) provides retirement income and other deferred benefits to Authority employees and their beneficiaries. Proposed modifications to the 457 Plan require Board approval to restate the Plan and includes new provisions for the following:

- Specify a 457 Plan Management Structure
- Establish a 457 Plan Loan Provision

**Background and History:**

On December 10, 1998, the Board of Directors created the 457 Plan. Contributions to the 457 Plan are 100% employee-based for the purpose of retirement savings and are separate from other existing Metro pension plans. In February 2013, WMATA reviewed the provisions of the 457 Plan to determine if enhancements could be made to the Plan. The analysis produced two recommendations. The first recommendation was to establish a plan management structure, or an administrative committee, to provide fiduciary oversight to the Plan, an approach that is consistent with other WMATA trusts and aligns with industry best practices. The second recommendation was to establish a loan provision to assist employees who are experiencing financial hardships.

Previous plan restatements were made as a result of, and in accord with, federal legislation that including the Heroes Earning Assistance Relief Tax Act, the Worker, Retiree, and Employer Recovery Act and the Economic Growth and Tax Relief Reconciliation Act. Since 2002, employer 457 plan loan provisions have increased

significantly, principally for two reasons. First, many plan providers are now able to administer loans at no cost to the Plan or employer and secondly, they provide participants the ability to utilize their own contributed savings to ease difficult financial situations that do not meet the stringent IRS hardship distribution requirements.

**Discussion:**

Article X of the existing 457 Plan Document requires that all amendments be made by a resolution of the Board of Directors. In accord with this requirement, the restated document for the 457 Plan is being presented to the Board for approval with the following provisions added:

- Specification of a Plan Management Structure: An Administrative Committee would be established and comprised of designees of the General Manger/Chief Executive Officer, the Chief Financial Officer, and the Chief Human Resources Officer. The Committee would be responsible for Plan administration with the authority to obtain the services of investment advisors, investment managers, fund administrators, service providers, plan auditors, and plan counsel to assist in executing these responsibilities. Expenses for these services will be paid from fees received by the Plan Service Provider from certain investment funds and will be placed in the Plan Expense Account. Establishing a plan management structure for the 457 Plan aligns with the fiduciary oversight approach utilized by WMATA's remaining trusts and with industry best practices.
- Establishment of a 457 Plan Loan Provision: To alleviate the financial burden that many employees may periodically experience, we propose establishing a loan provision to the 457 Plan. The Administrative Committee would be responsible for establishing loan provision conditions and restricting loan amounts to the amount of available funds the employee has contributed. The loan provision is without financial impact or liability to WMATA and as such, WMATA is not liable for non-payment of loans. WMATA's service provider would be responsible for disbursement of funds and repayment would be made through automated clearinghouse payments. Approximately twenty-five percent of public employers have taken the initiative to include a loan provision in their 457 plan. Three compact jurisdictions, the District of Columbia, Fairfax County and the City of Alexandria are included in this statistic. The loan provision provides employees access to their own individual contributions to ease financial burdens that do not meet the criteria for hardship withdrawal.

**FUNDING IMPACT:**

|                            |                                   |
|----------------------------|-----------------------------------|
| No impact on funding.      |                                   |
| Project Manager:           | James R. Davis, Manager, Benefits |
| Project Department/Office: | Human Resources                   |

**TIMELINE:**

|   |   |
|---|---|
| <b>Previous Actions</b>                       | February 2013 - review of 457 Plan provisions                           |
| <b>Anticipated actions after presentation</b> | December 2013 - restated 457 Plan document will be adopted and approved |

**RECOMMENDATION:**

Board of Directors approval of the resolution for the restatement of the WMATA Deferred Compensation Plan and Trust.

**PRESENTED AND ADOPTED: December 19, 2013**

SUBJECT: RESTATEMENT OF THE WMATA DEFERRED COMPENSATION PLAN AND TRUST

**2013-32**

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

WHEREAS, The restated plan document for the WMATA Deferred Compensation Plan and Trust ("Plan") makes changes necessary to allow this Plan to be administered consistent with how WMATA pension plans are administered; and

WHEREAS, The changes to the Plan include the addition of a loan provision, and a change in the governance structure to allow for the establishment of an Administrative Committee; and

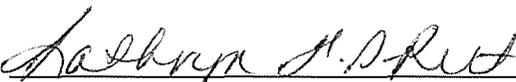
WHEREAS, Plan Article X requires that all Plan amendments be made by a written Resolution of the Board of Directors; now, therefore be it

*RESOLVED*, That the WMATA Deferred Compensation Plan and Trust, as amended and restated effective January 1, 2014, a copy of which is attached to this Resolution, is hereby adopted and approved; and be it further

*RESOLVED*, That the General Manager/Chief Executive Officer or the Chief Human Resources Officer is hereby authorized and directed to execute such other forms, notices, instruments or other documents; and to take such further action as may be necessary or desirable to: 1) fully implement the WMATA Deferred Compensation Plan and Trust; and 2) ensure that the Plan is eligible under Section 457(b) of the Internal Revenue Code; and be it finally

*RESOLVED*, That this Resolution shall be effective immediately.

Reviewed as to form and legal sufficiency,

  
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Kathryn H.S. Pett  
General Counsel

WMATA File Structure No.  
7.6.1 Deferred Compensation (457)

**Motioned by Mr. Acosta, seconded by Mr. Downey**

**Ayes: 8 – Mr. Downs, Mr. Downey, Mr. Nichols, Mrs. Hudgins, Mr. Dyke, Ms. Bowser, Mr. Acosta and Mr. Goldman**

**WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY  
DEFERRED COMPENSATION PLAN & TRUST**

As Amended and Restated Effective March 21, 2002  
As Further Amended and Restated Effective January 1, 2014

**ARTICLE I. PURPOSE**

The Washington Metropolitan Area Transit Authority hereby establishes the Washington Metropolitan Area Transit Authority Deferred Compensation Plan and Trust, hereafter referred to as the "Plan." Both the Plan and the Trust consist of the provisions set forth in this document.

The primary purpose of this Plan is to provide retirement income and other deferred benefits to the Employees of the Washington Metropolitan Area Transit Authority and the Employees' Beneficiaries in accordance with the provisions of Section 457 of the Internal Revenue Code of 1986, as amended (the "Code").

This Plan shall be an agreement solely between the Washington Metropolitan Area Transit Authority and participating Employees. The Plan and Trust forming a part hereof are established and shall be maintained for the exclusive benefit of eligible Employees and their Beneficiaries. No part of the corpus or income of the Trust shall revert to the Washington Metropolitan Area Transit Authority or be used for or diverted to purposes other than the exclusive benefit of Participants and their Beneficiaries.

**ARTICLE II. DEFINITIONS**

**2.01 Account:** The bookkeeping account maintained for each Participant reflecting the cumulative amount of the Participant's Deferred Compensation, including any income, gains, losses, or increases or decreases in market value attributable to the Administrative Committee's investment of the Participant's Deferred Compensation, and further reflecting any distributions to the Participant or the Participant's Beneficiary and any fees or expenses charged against such Participant's Deferred Compensation as described in Section 6.03.

**2.02 Accounting Date:** Each business day that the New York Stock Exchange is open for trading, as provided in Section 6.06 for valuing the Trust's assets.

**2.03 Administrative Committee.** A committee composed of the General Manager & Chief Executive Officer, the Deputy General Manager for Administration/Chief Financial Officer, and the Chief Human Resources Officer or their designees who shall administer the Plan and serve as the Trustees of the Plan.

**2.04 Administrator:** The person or persons named to carry out certain nondiscretionary administrative functions under the Plan, as hereinafter described.

The Administrative Committee may remove any person as Administrator upon 60 days' advance notice in writing to such person, in which case the Administrative Committee shall name another person or persons to act as Administrator. The Administrator may resign upon 60 days' advance notice in writing to the Administrative Committee, in which case the Administrative Committee shall name another person or persons to act as Administrator.

**2.05 Automatic Distribution Date:** Prior to January 1, 2002, "Automatic Distribution Date" means the 60<sup>th</sup> day of the calendar year after the Plan Year of the Participant's Retirement or any other date permitted under the regulations promulgated under Code section 457. On and after January 1, 2002, "Automatic Distribution Date" means April 1 of the calendar year after the Plan Year in which the Participant attains age 70½ or, if later, has a Severance Event.

**2.06 Beneficiary:** The person or persons designated by the Participant in his or her Joinder Agreement who shall receive any benefits payable hereunder in the event of the Participant's death. In the event that the Participant names two or more Beneficiaries, each Beneficiary shall be entitled to equal shares of the benefits payable at the Participant's death, unless otherwise provided in the Participant's Joinder Agreement. If no beneficiary is designated in the Joinder Agreement, if the designated Beneficiary predeceases the Participant, or the designated Beneficiary does not survive the Participant for a period of fifteen (15) days, the benefits shall be distributed in the following order of priority to the deceased Participant's: (a) spouse, (b) lineal descendants, (c) parents, or (d) estate. If a married Participant resides in a community property or marital property state, the Participant shall be responsible for obtaining appropriate consent of his or her spouse in the event that the Participant designates someone other than his or her spouse as Beneficiary.

**2.07 Deferred Compensation:** The amount of Normal Compensation otherwise payable to the Participant which the Participant and the Washington Metropolitan Area Transit Authority mutually agree to defer hereunder, any amount credited to a Participant's Account by reason of a transfer under section 6.08, or any other amount which the Washington Metropolitan Area Transit Authority credits to a Participant's Account.

**2.08 Dollar Limitation:** The applicable dollar amount within the meaning of Section 457(b)(2)(A) of the Code, as adjusted for the cost-of-living in accordance with Section 457(e)(15) of the Code, or as Code Section 457(b)(2)(A) may be amended in the future.

**2.09 Employee:** Any individual who provides services for the Washington Metropolitan Area Transit Authority as an employee of the Washington Metropolitan Area Transit Authority.

**2.10 Employer:** The Washington Metropolitan Area Transit Authority, which is an interstate compact agency and instrumentality of the Commonwealth of Virginia,

State of Maryland, and District of Columbia created with the consent of the United States Congress. The Washington Metropolitan Area Transit Authority is a governmental agency within the meaning of Section 414(d) of the Code and as described in Section 3(32) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA").

**2.11 457 Catch-Up Dollar Limitation:** Prior to January 1, 2002, "457 Catch-Up Dollar Limitation" means \$15,000. On and after January 1, 2002, "457 Catch-Up Dollar Limitation" means twice the Dollar Limitation.

**2.12 Includible Compensation:** The amount of an Employee's compensation from the Washington Metropolitan Area Transit Authority for a taxable year that is attributable to services performed for the Washington Metropolitan Area Transit Authority and that is includible in the Employee's gross income for the taxable year for federal income tax purposes; such term does not include any amount excludable from gross income under this Plan or any other plan described in Section 457(b) of the Code or any other amount excludable from gross income for federal income tax purposes. Includible Compensation shall be determined without regard to any community property laws.

**2.13 Joinder Agreement:** An agreement entered into between an Employee and the Washington Metropolitan Area Transit Authority, including any amendments or modifications thereof. Such agreement shall fix the amount of Deferred Compensation, specify a preference among the investment alternatives designated by the Administrative Committee of this Plan, designate the Employee's Beneficiary or Beneficiaries, and incorporate the terms, conditions, and provisions of the Plan by reference.

**2.14 Normal Compensation:** The amount of compensation which would be payable to a Participant by the Washington Metropolitan Area Transit Authority for a taxable year if no Joinder Agreement were in effect to defer compensation under this Plan. For purposes of this section, the term "Normal Compensation" as used in this section expressly includes money paid by the Employer to the Participant as a differential wage payment as that term is defined in section 3401(h)(2) of the Internal Revenue Code for all differential wage payments made after December 31, 2008. Normal Compensation shall also include such amounts or imputed amounts as may be required to be included under section 414(u) of the Internal Revenue Code.

**2.15 Normal Limitation:** The maximum amount of Deferred Compensation for any Participant for any taxable year (other than amounts referred to in sections 6.08 and 6.09).

**2.16 Normal Retirement Age:** Age 65, unless the Participant has elected an alternate Normal Retirement Age by written instrument delivered to the Administrator prior to Separation from Service. A Participant's Normal Retirement

Age determines the period during which a Participant may utilize the catch-up limitation of Section 5.02 hereunder. Once a Participant has to any extent utilized the catch-up limitation of Section 5.02, his Normal Retirement Age may not be changed.

A Participant's alternate Normal Retirement Age may not be earlier than the earliest date that the Participant will become eligible to retire and receive unreduced retirement benefits under the Washington Metropolitan Area Transit Authority's basic retirement plan covering the Participant and may not be later than the date the Participant will attain age 70½. If the Participant will not become eligible to receive benefits under a basic retirement plan maintained by the Washington Metropolitan Area Transit Authority, the Participant's Normal Retirement Age will be Age 65.

**2.17 Participant:** Any Employee who has joined the Plan pursuant to the requirements of Article IV.

**2.18 Percentage Limitation:** The Percentage Limitation means 100 percent of the Participant's Includible Compensation for the taxable year.

**2.19 Plan Year:** The calendar year.

**2.20 Retirement:** The first date upon which both of the following shall have occurred with respect to a Participant: Separation from Service and attainment of at least age 65.

**2.21 Severance Event:** Prior to January 1, 2002, severance of the Participant's employment with the Washington Metropolitan Area Transit Authority which constitutes a "separation from service" within the meaning of Section 402(e)(4)(D)(i)(III) of the Code. After December 31, 2001, a Severance Event means a severance of the Participant's employment with the Employer within the meaning of Section 457(d)(1)(A)(ii).

In general, a Participant shall be deemed to have experienced a Severance Event for purposes of this Plan when, in accordance with the established practices of the Washington Metropolitan Area Transit Authority, the employment relationship is considered to have actually terminated or such other events as may be permitted under the Code.

**2.22 Trust:** The Trust created under Article VI of the Plan which shall consist of all compensation deferred under the Plan, plus any income and gains thereon, less any losses, expenses and distributions to Participants and Beneficiaries.

## **ARTICLE III. ADMINISTRATION**

**3.01 Duties of the Washington Metropolitan Area Transit Authority:** The Washington Metropolitan Area Transit Authority shall have the authority to execute joinder agreements for the entry into the Plan, and changes to a Participant's deferral amount. The Washington Metropolitan Area Transit Authority shall retain the power to amend the terms of the Trust or terminate the Trust but shall not have any power to establish, modify or rescind any of the policies of the Trust or Plan nor select investment options or providers. The Washington Metropolitan Area Transit Authority's decisions shall be afforded the maximum deference permitted by applicable law.

**3.02 Duties of Administrator:** The Administrator, as agent for the Administrative Committee, shall perform nondiscretionary administrative functions in connection with the Plan, including the maintenance of Participants' Accounts, the provision of periodic reports of the status of each Account, the disbursement of benefits on behalf of the Trustee according to the provisions of this Plan, and such other nondiscretionary activities as may be delegated to it by the Administrative Committee.

**3.03 Duties of the Administrative Committee:** The Trustee, as created in Section 6.01, shall perform all discretionary duties affecting the rights or benefits of Participants which may be required in the administration of this Plan which are not vested in the Washington Metropolitan Area Transit Authority under Section 3.01 of this Trust. The Trustee shall create, rescind, and amend all policies applicable to the Plan and shall have the power to interpret the terms of the Plan and the Trust. The Administrative Committee shall select, hire, and discharge all investment option providers and shall decide the type of investment options to be available to Participants of the Plan. The Administrative Committee may hire discharge, and pay the reasonable fees and expenses of such other service providers, including counsel (who may be counsel to the Washington Metropolitan Area Transit Authority) as they deem appropriate to the conduct of their duties. The Administrative committee's decisions shall be afforded the maximum deference permitted by applicable law. To the extent required by the Administrator, the Administrative Committee shall provide Participant biographical data and beneficiary elections.

**3.04 Audit and Insurance:** The Administrative Committee shall carry fiduciary insurance in an appropriate amount to protect the Plan Participants from loss due to errors and omissions made by the Administrative Committee or any Administrator appointed by it in the performance of their duties. The Administrative Committee may use fiduciary insurance provided to the Trust by an investment provider or Administrator to comply with this section. The Administrative Committee shall have an independent audit of the Trust assets, liabilities, income and expenses performed annually. The cost of the annual audit and any fiduciary insurance obtained for the Administrative Committee and Plan Staff shall be borne by the Plan.

## ARTICLE IV. PARTICIPATION IN THE PLAN

**4.01 (a) Initial Participation:** An Employee may become a Participant by entering into a Joinder Agreement prior to the beginning of the calendar month in which the Joinder Agreement is to become effective to defer compensation not yet earned.

**(b) Participation of Rehired Employees:** Any prior employee who was a Participant in the Plan and is rehired by the Washington Metropolitan Area Transit Authority may resume participation in the Plan by entering into a Joinder Agreement. If the Participant has begun distributions from the Plan due to that prior Severance Event, the Participant shall terminate distributions before being eligible. Any deferred commencement date elected by such employee with respect to those prior Plan assets shall be null and void.

**4.02 Amendment of Joinder Agreement:** A Participant may amend an executed Joinder Agreement to change the amount of Normal Compensation not yet earned which is to be deferred (including the reduction of such future deferrals to zero) or to change his investment preference (subject to such restrictions as may result from the nature of terms of any investment made by the Administrative Committee). Such amendment shall become effective as of the first payroll run date of the calendar month commencing after the date the amendment is executed. A Participant may at any time amend his Joinder Agreement to change the designated Beneficiary, and such amendment shall become effective immediately.

## ARTICLE V. LIMITATIONS ON DEFERRALS

**5.01 Normal Limitation:** Except as provided in section 5.02, the maximum amount of Deferred Compensation for any Participant for any taxable year shall not exceed the lesser of the Dollar Limitation or the Percentage Limitation.

### **5.02 Catch-Up Limitations:**

**(a) Catch-Up Contributions for Participants Age 50 and Over:** A Participant who has attained the age of 50 before the close of the Plan Year, and with respect to whom no other elective deferrals may be made to the Plan for the Plan Year by reason of the Normal Limitation of section 5.01, may enter into a Joinder agreement to make elective deferrals in addition to those permitted by the Normal Limitation in an amount not to exceed the lesser of (1) the applicable dollar amount as defined in Section 414(v)(2)(B) of the Code, as adjusted for the cost-of-living in accordance with 414(v)(2)(C) of the code, or (2) the excess (if any) of (i) the Participant's compensation (as defined in section 415(c)(3) of the code) for the year, over (ii) any other elective deferrals of the Participant for such year which are made without regard to this Section 5.02(a) shall not, with respect to the year in which the contribution is made, be

subject to any otherwise applicable limitation contained in Section 5.01 above, or be taken into account in applying such limitation to other contributions or benefits under the Plan or any other plan. This Section 5.02(a) shall not apply in any year to which Section 5.02(b) applies. The provisions of this section 5.02(a) of the Plan shall only apply on and after January 1, 2002.

- (b) **Last Three Years Catch-Up Contribution:** For each of the last three (3) taxable years of a Participant ending before his attainment of Normal Retirement Age, the maximum amount of Deferred Compensation shall be the lesser of: (1) 457 Catch-Up Dollar Limitation or (2) the sum of (i) the Normal Limitation for the taxable year, and (ii) the Normal Limitation for each prior taxable year of the Participant commencing after 1978 less the amount of the Participant's Deferred Compensation for such prior taxable years. A prior taxable year shall be taken into account under the preceding sentence only if (i) the Participant was eligible to participate in the Plan for such year (or in any other eligible deferred compensation plan established under Section 457 of the Code which is properly taken into account pursuant to regulations under section 457), and (ii) compensation (if any) deferred under the Plan (or such other plan) was subject to the deferral limitations set forth in Section 5.01.

**5.03 Other Plans:** Notwithstanding any provision of the Plan to the contrary, the amount excludable from a Participant's gross income under this Plan or any other eligible deferred compensation plan under section 457(b) of the Code shall not exceed the limits set forth in sections 457(b) and 414(v) of the Code. Prior to January 1, 2002, the limits under Section 457(b) of the Code described in the first sentence of this Section 5.03 shall be further reduced by any amount excluded from gross income under section 401(k), 402(e)(3), 402(h)(1)(B), or 403(b) of the Code, or any amount with respect to which a deduction is allowable by reason of a contribution to an organization described in section 501(c)(18) of the Code.

## **ARTICLE VI. TRUST AND INVESTMENT OF ACCOUNTS**

**6.01 Investment of Deferred Compensation:** A Trust is hereby created to hold all the assets of the Plan for the exclusive benefit of Participants and Beneficiaries, except that expenses and taxes may be paid from the Trust as provided in Section 6.03. The Administrative Committee shall serve as the Trustee of the Trust created herein.

**6.02 Investment Powers:** Except to the extent that the investment of Trust assets is directed by Participants, pursuant to Section 6.05, the Administrative Committee or the Administrator, acting as agent for the Administrative Committee, shall have the powers listed in this Section with respect to investment of Trust assets,

(a) To invest and reinvest the Trust without distinction between principal and income in any form of tangible or intangible property, real, personal, or mixed, and wherever situated, including, but not by way of limitation, common or preferred stocks, shares of regulated investment companies and other mutual funds, bonds, loans, notes, debentures, mortgages, certificates of deposit, interest, or participation, equipment trust certificates, commercial paper including but not limited to participation in pooled commercial paper accounts, contracts with insurance companies including but not limited to insurance, individual or group annuity, deposit administration, and guaranteed interest contracts, deposits at reasonable rates of interest at banking institutions including but not limited to savings accounts and certificates of deposit, and other forms of securities or investments of any kind, class, or character whatsoever and representing interests in any form of enterprise, wherever it may be located, organized or operated within or without the United States of America, whether such investments are income producing or not, without being limited in any respect by statute or court rule or decision of any jurisdiction now or hereafter in force purporting to limit or otherwise affect such investments. Assets of the Trust may be invested in securities or new ventures that involve a higher degree of risk than investments that have demonstrated their investment performance over an extended period of time.

(b) To invest and reinvest all or any part of the assets of the Trust in any common, collective or commingled trust fund that is maintained by a bank or other institution and that is available to Employee plans described under sections 457 or 401 of the Code, or any successor provisions thereto, and during the period of time that an investment through any such medium shall exist, to the extent of participation of the Plan, the declaration of trust of such common, collective, or commingled trust fund shall constitute a part of this Plan.

(c) To invest and reinvest all or any part of the assets of the Trust in any group annuity, deposit administration or guaranteed interest contract issued by an insurance company or other financial institution on a commingled or collective basis with the assets of any other 457 plan or trust qualified under section 401(a) of the Code or any other plan described in section 401(a)(24) of the Code, and such contract may be held or issued in the name of the Plan Administrator, or such custodian as the Plan Administrator may appoint, as agent and nominee for the Washington Metropolitan Area Transit Authority. During the period that an investment through any such contract shall exist, to the extent of participation of the Plan, the terms and conditions of such contract shall constitute a part of the Plan.

(d) To purchase part interests in real property or in mortgages on real property, wherever such real property may be situated, and to delegate to a property manager or the holder or holders of a majority interest in such real

property or mortgage on real property the management and operation of any part interest in such real property or mortgages.

(e) To hold cash awaiting investment and to keep such portion of the Trust in cash or cash balances, without liability for interest, in such amounts as may from time to time be deemed to be reasonable and necessary to meet obligations under the Plan or otherwise to be in the best interests of the Plan.

(f) To retain, manage, operate, administer, divide, subdivide, partition, mortgage, pledge, improve, alter, demolish, remodel, repair, and develop in any manner any property, or any part of or partial interest in any property, real or personal, held in the Trust, to lease such property for any period of time, and to grant options to sell, exchange, lease, or otherwise dispose of any such property, without regard to restrictions applicable to fiduciaries or others and without the approval of any court.

(g) To sell for cash or credit, redeem, exchange for other property, convey, transfer, or otherwise dispose of any property held in the Trust in any manner and at any time, by private contract or at public auction or otherwise, and no other person shall be bound to see to the application of the purchase money or to inquire into the validity, expediency, or propriety of any such sale or other disposition.

(h) To enter into contracts for or to make commitments either alone or in company with others to purchase or sell at any future date any property acquired for the Trust.

(i) To vote or to refrain from voting any stocks, bonds, or other securities held in the Trust, to exercise any other right appurtenant to any securities or other property held in the Trust, to give general or special proxies or powers of attorney with or without power of substitution with respect to such securities and other property, to exercise any conversion privileges, subscription rights, or other options or privileges with respect to such securities and other property and make any payments incidental thereto, and generally to exercise, personally or by general or limited power of attorney, any of the powers of an owner with respect to stocks, bonds, securities, or other property held in the Trust at any time.

(j) To oppose or to consent to and participate in any organization, reorganization, consolidation, merger, combination, readjustment of finances, or similar arrangement with respect to any corporation, company, or association, any of the securities of which are held in the Trust, to do any act with reference thereto, including the exercise of options, the making of agreements or subscriptions and the payment of expenses, assessments, or subscriptions that may be deemed necessary or advisable in connection

therewith, and to accept, hold, and retain any securities or other property that may be so acquired.

(k) To deposit any property held in the Trust with any protective, reorganization, or similar committee, and to delegate discretionary power thereto and to pay and agree to pay part of its expenses and compensation and any assessments levied with respect to any such property so deposited.

(l) To hold, to authorize the holding of, and to register any investment to the Trust in the name of the Plan, the Administrative Committee, or any nominee or agent of any of the foregoing, including the Administrator, or in bearer form, to deposit or arrange for the deposit of securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by any other person, and to organize corporations or trusts under the laws of any jurisdiction for the purpose of acquiring or holding title to any property for the Trust, all with or without the addition of words or other action to indicate that property is held in a fiduciary or representative capacity but the books and records of the Plan shall at all times show that all such investments are part of the Trust.

(m) Upon such terms as may be deemed advisable by the Administrative Committee or the Administrator, as the case may be, for the protection of the interests of the Plan or for the preservation of the value of an investment, to exercise and enforce by suit for legal or equitable remedies or by other action, or to waive any right or claim on behalf of the Plan or any default in any obligation owing to the Plan, to renew, extend the time for payment of, agree to a reduction in the rate of interest on, or agree to any other modification or change in the terms of any obligation owing to the Plan, to settle, compromise, adjust, or submit to arbitration any claim or right in favor of or against the Plan, to exercise and enforce any and all rights of foreclosure, bid for property in foreclosure, and take a deed in lieu of foreclosure with or without paying consideration therefor, to commence or defend suits or other legal proceedings whenever any interest of the Plan requires it, and to represent the Plan in all suits or legal proceedings in any court of law or equity or before any body or tribunal.

(n) To employ suitable consultants, depositories, agents, and legal counsel (who may be counsel to the Washington Metropolitan Area Transit Authority) on behalf of the Plan.

(o) To make, execute, acknowledge, and deliver any and all deeds, leases, mortgages, conveyances, contracts, waivers, releases, or other instruments in writing necessary or proper for the accomplishment of any of the foregoing powers.

(p) To open and maintain any bank account or accounts in the name of the Plan, the Administrative Committee, or any nominee or agent of the foregoing, including the Administrator, in any bank or banks.

(q) To do any and all other acts that may be deemed necessary to carry out any of the powers set forth herein.

**6.03 Taxes and Expenses:** All brokerage costs, transfer taxes and similar expenses incurred in connection with the investment and reinvestment of the Trust Fund and all taxes of any kind whatsoever which may be levied or assessed under existing or future laws upon or in respect of the Trust Fund, shall be paid from the Trust Fund, and, until paid, shall constitute a charge upon the Trust Fund. Such charges are to be apportioned among Participants' account on an equitable basis. The compensation to the Administrator as may be agreed upon from time to time between the Administrative Committee and the Administrator (in accordance with the Administrator's contract in effect from time to time during the time it administers this Trust, if applicable) shall be paid from the sources identified by the Administrative Committee and may be assessed against Participant accounts on a per head basis. All other administrative expenses incurred by the Administrative Committee in the performance of its duties, and all proper charges and disbursements of the Trustee, shall be charged against and paid out of the Trust Expense Account. A lien for the payment thereof shall be impressed solely upon the assets of the Account and not upon the Trust assets generally. However, if at the end of the Plan Year, the Trust Expense Account balance is insufficient to pay all such expenses, then Participant accounts shall be charged for those expenses on an equitable basis determined by the Administrative Committee. No person who received full-time pay from the Washington Metropolitan Area Transit Authority may receive compensation from the Trust, except for reimbursement of expenses properly and actually incurred.

**6.04 Payment of Benefits:** The payment of benefits from the Trust in accordance with the terms of the Plan may be made by the Administrator, or by any custodian or other person so authorized by the Administrative Committee to make such disbursement. The Administrator, custodian or other person shall not be liable with respect to any distribution of Trust assets made at the direction of the Administrative Committee.

**6.05 Investment Funds:** In accordance with uniform and nondiscriminatory rules established by the Administrative Committee and the Administrator, the Participant may direct his/her Accounts to be invested in one (1) or more investment funds (including a self-directed stock purchase account if authorized by the Administrative Committee and offered by the Administrator); provided, however, that the Participant's investment directions shall not violate any investment restrictions established by the Administrative Committee. Neither the Washington Metropolitan Area Transit Authority, the Administrative Committee, the Administrator, nor any other person shall be liable for any losses incurred by virtue

of following such directions or with any reasonable administrative delay in implementing such directions.

**6.06 Valuation of Accounts:** As of each Accounting Date, the Plan assets held in each investment fund offered shall be valued at fair market value and the investment income and gains or losses for each fund shall be determined. Such investment income and gains or losses shall be allocated proportionately among all Account balances on a fund by fund basis. The allocation shall be in the proportion that each such Account balance as of the immediately preceding Accounting Date bears to the total of all such Account balances as of that Accounting Date. For purposes of this Article, all Account balances include the Account balances of all Participants and Beneficiaries.

**6.07 Crediting of Accounts:** The Participant's Account shall reflect the amount and value of the investments or other property obtained by the Administrative Committee through the investment of the Participant's Deferred Compensation pursuant to Sections 6.05 and 6.06. It is anticipated that the Administrative Committee's investments with respect to a Participant will conform to the investment preference specified in the Participant's Joinder Agreement, but nothing herein shall be construed to require the Administrative Committee to make any particular investment of a Participant's Deferred Compensation. Each Participant shall receive periodic reports, not less frequently than annually, showing the then current value of his/her Account.

**6.08 Transfers:**

**(a) Incoming Transfers:** A transfer may be accepted from an eligible deferred compensation plan maintained by another employer and credited to a Participant's Account under the Plan if (i) the Participant has had a Severance Event with that employer and become an Employee of the Washington Metropolitan Area Transit Authority, and (ii) the other employer's plan provides that such transfer will be made. The Administrative Committee may require such documentation from the predecessor plan as it deems necessary to effectuate the transfer in accordance with Section 457(e)(10) of the Code, to confirm that such plan is an eligible deferred compensation plan within the meaning of Section 457(b) of the Code, and to assure that transfers are provided for under such plan. The Administrative Committee may refuse to accept a transfer in the form of assets other than cash, unless the Administrative Committee and the Administrator agree to hold such other assets under the Plan.

Any such transferred amount shall be treated as a deferral subject to the limitations of Article V, except that, for purposes of applying the limitations of Sections 5.01 and 5.02, an amount deferred during any taxable year under the plan from which the transfer is accepted shall be

treated as if it has been deferred under this Plan during such taxable year and compensation paid by the transferor employer shall be treated as if it had been paid by the Washington Metropolitan Area Transit Authority.

**(b) Outgoing Transfers:** An amount may be transferred to an eligible deferred compensation plan maintained by another employer, and charged to a Participant's Account under this Plan, if (i) the Participant has separated from service with the Washington Metropolitan Area Transit Authority and become an employee of the other employer, (ii) the other employer's plan provides that such transfer will be accepted, and (iii) the Participant and the employer have signed such agreements as are necessary to assure that the Plan's liability to pay benefits to the Participant has been discharged and assumed by the other employer. The Administrative Committee may require such documentation from the other plan as it deems necessary to effectuate the transfer, to confirm that such plan is an eligible deferred compensation plan within the meaning of section 457 of the Code, and to assure that transfers are provided for under such plan. Such transfers shall be made only under such circumstances as are permitted under section 457 of the Code and the regulations thereunder.

#### **6.09 Eligible Rollover Distributions:**

- (a) **Effective Date:** This Section 6.09 is effective January 1, 2002.
- (b) **Incoming Rollovers:** An eligible rollover distribution may be accepted from an eligible retirement plan maintained by another employer and credited to a Participant's Account under the Plan. The Employer may require such documentation from the distributing plan as it deems necessary to effectuate the rollover in accordance with Section 402 of the Code and to confirm that such plan is an eligible retirement plan within the meaning of Section 402(c)(8)(B) of the code. The Plan shall separately account for eligible rollover distributions from any eligible retirement plan that is not an eligible deferred compensation plan described in Section 457(b) of the code maintained by an eligible governmental employer described in Section 457(e)(1)(A) of the Code.
- (c) **Outgoing Rollovers:** Notwithstanding any provision of the Plan to the contrary that would otherwise limit a distributee's election under this Section, a distributee may elect, at the time and in the manner prescribed by the Administrative Committee, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.
- (d) **Definitions:**

- (1) **Eligible Rollover Distribution:** An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the Distributee, except that an eligible rollover distribution does not include any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the Distributee or the joint lives (or joint life expectancies) of the Distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under Sections 401(a)(9) and 457(d)(2) of the Code; and any distribution made as a result of an unforeseeable emergency of the employee. For purposes of distributions from other eligible retirement plans rolled over into this Plan, the term eligible rollover distribution shall not include the portion of any distribution that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities).
- (2) **Eligible Retirement Plan:** An eligible retirement plan is an individual retirement account described in Section 408(a) of the Code, an individual retirement annuity described in Section 408(b) of the Code, an annuity plan described in Sections 403(a) or 403(b) of the Code, a qualified trust described in Section 401(a) of the code, or an eligible deferred compensation plan described in Section 457(b) of the code which is maintained by an eligible governmental employer described in Section 457(e)(1)(A) of the code, that accepts the distributee's eligible rollover distribution.
- (3) **Distributee:** A Distributee includes an employee or former employee. In addition, the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the code, are Distributees with regard to the interest of the spouse or former spouse.
- (4) **Direct Rollover:** A direct rollover is a payment by the plan to the eligible retirement plan specified by the Distributee.

**6.10 Treatment of Distributions of Amounts Previously Rolled Over From 401(a) and 403(b) Plans and IRAs:** For purposes of Section 72(t) of the Code, a distribution from this Plan shall be treated as a distribution from a qualified retirement plan described in Section 4974(c)(1) of the Code to the extent that such distribution is attributable to an amount transferred to an eligible deferred compensation plan from a qualified retirement plan (as defined in section 4974(c) of the Code).

**6.11 Washington Metropolitan Area Transit Authority Liability:** In no event shall the Washington Metropolitan Area Transit Authority's liability to pay benefits to a

Participant under this Plan exceed the value of the amounts credited to the Participant's Account; neither the Washington Metropolitan Area Transit Authority nor the Administrative Committee shall be liable for losses arising from depreciation or shrinkage in the value of any investments acquired under this Plan.

**6.12 Funding Trust Expenses:** It is anticipated that all Trust expenses will be funded by the Trust using funds received from the Trust's custodian pursuant to any agreement between the Trust and the Administrator and which are then deposited into a Trust Expense Account. All funds contributed under this section shall be kept separate from all other funds contained in the Trust and may be used only for the payment of lawful expenses of the Trust. To the extent that the funds received by Trust from the Administrator are insufficient to cover those expenses, the remaining expenses shall be paid from funds designated by the Administrative Committee and which may include a pro rata charge against participant accounts.

**6.13 Trust Expense Budget:** Annually, the Administrative Committee shall prepare a budget for the Plan which will cover all anticipated expenses other than investment costs. The budget shall identify proposed sources of funding for all such non-investment costs. Investment costs shall be borne by the individual Participants incurring such costs.

**6.14 Washington Metropolitan Area Transit Authority Contribution Due Date:** The Washington Metropolitan Area Transit Authority shall make contributions to the Account of each Participant in accordance with the most current joinder agreement on file with it no later than the twentieth calendar day following the close of each biweekly pay period or if the twentieth day is not a business day, then on the next business day succeeding the twentieth day.

**6.15 Participant Loan Accounts:** Participant Loan Accounts shall be invested in accordance with Section 14.02 of the Plan. Such Accounts shall not share in any investment income and gains or losses of the investment funds described in Sections 6.05 and 6.06.

**ARTICLE VII. BENEFITS**

**7.01 Retirement Benefits and Election on Severance Event:**

- (a) **General Rule:** Except as otherwise provided in this Article VII, the distribution of a Participant's Account shall commence as of a Participant's Automatic Distribution Date and the distribution of such benefits shall be made in accordance with one of the payment options described in Section 7.02. Notwithstanding the foregoing, but subject to the following paragraph of this Section 7.01, the Participant may elect following a Severance Event to have the distribution of benefits commence on a fixed determinable date other than that described in the preceding sentence but not later than April 1

of the year following the year of the Participant's Retirement or attainment of age 70½, whichever is later.

- (b) **Additional Delay in Distribution:** Prior to January 1, 2002, the Participant may elect to defer the commencement of distribution of benefits to a fixed determinable date later than the date provided in Section 7.01(a), but not later than April 1 of the year following the year of the Participant's retirement or attainment of age 70½, whichever is later, provided, however, that (a) such election is made after the 61st day following the Participant's Severance Event and before commencement of distributions, (b) the Participant may make only one (1) such election, and (c) such election is made not less than 30 days prior to the date the distribution of a Participant's Account would otherwise commence. On or after January 1, 2002, the Participant's right to change his or her election with respect to commencement of the distribution of benefits shall not be restrained by this Section 7.01, except that no distribution may begin after April 1 of the year following the later of the Employee's Severance Event or his reaching age 70½. Notwithstanding the foregoing, the Administrator, in order to ensure the orderly administration of this provision, may establish a deadline after which such election to defer the commencement of distribution of benefits shall not be allowed.

**7.02 Payment Options:** As provided in Sections 7.01, 7.05 and 7.06, a Participant or Beneficiary may elect to have the value of the Participant's Account distributed in accordance with one of the following payment options, provided that such option is consistent with the limitations set forth in Section 7.03.

- (a) Equal monthly, quarterly, semiannual or annual payments in an amount chosen by the Participant, continuing until his/her Account is exhausted;
- (b) One lump sum payment;
- (c) Approximately equal monthly, quarterly, semiannual or annual payments, calculated to continue for a period certain chosen by the Participant.
- (d) Annual Payments equal to the minimum distributions required under Section 401(a)(9) of the Code over the life expectancy of the Participant or over the life expectancies of the Participant and his Beneficiary.
- (e) Payments equal to payments made by the issuer of a retirement annuity policy acquired by the Washington Metropolitan Area Transit Authority.
- (f) A split distribution under which payments under options (a), (b), (c) or (e) commence or are made at the same time, as elected by the Participant under Section 7.01, provided that all payments commence (or are made) by the latest benefit commencement date under Section 7.01.

A Participant's or Beneficiary's selection of a payment option made after December 31, 1995, under Subsections (a) or (c) above may include the selection of an automatic annual cost-of-living increase. Such increase will be based on the rise in the Consumer Price Index for All Urban Consumers (CPI-U) from the third quarter of the last year in which a cost-of-living increase was provided to the third quarter of the current year. Any increase will be made in periodic payment checks beginning the following January.

If, prior to January 1, 2002, a Participant made a timely election of a payment date but failed to specify a payment option or failed to make a timely election of both payment date and option, and as a result, was defaulted to benefit commencement at age 65, or such other date as the Participant may have specified, benefits shall be paid annually in the amount of \$100 per year commencing at age 65 or the date specified by the Participant until the Participant reaches age 70½. When the Participant reaches age 70½, payments shall be made in accordance with Code section 401(a)(9) and the regulations thereunder.

**7.03 Limitation on Options:** No payment option may be selected by a Participant under subsections 7.02(a) or (c) unless the amount of any installment is not less than \$100. No payment option may be selected by a Participant under Sections 7.02, 7.05, or 7.06 unless it satisfies the requirements of Sections 401(a)(9) and 457(d)(2) of the Code, including that payments commencing before the death of the Participant shall satisfy the incidental death benefits requirement under section 457(d)(2)(B)(i)(1). However, the requirements of this section 7.03 relating to Internal Revenue Code sections 401(a)(9) and 457(d)(2) are inapplicable for calendar year 2009 provided, however, that the inapplicability of this section 7.03 for calendar year 2009 shall not make any distribution made during calendar year 2009 an eligible rollover distribution if such distribution after the application of section 7.03 would have rendered that distribution ineligible for treatment as an eligible rollover distribution under section 401(a)(31) of the Internal Revenue Code.

**7.04 Taxation of Distributions:** To the extent required by law, income and other taxes shall be withheld from each benefit payment and payments shall be reported to the appropriate governmental agency or agencies.

**7.05 Postretirement Death Benefits:**

- (a) Should the Participant die after he or she has begun to receive benefits under a payment option, the remaining payments, if any, under the payment option shall continue until the Administrator receives notice of the Participant's death. Upon notification of the Participant's death, benefits shall be payable to the Participant's Beneficiary commencing not later than December 31 of the year following the year of the Participant's death, provided that the Beneficiary may elect to begin benefits earlier than that date.

- (b) If the Beneficiary has not attained age 80 at the time payments commence, he or she may elect to receive payments in a single lump-sum payment or in equal or approximately equal monthly, quarterly, semi-annual or annual payments continuing over a period not to exceed ten years from the first payment. The Beneficiary also may elect to receive a partial lump-sum payment followed by monthly, quarterly, semi-annual or annual installments, provided that all payments are made within a period of ten years from the initial payment. In the event that the Beneficiary is age 80 or over, the remaining balance in the Participant's account will be paid to the Beneficiary in a single lump sum.
- (c) In the event that the Beneficiary dies before the payment of death benefits has commenced or been completed, the remaining value of the Participant's Account shall be paid to the estate of the Beneficiary in a lump sum. In the event that the Participant's estate is the Beneficiary, payment shall be made to the estate in a lump sum.

**7.06 Preretirement Death Benefits:**

- (a) Should the Participant die before he or she has begun to receive the benefits provided by Section 7.01, the value of the Participant's Account shall be payable to the Beneficiary commencing not later than December 31 of the year following the year of the Participant's death, provided that the Beneficiary may elect to begin benefits earlier than that date.
- (b) If the designated Beneficiary has not attained age 80 at the time payments commence, he or she may elect to receive payments in a single lump-sum payment or in equal or approximately equal monthly, quarterly, semi-annual or annual payments continuing over a period not to exceed ten years from the first payment. The Beneficiary also may elect to receive a partial lump-sum payment followed by monthly, quarterly, semi-annual or annual installments, provided that all payments are made within a period of ten years from the initial payment. In the event that the Beneficiary is age 80 or over, the remaining balance in the Participant's account will be paid to the Beneficiary in a single lump sum.
- (c) In the event that the Beneficiary dies before the payment of death benefits has commenced or been completed, the remaining value of the Participant's Account shall be paid to the estate of the Beneficiary in a lump sum. In the event that the Participant's estate is the Beneficiary, payment shall be made to the estate in a lump sum.

**7.07 Unforeseeable Emergencies:**

- (a) In the event an unforeseeable emergency occurs, a Participant may apply to the Administrative Committee or its designated representative to receive that part of the value of his/ or her Account that is reasonably needed to satisfy the emergency need. If such an application is approved by the Administrative Committee or its designated representative, the Participant shall be paid only such amount as the Administrative Committee or its designated representative deems necessary to meet the emergency need, but payment shall not be made to the extent that the financial hardship may be relieved through cessation of deferral under the Plan, insurance or other reimbursement, applying for a loan under the Plan, or liquidation of other assets to the extent such liquidation would not itself cause severe financial hardship.
  
- (b) An unforeseeable emergency shall be deemed to involve only circumstances of severe financial hardship to the Participant resulting from a sudden unexpected illness, accident, or disability of the Participant or of a dependent (as defined in section 152(a) of the Code or as otherwise permitted by the Internal Revenue Service) of the Participant, loss of the Participant's property due to casualty, or other similar and extraordinary unforeseeable circumstances arising as a result of events beyond the control of the Participant. The need to send a Participant's child to college or to purchase a new home shall not be considered unforeseeable emergencies. The determination as to whether such an unforeseeable emergency exists shall be based on the merits of each individual case.

**7.08 De Minimis Accounts:** Notwithstanding the foregoing provisions of this Article, prior to January 1, 2002, if the value of a Participant's Account does not exceed the dollar limit under Section 411(a)(11)(A) of the Code as described in section 457(e)(9)(A) of the Code and (a) no amount has been deferred under the Plan with respect to the Participant during the 2-year period ending on the date of the distribution and (b) there has been no prior distribution under the Plan to the Participant pursuant to this Section 7.08, the Participant may elect to receive or the Administrative Committee may involuntarily distribute the Participant's entire Account without the consent of the Participant. Such distribution shall be made in a lump sum.

On or after January 1, 2002, if the value of a Participant's Account is less than \$1,000, the Trustee may pay the Participant's Account to the Participant in a single lump sum distribution, provided that (a) no amount has been deferred under the Plan with respect to the Participant during the 2-year period ending on the date of the distribution and (b) there has been no prior distribution under the Plan to the Participant pursuant to this Section 7.08. If the value of the Participant's Account is at least \$1,000 but not more than the dollar limit under Code Section 411(a)(11)(A) and (a) no amount has been deferred under the Plan with respect to the Participant during the 2-year period ending on the date of the distribution and (b) there has been no prior distribution under the Plan to the Participant pursuant to

this Section 7.08, the Participant may elect to receive his or her entire Account. Such distribution shall be made in a lump sum.

## **ARTICLE VIII. NONASSIGNABILITY**

**8.01 In General:** Except as provided in Articles VIII and XIV, no Participant or Beneficiary shall have any right to commute, sell, assign, pledge, transfer or otherwise convey or encumber the right to receive any payments hereunder, which payments and rights are expressly declared to be nonassignable and nontransferable.

### **8.02 Domestic Relations Orders:**

**(a) Allowance of Transfers:** To the extent required under final judgment, decree, or order (including approval of a property settlement agreement) that (i) relates to the provision of child support, alimony payments, or marital property rights and (ii) is made pursuant to a state domestic relations law, any portion of a Participant's Account may be paid or set aside for payment to a spouse, former spouse, child, or other dependent of the participant. Where necessary to carry out the terms of such an order, a separate Account shall be established with respect to the spouse, former spouse, or child who shall be entitled to make investment selections with respect thereto in the same manner as the Participant; any amount so set aside for a spouse, former spouse, or child shall be paid out in a lump sum at the earliest date that benefits may be paid to the Participant, unless the order directs a different time or form of payment. Nothing in this Section shall be construed to authorize any amount to be distributed under the Plan at a time or in a form that is not permitted under Section 457(b) of the Code. Any payment made to a person pursuant to this Section shall be reduced by any required income tax withholding.

**(b) Release from Liability to Participant:** The Washington Metropolitan Area Transit Authority's and the Plan's liability to pay benefits to a Participant shall be reduced to the extent that amounts have been paid or set aside for payment to a spouse, former spouse, or child pursuant to paragraph (a) of this Section. No such transfer shall be effectuated unless the Administrative Committee or Administrator have been provided with satisfactory evidence that the Washington Metropolitan Area Transit Authority, Administrative Committee and Administrator are released from any further claim by the Participant with respect to such amounts. The Participant shall be deemed to have released the Washington Metropolitan Area Transit Authority, Administrative Committee, and Administrator from any claim with respect to such amounts, in any case in which (i) the Washington Metropolitan Area Transit Authority, Administrative Committee, or Administrator has been served with legal process or otherwise joined in a proceeding relating to such transfer, (ii) the Participant has been notified of the pendency of such

proceeding in the manner prescribed by the law of the jurisdiction in which the proceeding is pending for service of process in such action or by mail from the Washington Metropolitan Area Transit Authority, Administrative Committee, or Administrator to the Participant's last known mailing address, and (iii) the Participant fails to obtain an order of the court in the proceeding relieving the Washington Metropolitan Area Transit Authority, Administrative Committee, or Administrator from the obligation to comply with the judgment, decree, or order.

**(c) Participation in Legal Proceedings:** The Washington Metropolitan Area Transit Authority, Administrative Committee, and Administrator shall not be obligated to defend against or set aside any judgment, decree, or order described in paragraph (a) or any legal order relating to the garnishment of a Participant's benefits, unless the full expense of such legal action is borne by the Participant. In the event that the Participant's action (or inaction) nonetheless causes the Washington Metropolitan Area Transit Authority, Administrative Committee or Administrator to incur such expense, the amount of the expense may be charged against the Participant's Account and thereby reduce the Washington Metropolitan Area Transit Authority's and Administrative Committee's obligation to pay benefits to the Participant. In the course of any proceeding relating to divorce, separation, or child support, the Washington Metropolitan Area Transit Authority, Administrative Committee and Administrator shall be authorized to disclose information relating to the Participant's Account to the Participant's spouse, former spouse, or child (including the legal representatives of the spouse, former spouse, or child), or to a court.

The Administrative Committee shall not be obligated to comply with any judgment, decree or order which attempts to require the Plan to violate Plan provisions or any provision of Code Section 457.

**ARTICLE IX. RELATIONSHIP TO OTHER PLANS AND EMPLOYMENT AGREEMENTS**

This Plan serves in addition to any other retirement, pension, or benefit plan or system presently in existence or hereinafter established for the benefit of the Washington Metropolitan Area Transit Authority's employees, and participation hereunder shall not affect benefits receivable under any such plan or system. Nothing contained in this Plan shall be deemed to constitute an employment contract or agreement between any Participant and the Washington Metropolitan Area Transit Authority or to give any Participant the right to be retained in the employ of the Washington Metropolitan Area Transit Authority. Nor shall anything herein be construed to modify the terms of any employment contract or agreement between a Participant and the Washington Metropolitan Area Transit Authority. In addition, notwithstanding any provision of the Plan to the contrary, the Plan shall be administered in compliance with the requirements of the Uniformed Services Employment and Reemployment Rights Act contained in Code Section 414(u), as amended.

**ARTICLE X. AMENDMENT OR TERMINATION OF PLAN**

The Washington Metropolitan Area Transit Authority may at any time amend this Plan provided that it transmits such amendment in writing to the Administrative Committee at least 30 days prior to the effective date of the amendment. The consent of the Administrative Committee or Administrator shall not be required in order for such amendment to become effective, but the Administrator shall be under no obligation to continue acting as Administrator hereunder if it disapproves of such amendment. The Washington Metropolitan Area Transit Authority may at any time terminate this Plan.

The Administrator may at any time propose an amendment to the Plan by an instrument in writing transmitted to the Administrative Committee at least 30 days before the proposed effective date of the amendment. Such amendment shall not become effective until the Plan is formally amended. If within 60 days, the Washington Metropolitan Area Transit Authority notifies the Administrative Committee in writing for transmission to the Administrator that it disapproves such amendment, then such amendment shall not become effective. In the event of such disapproval, the Administrator shall be under no obligation to continue acting as Administrator hereunder.

Except as may be required to maintain the status of the Plan as an eligible deferred compensation plan under section 457 of the Code or to comply with other applicable laws, no amendment or termination of the Plan shall divest any Participant of any rights with respect to compensation deferred before the date of the amendment or termination.

## **ARTICLE XI. APPLICABLE LAW**

This Plan and Trust shall be construed under the laws of the District of Columbia and is established with the intent that it meet the requirements of an “eligible deferred compensation plan” under Section 457 of the Code, as amended, including the trust requirements of Code Section 457(g). The provisions of this Plan and Trust shall be interpreted wherever possible in conformity with the requirements of that Section of the Code.

## **ARTICLE XII. GENDER AND NUMBER**

The masculine pronoun, whenever used herein, shall include the feminine pronoun, and the singular shall include the plural, except where the context requires otherwise.

## **ARTICLE XIII. LEAVE OF ABSENCE**

**13.01 Paid Leave of Absence:** If a participant is on an approved leave of absence from the Washington Metropolitan Area Transit Authority with Compensation, or on an approved leave of absence without Compensation that does not constitute a Severance Event within the meaning of Code Section 457(d)(1))(A)(ii), which under the Washington Metropolitan Area Transit Authority’s current practices is generally a leave of absence without Compensation for a period of one year or less, said Participant’s participation in the Plan may continue.

**13.02 Unpaid Leave of Absence:** If a Participant is on an approved leave of absence without Compensation and such leave of absence continues to such an extent that it becomes a Severance Event within the meaning of Code Section 457(d)(1))(A)(ii), said participant shall have separated from service with the Washington Metropolitan Area Transit Authority for purposes of this Plan. Upon termination of leave without pay and return to active status, the Participant may enter into a new Joinder Agreement to be effective when permitted by section 4.01.

**13.03 Leave of Absence for Qualified Military Service.** Should a Participant die or suffer a Total and Permanent Disability as a result of qualified military service as defined in section 414(u) of the Internal Revenue Code, the Leave of Absence shall be deemed to have ended on the day prior to such death or Total and Permanent Disability and the Participant shall be presumed for all Plan purposes to have resumed his employment with the Employer on that day.

## **ARTICLE XIV LOANS**

**14.01 Availability of Loans to Participants:** A Participant eligible under the Plan’s loan policy to receive a loan may apply for a loan from the Plan subject to the limitations and other conditions established by the Administrative Committee,

which must comply with applicable statutes or regulations issued by the Internal Revenue Service and the provisions of this Article.

#### **14.02 Participant Loan Accounts:**

- (a) Upon approval of a loan to a Participant by the Administrative Committee or its designated representative, an amount not in excess of the loan shall be transferred from the Participant's other investment fund(s), described in Section 6.05 of the Plan, to the Participant's Loan Account as of the Accounting Date immediately preceding the agreed upon date on which the loan is to be made.
- (b) The assets of a Participant's Loan Account may be invested and reinvested only in promissory notes received by the Plan from the Participant as consideration for a loan permitted by Section 14.01 of the Plan or in cash. Uninvested cash balances in a Participant's Loan Account shall not bear interest. Neither the Washington Metropolitan Area Transit Authority, the Administrative Committee, the Plan Administrator, nor any other person shall be liable for any loss, or by reason of any breach, that results from the Participant's exercise of such control.
- (c) Repayment of principal and payment of interest shall be made by pre-approved continuing ACH funds transfer, and shall be invested in one (1) or more other investment funds, in accordance with Section 6.05 of the Plan, as of the next Accounting Date after payment thereof to the Trust. The amount so invested shall be deducted from the Participant's Loan Account.

#### **ARTICLE XV . TAX TREATMENT OF AMOUNT CONTRIBUTED**

It is intended that pursuant to Code Section 457, the amount of Deferred Compensation shall not be considered current compensation for purposes of federal income taxation. This rule shall also apply to state income taxation unless applicable state laws provide otherwise. Such amounts shall, however, be included as compensation to the extent required under the Federal Insurance Contributions Act (FICA). Payments under this Plan shall supplement retirement and death benefits payable under the Washington Metropolitan Area Transit Authority's group insurance and retirement plans, if any.

#### **ARTICLE XVI DISCLAIMER**

The Washington Metropolitan Area Transit Authority, Administrative Committee, and Administrator make no endorsement, guarantee or any other representation and shall not be liable to the Plan or any Participant, Beneficiary, or any other person with respect to (a) the financial soundness, investment performance, fitness or suitability (for meeting a Participant's objectives, future obligations under the Plan,

or any other purpose) of any investment option offered or any investment vehicle in which amounts deferred under the Plan are actually invested, or (b) the tax consequences of the Plan to any Participant, Beneficiary or any other person.

IN WITNESS WHEREOF, the Washington Metropolitan Area Transit Authority has executed this Plan and Trust Agreement this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

ATTEST:

Washington Metropolitan Area Transit Authority

\_\_\_\_\_

By \_\_\_\_\_  
Richard R. Sarles  
General Manager & Chief Executive Officer