

Washington Metropolitan Area Transit Authority

Board Action/Information Summary

☒ Action ☐ Information

Document
Number:
209827

Resolution:
☒ Yes ☐ No

Presentation Name:

DC Bus Reimbursable Agreements and FY2025 Budget Amendment

Project Manager:

Yetunde Olumide

Project Department:

Finance

Purpose/Key Highlights:

Metro's reimbursable bus agreements with the District of Columbia (the District) supports bus customers and the economy through two service enhancements. These agreements also support our STP goal of **regional opportunity and partnership**. In this presentation, staff will provide an overview of two reimbursable bus agreements and recommend amending the FY2025 Budget to incorporate these agreements. All expenses associated with these agreements will be fully funded by the District.

Interested Parties:

No interested parties identified.

Background:

The Board approved the negotiation and execution of the Reimbursable 24-Hour Metrobus Service Agreement in Resolution 2024-12. All expenses of this service change were fully funded by the District.

The District has requested additional services to support the discontinuation of Circulator services beginning in October 2024.

Discussion:

Staff seeks approval to increase the reimbursable budget for two service enhancements in the District. These service enhancements will be fully funded by the District and will support bus customers and the economy. Staff recommends an increase to the reimbursable budget to reflect the extension of the Memorandum of Understanding for the remaining nine months for overnight bus service in the District.

In addition, staff seeks approval to negotiate and enter into an additional reimbursable project agreement with the District to provide Metrobus services to address capacity and critical gaps when DC Circulator is discontinued. Metro would add weekend capacity on Route 38B between Rosslyn and Farragut Square; reroute, extend and add capacity to route 31/33 from Franklin Square to Union Station; introduce temporary service to serve Stanton Road; and add capacity on route 52/54 on 14th St. NW. These service additions will be fully funded by the District.

The revised 2025 Better Bus Network will be presented to the Board for approval later this fall and implementation in Summer 2025. The additional service enhancements above would be incorporated into the revised Better Bus Network. The FY2025 Budget will be amended to include the revenue and expenses of the 24-hour Metrobus Service and the Additional DC. Bus Service into the FY2025 Reimbursable Budget. These costs are fully funded by the District

Funding Impact:

The FY2025 Budget will be amended to include both the sources and uses of funds pertaining to the two DC reimbursable agreements. Each of the reimbursable agreements will be funded by the District.

Previous Actions:

The Metro Board of Directors approved the FY2025 Budget in April 2024.

Next Steps:

Finalize work with the District on a reimbursable agreement for the costs associated with the Additional Services.

Recommendation:

Approval to: Execute the Additional Services Reimbursable Agreement and amend the FY2025 Budget to add funding and costs of both reimbursable agreements

PRESENTED AND ADOPTED: September 12, 2024

SUBJECT: REIMBURSABLE AGREEMENT FOR ADDITIONAL METROBUS SERVICE IN THE DISTRICT OF COLUMBIA AND AMENDMENTS TO FISCAL YEAR 2025 OPERATING BUDGET

2024-24

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

WHEREAS, Resolution 2011-30, as amended, requires the Board of Directors to approve reimbursable agreements over \$500,000; and

WHEREAS, The District of Columbia (the "District") and WMATA wish to negotiate reimbursable agreements whereby the District, through the District Department of Transportation ("DDOT") would fully fund (1) the annual operational costs of additional service including overnight service for certain Metrobus routes (the "24-Hour Metrobus Service") and (2) the operational costs of additional service for certain Metrobus routes (the "Additional Metrobus Service"); and

WHEREAS, The Board has already approved the negotiation and execution of the Reimbursable 24-Hour Metrobus Service Agreement in Resolution 2024-12; and

WHEREAS, Staff recommends entering into a reimbursable agreement with DDOT for the Additional Metrobus Service, substantially in the form as shown in Attachment A; and

WHEREAS, The Council of the District has approved a budget for these costs in an amount not to exceed \$11.7 million for the 24-Hour Metrobus Service, of which \$8.6 million will be expended in the WMATA's Fiscal Year (FY) 2025, which will fully fund the 24-Hour Metrobus Service increases and related costs from on or about October 1, 2024, until June 30, 2025, and a budget for Additional Metrobus Service costs in an amount not to exceed \$8.7 million, of which \$6.2 million will be expended in WMATA FY 2025, which will fully fund the Additional Metrobus Service increases and related costs from on or about October 1, 2024, until June 30, 2025; and

WHEREAS, Expenses of the 24-Hour Metrobus Service and the Additional Metrobus Service, each of which will be fully funded by the District, requires an increase in the approved FY 2025 Operating Budget;

NOW, THEREFORE BE IT

Motioned by Mr. Letourneau, seconded by Mr. McAndrew

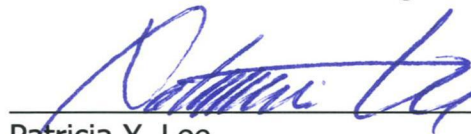
Ayes: 8- Ms. Santos, Mr. Smedberg, Mr. McAndrew, Ms. Kline, Ms. Worth, Mr. Letourneau, Mr. Graham and Ms. Martin-Proctor

RESOLVED, That the General Manager and Chief Executive Officer or designee is authorized to negotiate and execute a reimbursable agreement, substantially in the form shown in Attachment A, with the District of Columbia to fund the operational costs of the Additional Metrobus Service; and be it further

RESOLVED, That the Fiscal Year 2025 Operating Budget's Reimbursable Budget is increased in the amount of \$8.6 million funded by the District of Columbia in the amount of \$8.4 million with the remaining \$0.2 million funded from expected passenger revenues to accommodate the additional expenditures of the 24-Hour Metrobus Service and a further amendment of the Fiscal Year 2025 Operating Budget's Reimbursable Budget in the amount of \$6.2 million to fund the Additional Metrobus Service, the funding of which will be provided by the District of Columbia; and be it finally

RESOLVED, That to ensure continuity of the existing 24-hour Metrobus Service and the start of Additional Metrobus Service, this Resolution shall be effective immediately.

Reviewed as to form and legal sufficiency,



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

WMATA File Structure No.:
4.3.3. Reimbursable Agreements

REIMBURSABLE AGREEMENT FOR ADDITIONAL METROBUS SERVICE

This **REIMBURSABLE AGREEMENT FOR ADDITIONAL METROBUS SERVICE in the District of Columbia** (this “*Agreement*”) is made and executed as of the date last set forth with the Parties’ signatures hereto below by and among **THE WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY (“WMATA”)**, and **THE DISTRICT OF COLUMBIA (“District”)**, acting by and through the District Department of Transportation (“*DDOT*”), (WMATA, the District, and DDOT, each referred to by name or as a “*Party*” and collectively, as the “*Parties*”).

WHEREAS, the District intends to terminate its provision of its own bus service on or about _____, 2024, after which point WMATA intends to provide service in addition to that proposed in the 2025 Better Bus Network (“**Additional Service**”) for a certain period of time in exchange for payment for the full cost of the **Additional Service** from the District in accordance with the terms and conditions of this Agreement; and

WHEREAS, the Council of the District of Columbia (the “**Council**”) _____ dollars (\$ _____) in District fiscal year 2024 (October 1, 2023 through September 30, 2024) for this purpose; and

WHEREAS, DDOT desires for WMATA to provide Additional Service beginning on or about _____, and ending on _____, and WMATA is willing to provide the requested Metrobus service, upon the terms and conditions set forth herein; and

WHEREAS, the Parties’ current intent is to explore the possibility of providing Additional Service beyond the Term of this Agreement in WMATA’s annual fiscal year 2025 budget;

NOW, THEREFORE, the Parties agree as follows:

1. **ADDITIONAL SERVICE.** In exchange for DDOT’s payment in accordance with Sections 2 and 3 below, and DDOT’s performance of all other obligations hereunder, WMATA agrees to operate scheduled bus service in revenue service during the Term, which shall be in addition to existing scheduled revenue bus service provided by WMATA (“**Additional Service**”) on those routes and frequencies set forth in Exhibit A, at the points set forth in Exhibit B and otherwise in accordance with the service definitions and minimum requirements established by WMATA’s Metrobus Service Guidelines, approved December 2020, as may be amended (the “**Guidelines**”) and all other terms and conditions set forth in this Agreement and the then-current WMATA Tariff.

2. **INVOICE & PAYMENT.** WMATA will bill DDOT as part of WMATA’s regular quarterly subsidy billing, and DDOT shall pay to WMATA, in accordance with existing subsidy processes, as follows:

- a. First Payment: \$1,218,810
- b. Second Payment: \$2,483,095
- c. Third Payment: \$2,483,095
- d. Fourth Payment: \$2,500,000

DDOT will pay WMATA at the same time as the payment due dates for the regular quarterly subsidy billing, except as may be prohibited by Section 6(c) below. The amounts set forth in this Section 2 are based on (x) the estimated costs set forth in Exhibit B of (i) operating and maintenance costs (including projected costs of extending and improving service spans and levels and time and labor for bus operators, maintenance and support staff) for Additional Service, based on the approved non-regional platform billing rate, established in accordance with WMATA Resolution 98-32 (as may be amended from time to time) (“**Service**”); (ii) Metro Transit Police Department’s costs for providing security and policing during Additional Service (“**Security**”); ; less the (y) projected fare revenue attributable to Additional Service expected to be collected during the Term (“**Revenue**”).

3. **COST OF GOODS AND SERVICES.** Total cost for goods and services under this Agreement shall not exceed \$8,685,000. WMATA shall have no obligation to provide goods or services in excess of this amount unless DDOT has identified and agreed to provide additional funding, which has been authorized and appropriated, to cover this request. To the extent that WMATA provides Additional Service that exceeds this amount without DDOT’s identification of funding and agreement to pay, DDOT shall have no obligation to pay for such goods and services. WMATA shall provide DDOT with sixty (60) days’ notice if WMATA anticipates that the cost of the goods and services provided under this Agreement will exceed \$8,685,000 during the Term of this Agreement. To the extent (a) the actual costs of Service, Security, and/or Communication are less than the estimated costs of Service, Security, and/or Communication; and/or (b) the actual Revenue collected by WMATA during the Term is more than the estimated Revenue collected by WMATA during the Term, WMATA shall have no obligation to pay DDOT for any such difference.

4. **TERM & TERMINATION.** The term of this Agreement shall begin on October 1, 2024 (the “**Effective Date**”) and terminate on September 30, 2025, unless earlier terminated in accordance with this Section 4 (the “**Term**”). This Agreement may be terminated by (a) either party by giving no less one hundred eighty (180) days written notice to the other party and only in conjunction with other Metrobus service changes; (b) upon the effective date of a new subsidy formula being adopted by the WMATA Board of Directors; or (c) upon the effective date of the service changes associated with a new bus network being implemented by WMATA. In the event of termination pursuant to provisions 4(b) or 4(c) above, WMATA shall provide sixty (60) days written notice to DDOT. WMATA shall endeavor to provide DDOT advance notice, as and when practicable, of changes to Metro’s subsidy allocation formula or Metrobus service network that may impact the continuation of this Agreement. DDOT shall endeavor to provide WMATA advance notice, as and when practicable, of changes to the DC budget that may impact the continuation of this Agreement.

5. **OBLIGATIONS & ACKNOWLEDGEMENTS.**

a. **Guideline Compliance.** The Parties agree that WMATA, at its sole and exclusive discretion may alter, suspend, eliminate, or otherwise modify the Additional Service provided by this Agreement, in whole or in part, on a temporary or permanent basis without advanced notice to DDOT, so long as such action is taken in accordance with the Guidelines. The Parties further acknowledge and agree that any change to Metrobus service, including but not limited to, hours of operation, routes, and service levels to ensure compliance with the Guidelines in no way constitutes an amendment or breach of this Agreement. In addition, WMATA, at its sole and exclusive discretion, may require and enforce passenger compliance with local public health laws or Centers for Disease Control & Prevention guidance.

b. **Annual Line Performance Report.** WMATA shall incorporate the Additional Service into its annual line performance report.

c. **Additional DDOT Obligations.** In addition to its other responsibilities under this Agreement, DDOT shall (i) obtain such approvals of the Council and the District of Columbia Office of the Chief Financial Officer as may be necessary to implement this Agreement; (ii) be the single point of contact and coordinate with other District government agencies as necessary for the successful implementation of

this Agreement; and (iii) distribute marketing materials as necessary to inform the public of the Additional Service.

d. **Representations & Warranties.** The Parties represent and warrant to one another, on behalf of themselves, that (i) such Party has the full right, power, and authority, and all necessary approvals and authority have been obtained, to enter into this Agreement and each agreement, document, and instrument to be executed and delivered by such Party pursuant to this Agreement and to carry out the transactions contemplated hereby and thereby; (ii) other than WMATA Board approval no waiver or consent of any person is required in connection with the execution, delivery, and performance by such Party of this Agreement and each agreement, document, and instrument to be executed and delivered by such Party pursuant to this Agreement; (iii) such Party has full capacity and right to make and perform this Agreement and this Agreement constitutes a legal, valid and binding obligation of such Party enforceable in accordance with its terms; (iv) the making and performance of this Agreement does not and will not violate the provisions of any applicable law, regulation or order, and does not and will not result in the breach of, or constitute a default under, any material agreement, instrument or document to which it is a party or by which it or any of its property may be bound or affected; and (v) all consents, approvals, authorizations, and filings with, any governmental authority required under applicable law and regulations for the making and performance of this Agreement have been obtained or made and are in full force.

6. MISCELLANEOUS.

a. **No Prior Agreements.** Except for the representations and warranties contained in this Agreement, WMATA does not make, and hereby disclaims, any other representations or warranties.

b. **Modifications.** Except as otherwise provided herein, any amendment or modification in any respect to the terms and conditions of this Agreement shall be made by an instrument in writing signed by both Parties.

c. **Anti-Deficiency.** The Parties acknowledge and agree that nothing in this Agreement creates a financial obligation in anticipation of an appropriation and that all provisions of this Agreement are and shall remain subject to the provisions of (i) the federal Anti-Deficiency Act, 31 U.S.C. §§ 1341, 1342, 1349, 1351, (ii) the District of Columbia Anti-deficiency Act, D.C. Official Code §§ 47-355.01-355.08, (iii) D.C. Official Code § 47-105, and (iv) D.C. Official Code § 1-204.46 (the “*Anti-Deficiency Acts*”), as the foregoing statutes may be amended from time to time, regardless of whether a particular obligation has been expressly so conditioned. It is expressly understood and agreed that WMATA’s provision of the Additional Service is conditioned on DDOT’s payment for such services. To the extent that DDOT fails to pay for the services contemplated under this Agreement or is prevented under the Anti-Deficiency Acts from paying for the Additional Service, WMATA may, in its sole and exclusive discretion, suspend or terminate the Additional Service at the end of the last month for which funds have been made available to WMATA.

d. **Dispute Resolution.** Any disputes between DDOT and WMATA arising out of this Agreement may be disposed of by the Parties by written agreement and/or amendment of this Agreement. If the Parties cannot resolve the dispute, then the Party seeking a resolution shall provide written notice of the nature of the dispute and the issue(s) to the other Party. If the dispute is not resolved by the Parties within thirty (30) days of such notice, the Parties agree that the then-serving director of DDOT and the then-serving general manager and chief executive officer of WMATA shall attempt to resolve such dispute without court action within thirty (30) days thereafter. If the dispute is not resolved within such thirty (30) days, either Party may commence a civil action for resolution of the dispute in the United States District Court for the District of Columbia. Notwithstanding any provision to the contrary contained in this Agreement, prejudgment interest shall not be paid by one Party to the other Party.

e. **Governing Law.** This Agreement shall be governed by the laws of the District of Columbia, except where any law conflicts with the WMATA Compact, the Compact shall control.

f. **Relationship.** This Agreement shall not be construed as creating a partnership, joint venture or other relationship between the Parties, it being understood that each Party shall be and remain a separate and independent entity for all purposes hereof.

g. **No Waiver of Immunity.** This Agreement shall not be construed as a waiver of either Party's respective immunities, including, without limitation, municipal and sovereign immunity.

h. **No Assignment.** No transfer or assignment of this Agreement, or of any part thereof or interest therein, directly or indirectly, voluntarily or involuntarily, shall be made unless consent for such transfer or assignment is first approved in writing by the Parties.

i. **Notice.** Any notice required or permitted under this Agreement shall be in writing and shall be delivered by hand, sent by courier, sent by prepaid registered or certified mail with return receipt requested and addressed as appropriate to the following addresses (or to such other or further addresses as the Parties may designate by notice given in accordance with this paragraph), with copy sent by electronic mail, to the extent such recipient's email address is provided below:

WMATA:

Vice President and Treasurer
300 7th Street, S.W.
Washington, D.C. 20024
Email: rmhaas@wmata.com

with copies to:

Executive Vice President, Chief Legal Officer, and General Counsel
300 7th Street, S.W.
Washington, D.C. 20024
Email: pylee@wmata.com

Executive Vice President and Chief Financial Officer
300 7th Street, S.W.
Washington, D.C. 20024
Email: yolumide@wmata.com

Senior Vice President, Planning & Sustainability
300 7th Street, S.W.
Washington, D.C. 20024
Email: adavis5@wmata.com

DDOT:

Sharon Kershbaum, Acting Director
District Department of Transportation
250 M St. (9th Floor), SE
Washington, DC 20003
Email: sharon.kershbaum@dc.gov

with a copy to:

_____, Associate Director
Transit Delivery Division
District Department of Transportation

250 M St. (5th Floor), SE
Washington, DC 20003
Email: _____@dc.gov

Such correspondence shall be deemed delivered, upon the earlier to occur of the following: the day delivered by hand delivery; the third day following the day on which the same shall have been mailed by U.S. registered or certified mail, return receipt requested, with all postal charges prepaid, to the respective addresses set forth below; the day delivered by email and acknowledged by the recipient; or actual receipt at the Parties' addresses.

j. **Legislative Compliance.** The Parties shall comply with all applicable laws, regulations, and rules. This Agreement is subject to all applicable laws, regulations, and rules governing the Parties hereinafter enacted or promulgated. If any term or provision of this Agreement is held to be invalid or illegal, such term or provision shall not affect the validity or enforceability of the remaining terms and provisions of this Agreement. Meeting the terms of this Agreement shall not excuse any failure to comply with all applicable laws, regulations, and rules, whether or not these laws and regulations are specifically listed in this Agreement. The Parties shall abide by the provisions of Executive Order 11246, as amended; Title VI of the Civil Rights Act of 1964, as amended (78 Stat. 252; 42 U.S.C. §§ 2000d et seq.); Title V, Section 504 of the Rehabilitation Act of 1973, as amended (87 Stat. 394; 29 U.S.C. § 794); the Americans With Disabilities Act (104 Stat. 327; 42 U.S.C. §§ 12103 et seq.), the Age Discrimination Act of 1975, as amended (89 Stat. 728; 42 U.S.C. §§ 6101 et seq.); and with all other federal laws and regulations prohibiting discrimination on the grounds of race, color, national origin, disability, religion, or sex, in employment and in providing facilities and services to the public. Nothing in the advertising for employees shall be done which prevent those covered by these laws from qualifying for employment. The Parties shall abide by the provisions of 18 U.S.C. § 1913, which states that no part of the money appropriated by any enactment of Congress shall, in the absence of express authorization by Congress, be used directly or indirectly to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device, intended or designed to influence in any manner a Member of Congress, to favor or oppose, by vote or otherwise, any legislation, law, ratification, policy, or appropriation, whether before or after the introduction of any bill, measure, or resolution proposing such legislation, law, ratification, policy, or appropriation; but this shall not prevent officers or employees of the United States or of its departments or agencies from communicating to any such Member or official, at his request, or to Congress or such official, through the proper official channels, requests for legislation, law, ratification, policy, or appropriations which they deem necessary for the efficient conduct of the public business, or from making any communication whose prohibition by this section might, in the opinion of the Attorney General, violate the Constitution or interfere with the conduct of foreign policy, counter-intelligence, intelligence, or national security activities. Violations of this section shall constitute violations of Section 1352(a) of Title 31 of the United States Code. Nothing herein contained shall be deemed to be inconsistent with or contrary to the purpose or intent of any Act of Congress or the law of the District of Columbia establishing, affecting, or relating to this Agreement. Pursuant to 41 U.S.C. § 22, no member of Congress shall be admitted to any share of part of this Agreement, or to any benefits that may arise therefrom.

k. **Headings.** The headings throughout this Agreement are for convenience and reference only and shall in no way be held to explain, modify, amplify or aid in the interpretation, construction, or meaning of the provisions of this Agreement.

l. **Counterparts.** This Agreement may be signed in one or more identical counterparts, whether transmitted by electronic mail or otherwise. Each such counterpart shall be deemed an original for purposes of this Agreement.

[Signature Page & Exhibits Follow.]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date last set forth with their signatures hereto below.

WMATA:

THE WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY, an interstate compact agency and instrumentality of the District of Columbia, the Commonwealth of Virginia and the State of Maryland, created with the consent of the United States Congress.

By: _____
Robert M. Haas, Treasurer

Dated

THE DISTRICT:

THE DISTRICT OF COLUMBIA GOVERNMENT, a body politic, acting by and through the District Department of Transportation.

By: _____
Sharon Kershbaum, Acting Director

Dated

[Exhibits to Follow]

EXHIBIT A

LIST OF ADDITIONAL SERVICE ROUTES & FREQUENCIES

The routes listed below will operate Additional Service in the Term of this Agreement:

Additional Service is defined as providing service beyond the Proposed 2025 Better Bus Network.

WMATA will provide additional service on the C25 route as compared to the Proposed 2025 Better Bus Network Service plan including a minor route diversion (split) to include service on both Stanton Rd. SE and Pomeroy Rd. SE

WMATA will provide additional service both a longer alignment and increased frequencies on the D82 and D52 routes to better align service with WMATA's loading guidelines.

Services and costs by quarter are described below:

October 1 2024 - June 30, 2025			
Circ Route	Option Name	Total Hrs	Cost
RS-DP	Additional Short Trips b/t Farragut Sq and Rosslyn; weekends only, 8 hours each day (as "38B/")	2,000	\$260,000
Support		-	\$1,000,000
Marketing		-	\$500,000
10/1/24-6/30/25 SUBTOTAL		2,000	\$1,760,000
Dec 1 2024 - June 30, 2025			
Circ Route	Option Name	Total Hrs	Cost
WP-AM	Additional Short Trips b/t Colorado & Metro Center; 7 days a week, 8 hours each day (as "54/")	10,000	\$1,300,000
CH-US	Operate "Stanton Loop" route; operate on 15 minute headways; M-F 6a-9p, Sa-Su 7a-9p (as "C25")	5,500	\$725,000
GT-US	Extension of 31/33 to Union Station	8,500	\$1,100,000
GT-US	Additional Service north of G'Town	10,000	\$1,300,000
12/1/24-6/30/25 SUBTOTAL		34,000	\$4,425,000

EXHIBIT A

July 1, 2025 - Sept 30, 2025			
Circ Route	Option Name	Total Hrs	Cost
WP-AM	Additional Short Trips b/t Columbia Heights & Metro Center	6,250	\$825,000
CH-US	Increase C25 to every 15 min all-day; alternate trips b/t Pomeroy and Stanton	1,375	\$175,000
US-GT	Extend D82 from Franklin Square to Union Station (including late night extention to US)	5,750	\$750,000
US-GT	Additional D84 service to increase frequency north of M Street on Wisconsin (2 add'l buses / hr; Wkdy Peak & Wknd Mid/PM)	4,250	\$550,000
EM-LP	Reroute D14 to 8th Street SE to connect up to Union Station (covering part of former EMLP route)	0	\$0
Support		-	\$200,000
7/1/25-9/30/25 SUBTOTAL		17,625	\$2,500,000
GRAND TOTAL		53,625	\$8,685,000

EXHIBIT B

ADDITIONAL SERVICE ROUTES

The map below illustrates the geographic footprint of Additional Service set forth in Exhibit A.

