

Washington Metropolitan Area Transit Authority

Board Action/Information Summary

☒ Action ☐ Information

MEAD Number:
202109

Resolution:
☒ Yes ☐ No

TITLE:

FY2020 CFA and District of Columbia LCFA

PRESENTATION SUMMARY:

Staff recommends Board approval to enter into a one-year Capital Funding Agreement (CFA) for FY2020 among WMATA and the jurisdictions on similar terms and conditions as the FY2011-2016 CFA. Staff also recommends Board approval to enter into a one-year FY2020 District of Columbia Local Capital Funding Agreement (LCFA).

PURPOSE:

Board approval to enter into a one-year CFA for FY2020 among WMATA and the jurisdictions on similar terms and conditions as the FY2011-2016 CFA. Staff is also seeking Board approval to enter into a one-year FY2020 District of Columbia LCFA.

DESCRIPTION:

Key Highlights:

- The CFA among WMATA and the funding jurisdictions expired on June 30, 2019.
- WMATA requires approval to enter into a one-year CFA for FY2020 on similar terms and conditions as the FY2011-2016 CFA.
- The District of Columbia LCFA also expired on June 30, 2019 and requires approval for FY2020.

Background and History:

A financial agreement, the CFA provides the framework for jurisdictional investment in the Capital Improvement Program (CIP), including match to federal formula and discretionary grants, additional state and local contributions, and establishes processes for Metro to issue debt when jurisdictions choose to finance their funding obligations. The most recent CFA was originally established in calendar year 2010 for the FY2011-2016 CIP. WMATA and the jurisdictions previously executed three one year extensions of the CFA for FY2017, FY2018, and FY2019. That CFA expired on June 30, 2019.

To address certain concerns specific to the District of Columbia, WMATA and the District of Columbia have historically agreed upon terms for a LCFA. The LCFA provides additional detail regarding the definition of Capital Projects, provides a District of Columbia specific definition of debt, and includes the District's anti-deficiency requirements. The LCFA expired on June 30, 2019.

Discussion:

WMATA requires approval to enter into a one-year CFA for FY2020 on similar terms and conditions as the FY2011-2016 CFA. The FY2020 agreement will fund the jurisdictions' share of the \$1.76 billion FY2020 capital budget. The FY2020 agreement contains two amendments:

1. The reprogramming requirements changed from requiring approval for revisions greater than \$1 million to requiring WMATA to "provide the Contributing Jurisdictions with monthly reports regarding reprogramming of project budgets into or out of Capital Projects or Capital Programs during the term of this Agreement where such reprogramming results in either 1) an increase of the total project budget as shown in the CIP; 2) revises the scope of a Capital Project; 3) a movement of \$5 million or more; or 4) creates a new Capital Project."
2. Added the concept of Dedicated Funding Debt as a separate type of debt from Jurisdictional Capital Contribution Debt. Dedicated Funding Debt payments will be made from the dedicated funding received from the jurisdictions whereas as Jurisdictional Capital Contribution Debt is paid from funds received from the jurisdictions as part of their operating subsidy. Both types of debt are used for capital purposes.

All other terms and conditions of the FY2011-2016 CFA remain unchanged.

WMATA also requires approval to enter into a one-year FY2020 District of Columbia LCFA to address concerns specific to the District of Columbia.

FUNDING IMPACT:

This action will provide approval to enter into a one-year CFA for FY2020 among WMATA and the jurisdictions as well as approval to enter into a one-year FY2020 District of Columbia LCFA.

TIMELINE:

Previous Actions	June 2010 - Approval of the CFA and LCFA for FY2011-2016 March 2016 - Approval of one-year extension of CFA and LCFA for FY2017 March 2017 - Approval of second one-year extension of CFA and LCFA for FY2018 March 2018 - Approval of third one-year extension of CFA and LCFA for FY2019
Anticipated actions after presentation	Fall 2019 - WMATA and jurisdictions approve FY2020 CFA and LCFA agreements and continue negotiations on multi-year agreement covering FY2021-2026

RECOMMENDATION:

Staff recommends Board approval to enter into a one-year CFA for FY2020 among WMATA and the jurisdictions on similar terms and conditions as the FY2011-2016 CFA. Staff also recommends Board approval to enter into a one-year FY 2020 District of Columbia LCFA.

SUBJECT: APPROVAL OF FISCAL YEAR 2020 CAPITAL FUNDING AGREEMENT AND
FISCAL YEAR 2020 DISTRICT OF COLUMBIA LOCAL CAPITAL FUNDING
AGREEMENT

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

WHEREAS, Pursuant to Resolution 2011-30, Board approval is required for all capital funding agreements; and

WHEREAS, WMATA and its jurisdictional funding partners have entered into an agreement for the planning and execution of the Capital Improvement Program (CIP) and the yearly Capital Budget, known as the Capital Funding Agreement (CFA), for the six-year period beginning fiscal year (FY) 2011; and

WHEREAS, The CFA was subsequently extended through amendments to continue through the period ending on June 30, 2019; and

WHEREAS, The CFA includes a process for determining the scope of future year Capital Budgets and CIPs; and

WHEREAS, The jurisdictional funding partners and WMATA wish to adopt the terms and conditions of the expired CFA for FY 2020; and

WHEREAS, To address certain issues specific to the District of Columbia, WMATA and the District of Columbia have agreed upon the terms of the FY 2020 District of Columbia Local Capital Funding Agreement (LCFA);

NOW, THEREFORE be it

RESOLVED, That the Board of Directors approves the terms of the FY 2020 CFA and FY2020 District of Columbia LCFA as shown in Attachments A and B to this resolution; and be it further

RESOLVED, That the General Manager/Chief Executive Officer or designee is authorized to execute documents substantially in the form of the FY 2020 CFA and FY 2020 District of Columbia LCFA; and be it further

RESOLVED, That the Chief Financial Officer is authorized to temporarily use any lawfully available capital program funds for any CIP project expense in order to reduce the cost of financing the projects in the CIP; and be it finally

RESOLVED, That in order to expedite the receipt of dedicated funding from the District of Columbia and the State of Maryland, this Resolution shall be effective immediately.

Reviewed as to form and legal sufficiency,



Patricia Y. Lee
General Counsel

WMATA File Structure No.:
4.3.2 Jurisdictional Funding Agreements

PROPOSED

M E M O R A N D U M



SUBJECT: FY2020 CFA and District of Columbia LCFA DATE: September 6, 2019

FROM: EVP/CFO - Dennis Anosike *DM*

TO: GM/CEO - Paul J. Wiedefeld *PJW*

At the Special Board Meeting on September 12, staff will recommend Board approval to enter into a one-year Capital Funding Agreement (CFA) for FY2020 among WMATA and the jurisdictions with two amendments to the terms and conditions of the FY2011-2016 CFA. Staff will also recommend Board approval to enter into a one-year FY2020 District of Columbia Local Capital Funding Agreement (LCFA).

Calling a special board meeting to advance this item allows jurisdictions to seek legislative approvals at the earliest opportunity, as well as permits all parties to continue negotiations on a multi-year agreement covering FY2021-2026.

The CFA provides the framework for jurisdictional investment in the Capital Improvement Program (CIP), to include matching federal formula and discretionary grants, additional state and local contributions, and establishes processes for Metro to issue debt when jurisdictions choose to finance their funding obligations. The most recent CFA and LCFA were originally established in calendar year 2010 for the FY2011-2016 CIP. WMATA and the jurisdictions previously executed three, one-year extensions of the CFA and LCFA for FY2017, FY2018, and FY2019. The FY2019 CFA and LCFA expired on June 30, 2019.

The FY2020 CFA contains the following two amendments:

1. The reprogramming requirements changed from requiring approval for revisions greater than \$1 million to requiring WMATA to "provide the Contributing Jurisdictions with monthly reports regarding reprogramming of project budgets into or out of Capital Projects or Capital Programs during the term of this Agreement where such reprogramming results in either: 1) An increase of the total project budget as shown in the CIP; 2) Revises the scope of a Capital Project; 3) A movement of \$5 million or more; or 4) Creates a new Capital Project."
2. Adding the concept of Dedicated Funding Debt as a separate type of debt from Jurisdictional Capital Contribution Debt. Dedicated Funding Debt

FY2020 CFA and District of Columbia LCFA
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payments will be made from the dedicated funding received from the jurisdictions whereas Jurisdictional Capital Contribution Debt is paid from funds received from the jurisdictions as part of their operating subsidy. Both types of debt are used for capital purposes.

All other terms and conditions of the FY2011-2016 CFA remain unchanged.

To address certain concerns specific to the District of Columbia, WMATA and the District of Columbia have historically agreed upon terms for an LCFA. The LCFA provides additional details regarding the definition of Capital Projects, provides a District of Columbia specific definition of debt, and includes the District's anti-deficiency requirements.

**WMATA FISCAL YEAR 2020
CAPITAL FUNDING AGREEMENT**

Among

The State of Maryland;

The District of Columbia;

Arlington County, Virginia;

Fairfax County, Virginia;

The City of Alexandria, Virginia;

The City of Fairfax, Virginia;

The City of Falls Church, Virginia;

And

The Washington Metropolitan Area Transit Authority

Effective Date: _____

**WMATA FISCAL YEAR 2020
CAPITAL FUNDING AGREEMENT**

THIS WMATA FISCAL YEAR 2020 CAPITAL FUNDING AGREEMENT (2020 CFA) is made and entered into as of the last day signed by all of the Parties (Effective Date), by and among **the Washington Metropolitan Area Transit Authority (WMATA)**, a body corporate and politic created by interstate compact between Maryland, Virginia, and the District of Columbia; **the State of Maryland, acting by and through the Washington Suburban Transit District and the Department of Transportation; the District of Columbia; Arlington County, Virginia; Fairfax County, Virginia; the City of Alexandria, Virginia; the City of Fairfax, Virginia; and the City of Falls Church, Virginia (Contributing Jurisdictions and, collectively with WMATA, the Parties):**

RECITALS

1. The Parties to this 2020 CFA desire to adopt the terms and conditions, as modified herein, of that Capital Funding Agreement entered into by the Parties as of July 1, 2010 as amended and as extended to continue through WMATA Fiscal Year 2019 (2010 CFA).

2. The Parties to this 2020 CFA desire to continue the funding and work of WMATA on the same terms and conditions, as modified herein, in place under the 2010 CFA as amended by the First, Second, and Third Amendments to the 2010 CFA for WMATA's Fiscal Year 2020 (the Term).

3. The Parties will continue to negotiate in good faith toward a longer-term capital funding agreement during the Term of this 2020 CFA.

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

SEC. 1 DEFINITIONS

Unless defined otherwise in this 2020 CFA all terms used herein shall have the same meaning as is found in the 2010 CFA.

- A. "Capital Program" means an on-going effort associated with maintaining a capital asset or assets in a state of good repair. Examples include, but are not limited to, rail tie and running rail replacements, and the bus rolling stock replacement and rehabilitation programs.
- B. "Capital Project" means any capital eligible expenditure taken over a period of time with a defined start and end date to build, replace, acquire, or repair a capital asset. Capital Projects are distinct from Capital Programs in that they do not recur on an annual basis. Examples include but are not limited to railcar purchases; bus facility construction or reconstruction.
- C. "Dedicated Funding Debt" means that debt that may be authorized by the Board of Directors as backed by a pledge of those funds committed to WMATA pursuant to the following legislative enactments: (a) from the District of Columbia under D.C. Official Code § 1-325.401 or any successor statute, as the same may be amended from time to time; (b) from the State of Maryland under Md. Transportation Code Ann. § 10-205(g) or any successor statute, as the same may be amended from time to time; and (c) from the Commonwealth of Virginia under the Va. Code §33.2-3401.B or any successor statute, as the same may be amended from time to time. Dedicated Funding shall also include funds paid by any of the District of Columbia, the State of Maryland, the Commonwealth of

Virginia or any other authorized person or entity in-lieu-of such amounts (“Dedicated Funding”).

- D. “Jurisdictional Capital Contribution Debt” means that debt issued by WMATA pursuant to the applicable CFA, which is backed by a pledge of gross revenues and used to fund Allocated Contributions of the Contributing Jurisdictions.

SEC. 2 ADOPTION OF TERMS AND CONDITIONS AND LONG-TERM DEBT

- A. **Adoption of Terms and Conditions.** The Parties agree to incorporate the 2010 CFA by reference as if fully stated herein so as to apply those terms and conditions to the actions of the Parties for WMATA’s Fiscal Year 2020, from the Effective Date of this 2020 CFA through June 30, 2020.
- B. **Long Term Debt Obligations.** No Jurisdictional Capital Contribution Long-Term Debt is authorized for issuance in FY2020 at this time and specifically for the District of Columbia the authorized and anticipated amount of Jurisdictional Capital Contribution Long-Term Debt to be issued in FY2020 is \$0.00. In the event that WMATA or one or more Contributing Jurisdictions identifies a need to issue Jurisdictional Capital Contribution Debt during FY2020, the Parties shall follow the processes established for such issuance in the 2010 CFA.
- C. **Acknowledgement Of Dedicated Funding Debt.** The Parties acknowledge and agree that WMATA may issue Dedicated Funding Debt without additional approvals being required from the Contributing Jurisdictions. Dedicated Funding Debt issuance shall be approved in advance by the Board of Directors and be made in compliance with any agreement between WMATA and any of the Commonwealth of Virginia, the State of Maryland, and

the District of Columbia related to the provision and use of Dedicated Funding, prior to the issuance of Dedicated Funding Debt.

SEC. 3 CAPITAL IMPROVEMENT PROGRAM

- A. As is contemplated by the 2010 CFA, the WMATA Board of Directors adopted a new Fiscal Year 2020 Capital Budget in March 2019. It is the intent of the Parties to incorporate the jurisdictional funding commitments of the FY2020 Capital Budget as adopted by the Board exclusive of funds to be used to repay the debt service on previously issued bonds, Dedicated Funding, Jurisdictional Reimbursable Projects, or PRIIA, as shown in Attachment A, which contains the FY2020 Capital Budget Financial Plan.
- B. The District of Columbia's Allocated Contribution to the FY2020 Capital Budget shall not exceed \$92,700,000 and this amount shall be added to the amounts contained in Section 4(b)(1)(C)(i) of the CFA and the First, Second, and Third Amendments to the CFA to constitute the new limitation on required Allocated Contributions for the District of Columbia in the total maximum amount not to exceed \$733,449,000 to be paid from the District of Columbia Capital Funds for the 2010 CFA and 2020 CFA combined.
- C. It is the intent of the Parties that to the extent that WMATA undertakes multi-year projects in the FY2020 Capital Budget, adopted by this 2020 CFA, such projects shall be continued in accordance with the provisions of Section 2(e) of the 2010 CFA.
- D. The following language shall be used for purposes of this FY2020 CFA and WMATA's FY2020 instead of incorporating section 5(g) of the 2010 CFA as provided for in section 2(a) of this 2020 CFA:

"The Parties recognize that the scope, costs, scheduled completion date, or priority of some projects will change during the term of this 2020 CFA. To address these possibilities,

WMATA agrees to provide the Contributing Jurisdictions with monthly reports regarding reprogramming of project budgets into or out of Capital Projects or Capital Programs during the term of this Agreement where such reprogramming results in either 1) an increase of the total project budget as shown in the CIP; 2) revises the scope of a Capital Project; 3) a movement of \$5 Million or more; or 4) creates a new Capital Project. Each movement of budget between Capital Projects and/or Capital Programs for cash flow purposes or for schedule adjustments (that do not impact completion date) in an amount of \$1 Million to \$5 Million during the term of this Agreement shall be reported to the Contributing Jurisdictions on a quarterly basis. In no case shall WMATA request an increase in the Allocated Contributions for FY2020 funding requirements adopted by the Board of Directors and shown in Attachment A due to a reprogramming.”

SEC. 4 TERMS AND CONDITIONS

For the WMATA fiscal year addressed in this agreement, should there be any conflict between the terms and conditions in this 2020 CFA and the 2010 CFA; the terms and conditions of this 2020 CFA, and in the case of the District of Columbia the 2020 Local Capital Funding Agreement, shall control.

SEC. 5 COUNTERPARTS

This 2020 CFA may be executed in identical counterparts, each of which shall constitute an original and all of which shall constitute, collectively, one agreement. The counterpart with the most recent date shall determine the Effective Date.

IN WITNESS WHEREOF, WMATA and the Contributing Jurisdictions have executed this Amendment by their representatives' signatures on the following pages.

WASHINGTON METROPOLITAN AREA
TRANSIT AUTHORITY

Attest:

By:

Secretary

[Seal]
Paul J. Wiedefeld
General Manager/Chief Executive Officer

Dated: _____

[signatures continued on following page]

STATE OF MARYLAND

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

MARYLAND DEPARTMENT OF
TRANSPORTATION

Attest:

Witness

By: _____ [Seal]
Secretary

and

WASHINGTON SUBURBAN
TRANSIT DISTRICT

Attest:

Witness

By: _____ [Seal]
Chairman

Date: _____

[signatures continued on following page]

DISTRICT OF COLUMBIA

Attest:

Witness

By: _____ [[Seal]
Mayor

Dated: _____

[signatures continued on following page]

ARLINGTON COUNTY, VIRGINIA

Attest:

Clerk to the County Board

By: _____ [Seal]
County Manager

Dated: _____

[signatures continued on following page]

FAIRFAX COUNTY, VIRGINIA

Attest:

Clerk to the Board of Supervisors

By: _____ [Seal]
County Executive

Dated: _____

[signatures continued on following page]

CITY OF ALEXANDRIA, VIRGINIA

Attest:

City Clerk

By: _____ [Seal]
City Manager

Dated: _____

[signatures continued on following page]

CITY OF FAIRFAX, VIRGINIA

Attest:

City Clerk

By: _____ [Seal]
City Manager

Dated: _____

[signatures continued on following page]

CITY OF FALLS CHURCH, VIRGINIA

Attest:

City Clerk

By: _____ [Seal]
City Manager

Dated: _____

DRAFT

PROPOSED FINAL

**WMATA FISCAL YEAR 2020
LOCAL CAPITAL FUNDING AGREEMENT**

By and Between

The District of Columbia

And

The Washington Metropolitan Area Transit Authority

**WMATA FISCAL YEAR 2020
LOCAL CAPITAL FUNDING AGREEMENT**

THIS WMATA FISCAL YEAR 2020 LOCAL CAPITAL FUNDING AGREEMENT (2020 LCFA) is made and entered into as of the last day signed by all of the Parties (Effective Date), by and between **the Washington Metropolitan Area Transit Authority (WMATA)**, a body corporate and politic created by interstate compact between Maryland, Virginia, and the District of Columbia; **and the District of Columbia**, a municipal corporation (**District of Columbia**).

RECITALS

1. The Parties to this 2020 LCFA desire to adopt the terms and conditions, as modified herein, of that Local Capital Funding Agreement entered into by the Parties as of July 1, 2010 as amended and as extended to continue through WMATA Fiscal Year 2019 (DC LFA).
2. The Parties to this 2020 LCFA desire to continue the funding and work of WMATA on the same terms and conditions, as modified herein, in place under the DC LFA as amended by the First, Second, and Third Amendments to the DC LFA for WMATA's Fiscal Year 2020 (the Term).
3. The Parties will continue to negotiate in good faith toward a longer-term capital funding agreement during the Term of this 2020 LCFA.

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

SEC. 1 DEFINITIONS

Unless defined otherwise in this 2020 LCFA all terms used herein shall have the same meaning as is found in the DC LFA.

- A. "Capital Program" means an on-going effort associated with maintaining a capital asset or assets in a state of good repair. Examples include, but are not limited to, rail tie and running rail replacements, and the bus rolling stock replacement and rehabilitation programs.
- B. "Capital Project" means any capital eligible expenditure taken over a period of time with a defined start and end date to build, replace, acquire, or repair a capital asset. Capital Projects are distinct from Capital Programs in that they do not recur on an annual basis. Examples include but are not limited to railcar purchases; bus facility construction or reconstruction.
- C. "Dedicated Funding Debt" means that debt that may be authorized by the Board of Directors as backed by a pledge of those funds committed to WMATA pursuant to the following legislative enactments: (a) from the District of Columbia under D.C. Official Code § 1-325.401 or any successor statute, as the same may be amended from time to time; (b) from the State of Maryland under Md. Transportation Code Ann. § 10-205(g) or any successor statute, as the same may be amended from time to time; and (c) from the Commonwealth of Virginia under the Va. Code §33.2-3401.B or any successor statute, as the same may be amended from time to time. Dedicated Funding shall also include funds paid by any of the District of Columbia, the State of Maryland, the Commonwealth of Virginia or any other authorized person or entity in-lieu-of such amounts ("Dedicated Funding")
- D. "Jurisdictional Capital Contribution Debt" means that debt issued by WMATA pursuant to the applicable CFA, which is backed by a pledge of gross revenues and used to fund Allocated Contributions of the Contributing Jurisdictions.

SEC. 2 ADOPTION OF TERMS AND CONDITIONS AND LONG TERM DEBT

- A. **Adoption of Terms and Conditions.** The Parties agree to incorporate the DC LFA by reference as if fully stated herein so as to apply those terms and conditions to the actions of the Parties for WMATA's Fiscal Year 2020, from the Effective Date of this 2020 LCFA through June 30, 2020.
- B. **Long Term Debt Obligations.** No Jurisdictional Capital Contribution Long-Term Debt is authorized for issuance in FY2020 at this time and specifically for the District of Columbia the authorized and anticipated amount of Jurisdictional Capital Contribution Long-Term Debt to be issued in FY2020 is \$0.00. In the event that WMATA or one or more Contributing Jurisdictions identifies a need to issue Jurisdictional Capital Contribution Debt during FY2020, the Parties shall follow the processes established for such issuance in the 2020 CFA and DC LFA as applicable.
- C. **Acknowledgement Of Dedicated Funding Debt.** The Parties acknowledge and agree that WMATA may issue Dedicated Funding Debt without additional approvals being required from the Contributing Jurisdictions. Dedicated Funding Debt issuance shall be approved in advance by the Board of Directors and be made in compliance with any agreement between WMATA and any of the Commonwealth of Virginia, the State of Maryland, and the District of Columbia related to the provision and use of Dedicated Funding, prior to the issuance of Dedicated Funding Debt.

SEC. 3 CAPITAL IMPROVEMENT PROGRAM

- A. As is contemplated by the DC LFA, the WMATA Board of Directors adopted a new FY2020 Capital Budget in March 2019. It is the intent of the Parties to incorporate the FY2020 Capital Budget as adopted by the Board exclusive of funds to be used to repay the

debt service on previously issued bonds, Dedicated Funding, Jurisdictional Reimbursable Projects, or PRIIA, as shown in Attachment A, which contains the FY2020 Capital Budget Financial Plan.

- B. The District of Columbia's Allocated Contribution to the FY2020 Capital Budget shall not exceed \$92,700,000, excluding PRIIA, Dedicated Funding, and Jurisdictional Reimbursable Project funding, and this amount shall be added to the amount contained in Section 4(b)(1)(C)(i) of the DC LFA to constitute the new limitation on required Allocated Contributions for the District of Columbia in the total maximum amount not to exceed \$733,449,000, to be paid from the District of Columbia Capital Funds for the 2010 CFA and 2020 CFA combined.
- C. It is the intent of the Parties that to the extent that WMATA undertakes multi-year projects in the FY2020 Capital Budget, adopted by this 2020 CFA, such projects shall be continued in accordance with the provisions of Section 2(e) of the 2010 CFA and the DC LCFA.
- D. The following language shall be used for purposes of this FY2020 DC LCFA and WMATA's FY2020 instead of incorporating section 5(g) of the 2010 CFA and DC LFA as provided for in section 2(a) of this 2020 LCFA:

"The Parties recognize that the scope, costs, scheduled completion date, or priority of some projects will change during the term of this 2020 LCFA. To address these possibilities, WMATA agrees to provide the Contributing Jurisdictions with monthly reports regarding reprogramming of project budget into or out of Capital Projects or Capital Programs during the term of this Agreement where such reprogramming results in either 1) an increase of the total project budget as shown in the CIP; 2) revises the scope of a Capital Project; 3) a movement of \$5 Million or more; or 4) creates a new Capital Project. Each movement of

budget between Capital Projects and/or Capital Programs for cash flow purposes or for schedule adjustments (that do not impact completion date) in an amount of \$1 Million to \$5 Million during the term of this Agreement shall be reported to the Contributing Jurisdictions on a quarterly basis. In no case shall WMATA request an increase in the Allocated Contributions for FY2020 funding requirements adopted by the Board of Directors and shown in Attachment A due to a reprogramming.”

SEC. 4 TERMS AND CONDITIONS

A. **Order of Precedence.** In reviewing compliance during the term of this Agreement, should there be any conflict between the multiple agreements between the Parties associated with capital funding, the documents shall be interpreted with the following order of precedence:

- (1) First this 2020 Local Capital Funding Agreement shall control;
- (2) Then the DC Local Capital Funding Agreement;
- (3) Then the 2020 Capital Funding Agreement;
- (4) Then the 2010 Capital Funding Agreement.

B. **Anti-Deficiency Requirements.** – Notwithstanding anything to the contrary in any of the 2020 LCFA, the DC LFA, the 2020 CFA, or the 2010 CFA, the District of Columbia’s obligations under this 2020 LCFA are subject to the following:

- (1) Pursuant to the provisions of (i) the federal Anti-Deficiency Act, 31 U.S.C. §§ 1341, 1342, 1349-1351 1511-1519 (2008) (the “**Federal ADA**”), and D.C. Official Code §§ 1-206.03(e) and 47-105; (ii) the District of Columbia Anti-Deficiency Act, D.C. Official Code §§ 47-355.01 – 355.08 (the “**D.C. ADA**” and (i) and (ii) collectively, as amended from time to time, the “**Anti-Deficiency**

Acts"); and (iii) Section 446 of the District of Columbia Home Rule Act, D.C. Official Code § 1-204.46, the District cannot obligate itself to any financial commitment in any present or future year unless the necessary funds to pay that commitment have been appropriated by the Congress of the United States (the "Congress") and are lawfully available for the purpose committed. Thus, pursuant to the Anti-Deficiency Acts, nothing in this Agreement creates an obligation of the District in anticipation of an appropriation by Congress for such purpose, and the District's legal liability for the payment of any amount under this Agreement does not and may not arise or obtain in advance of the lawful availability of appropriated funds for the applicable fiscal year as approved by Congress.

- (2) During the term of this Agreement, the Mayor of the District of Columbia or other appropriate official shall, for each fiscal period, include in the appropriate budget application submitted to the Council of the District of Columbia the amount necessary to fund the District's known potential financial obligations under this Agreement for such fiscal period. In addition, in the event that the District proposes to issue bonds or notes to fund its obligations subject to this Agreement, the Mayor of the District of Columbia or other appropriate official, and if any payments under this Agreement have not been made, the Mayor shall include in a budget application submitted to the Council of the District of Columbia the amount necessary to fund the District's known unpaid amounts. In the event that a request for such appropriations is excluded from the budget approved by the Council and submitted to Congress by the President for the applicable fiscal year or if no appropriation is made by Congress to pay any amount under this Agreement for any period after the

fiscal year for which appropriations have been made, and in the event appropriated funds for such purposes are not otherwise lawfully available, the District will not be liable to make any payment under this Agreement upon the expiration of any then-existing appropriation.

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

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

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

SEC. 5 COUNTERPARTS

This 2020 LCFA may be executed in identical counterparts, each of which shall constitute an original and all of which shall constitute, collectively, one agreement. The counterpart with the most recent date shall determine the Effective Date.

IN WITNESS WHEREOF, WMATA and the District of Columbia have executed this Amendment by their representatives' signatures on the following pages.

WASHINGTON METROPOLITAN AREA
TRANSIT AUTHORITY

Attest:

By:

Secretary

_____[Seal]
Paul J. Wiedefeld
General Manager/Chief Executive Officer

Dated: _____

[signatures continued on following page]

DISTRICT OF COLUMBIA

Attest:

Witness

By: _____ [Seal]
Mayor

Dated: _____