

Washington Metropolitan Area Transit Authority
Board Action/Information Summary

☒ Action ☐ Information

MEAD Number:
202362

Resolution:
☒ Yes ☐ No

TITLE:

FY2023-2031 Virginia PRIIA Funding Agreement

PRESENTATION SUMMARY:

Staff recommends Board approval to execute a new agreement to secure the Passenger Rail Infrastructure Improvement Act (PRIIA) match funding from the Virginia Department of Rail and Public Transportation (DRPT). This agreement will cover Metro Fiscal Years (FY) 2023-2031.

PURPOSE:

The new agreement will cover Metro's FY2023-2031 and aligns with Congressional and Federal Transit Administration requirements to receive matching funding from the Commonwealth of Virginia, the District of Columbia, and the State of Maryland.

DESCRIPTION:

No entities have a direct financial interest in this action for conflict-of-interest purposes.

Key Highlights:

- PRIIA funding supports Metro safety and state of good repair capital projects and maintenance programs in the capital program.
 - Established by federal legislation in 2008, PRIIA provided \$150 million in federal funding for 10 years subject to matching contributions from Commonwealth of Virginia, State of Maryland, and District of Columbia. Additional one-year extensions continued the funding through June 30, 2022.
 - The Infrastructure Investment and Jobs Act (IIJA) authorizes another nine years of funding, subject to federal appropriation and continuation of local match.
 - Staff seeks authorization to execute a required agreement to continue receiving PRIIA funding match from the Commonwealth of Virginia acting by and through the DRPT for Metro's FY2023-2031.
-

Background and History:

The federal PRIIA funding that WMATA receives annually requires a 50 percent local match that is allocated equally between the District of Columbia, the State of Maryland, and the Commonwealth of Virginia. In addition to the local match funding, the initial PRIIA legislation included requirements to complete the underground cellular system and establish an independent Office of the Inspector General.

Virginia's share of the PRIIA match funding has been provided through an agreement originally signed in 2010, refreshed in 2016, then extended in 2020 and 2021. The State of Maryland and the District of Columbia do not require administrative agreements to provide PRIIA matching funds.

To date, Congress and the Federal Transit Administration (FTA) provided PRIIA funding for Metro's FY2011 through FY2022.

The original "PRIIA Funding Agreement with the Virginia Department of Rail and Public Transportation" became effective on July 1, 2010 and covered WMATA's FY2011 through FY2016. WMATA and DRPT refreshed the original funding agreement in 2016 in the "2016 PRIIA Funding Agreement with the Virginia Department of Rail and Public Transportation" (2016 PRIIA Funding Agreement). The 2016 PRIIA Funding Agreement for the Virginia PRIIA match funding expired on June 30, 2020 and covered WMATA through FY2020. In June 2020 WMATA and DRPT executed the "First Amended Agreement of the 2016-2020 PRIIA Funding Agreement" (the First Amended Agreement) on substantially the same terms for FY2021. In May 2021, The First Amended Agreement was extended through the execution of the "Second Amendment to the 2016-2020 Virginia PRIIA Funding Agreement" (the Second Amended Agreement) on the same terms and conditions as the First Amendment Agreement. The Second Amended Agreement covered WMATA's FY2022. The Second Amended Agreement will expire on June 30, 2022.

The Infrastructure Investments and Jobs Act (IIJA) reauthorized PRIIA through WMATA FY2031 and require WMATA to certify that it has a capital planning process in place; has Transit Asset Management (TAM) planning in place; and will have performance measures aligned with strategic goals.

Additionally, the IIJA aligned five million dollars of PRIIA funding to the WMATA OIG to be issued as a separate grant for operating expenses and not included in the \$145 million grant for capital funding.

WMATA and DRPT have agreed to create a new agreement. The new agreement aligns with WMATA's existing practices, procedures, and reporting requirements to facilitate compliance. The PRIIA Funding Agreement covers WMATA's FY2023 through FY2031.

Conditions in the VA DRPT funding agreement include but are not limited to:

- Timing and amount of payments
- Interest earnings
- Reporting requirements

Discussion:

Virginia's share of the PRIIA match funding supports WMATA Capital Programs which include investments in Railcars and Railcar Facilities; Rail Systems; Track and Structure Rehabilitation; Station and Passenger Facilities; Bus, Bus Facilities, and Paratransit; and Operations and Business Support. Resolution 2011-30, as amended, requires approval from the Board prior to execution of capital funding agreements.

FUNDING IMPACT:

The Commonwealth of Virginia, through DRPT will continue to provide \$50 million in PRIIA matching funds per year for the period FY2023 through FY2031.

TIMELINE:

Previous Actions	<p>July 2010 – Approval of PRIIA Funding Agreement with the Virginia Department of Rail and Public Transportation</p> <p>July 2016 -- Approval of 2016 PRIIA Funding Agreement with the Virginia Department of Rail and Public Transportation</p> <p>June 2020 -- Approval of First Amendment to 2016-2020 PRIIA Funding Agreement</p> <p>May 2021 -- Approval of Second Amendment to 2016-2020 PRIIA Funding Agreement</p>
Anticipated actions after presentation	n/a

RECOMMENDATION:

Staff recommends Board approval to enter a new agreement between WMATA and DRPT for Virginia's share of PRIIA match funding for WMATA FY2023-2031.

PRESENTED AND ADOPTED: May 26, 2022

SUBJECT: APPROVAL OF THE FISCAL YEAR 2023-2031 PRIIA FUNDING AGREEMENT
WITH THE COMMONWEALTH OF VIRGINIA

2022-14

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

WHEREAS, The Board of Directors is required to approve capital funding agreements (Res. 2011-30); and

WHEREAS, The existing capital funding agreement between WMATA and the Commonwealth of Virginia for the Commonwealth's share of local match funding required by the Passenger Rail Investment and Improvement Act, as amended (PRIIA Funding Agreement) will expire on June 30, 2022; and

WHEREAS, The Commonwealth and WMATA seek to enter into a new PRIIA Funding Agreement for fiscal year 2023-2031;

NOW, THEREFORE, be it

RESOLVED, That the Board of Directors approves the "WMATA FY2023 to 2031 PRIIA Funding Agreement Between the Commonwealth of Virginia, Department of Rail and Public Transportation and the Washington Metropolitan Area Transit Authority" in substantially the same form shown in Attachment A; and be it further

RESOLVED, That the Interim General Manager and Chief Executive Officer or the Executive Vice President, Strategy Planning and Program Management is authorized to negotiate and execute the "WMATA FY2023 to 2031 PRIIA Funding Agreement Between the Commonwealth of Virginia, Department of Rail and Public Transportation and the Washington Metropolitan Area Transit Authority", in substantially the same form shown in Attachment A; and be it finally

Motioned by Mr. Smedberg, seconded by Mr. Letourneau

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

RESOLVED, That to timely execute the "WMATA FY2023 to 2031 PRIIA Funding Agreement Between the Commonwealth of Virginia, Department of Rail and Public Transportation and the Washington Metropolitan Area Transit Authority" and confirm the availability of funding required to support PRIIA grant applications, this Resolution shall be effective immediately.

Reviewed as to form and legal sufficiency,

A handwritten signature in black ink, appearing to read "Patricia Y. Lee", is written over a horizontal line.

Patricia Y. Lee
Executive Vice President and General Counsel

WMATA File Structure No.:
4.3.2 Jurisdictional Funding Agreements

**WMATA FY 2023 to 2031
PRIIA FUNDING AGREEMENT**

Between

The Commonwealth of Virginia, Department of Rail and Public Transportation

And

The Washington Metropolitan Area Transit Authority

DRAFT

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THIS AGREEMENT is made and entered into this____, day of _____, 2022, by and between the **Washington Metropolitan Area Transit Authority (WMATA)**, a body corporate and politic created by an interstate compact among the District of Columbia, State of Maryland, and Commonwealth of Virginia, and **the Commonwealth of Virginia (Commonwealth), Department of Rail and Public Transportation (DRPT)** to address funding requirements established by Congress as part of the Passenger Rail Infrastructure Investment Act (PRIIA) for the WMATA Fiscal Years 2023 through 2031.

RECITALS

1. The WMATA transit system plays a critical role in the growth and prosperity of the National Capital Region, and WMATA's continued economic vitality contributes to creating vibrant, livable, and sustainable communities.
2. The WMATA transit system was built and is operated through the substantial investment of public funds by the Federal Government and by State and local governments in the region.
3. Continued funding to rehabilitate and maintain the WMATA transit system, including replacing rail cars, buses, and other key transit assets, is critical to keeping the system safe, reliable and affordable.
4. The Passenger Rail Investment and Improvement Act of 2008 (PRIIA) (Pub. L. 110-432) provided WMATA with \$1.5 billion over a 10-year period but conditioned the receipt of funds on an equal amount of funds being pledged by the District of Columbia, the State of Maryland and the Commonwealth of Virginia from dedicated funding sources. Section 30019 of the Infrastructure Investment and

Jobs Act of 2021 (the "Act") amended PRIIA and provides WMATA with continued PRIIA funding of \$150 million annually through Federal Fiscal Year 2030 (WMATA FY 2031) (Section 30019 of Pub. L. 117-58). The amendment requires that for each relevant fiscal year, \$5 million of the PRIIA funds shall be for use exclusively by WMATA's Office of Inspector General (OIG). The Act also requires that WMATA provide \$5 million of non-Federal funds for use exclusively by the OIG

NOW, THEREFORE, in consideration of the mutual promises and obligations set forth in this Agreement, the sufficiency of which is acknowledged, the Parties agree as follows:

SEC. 1 DEFINITIONS

As used in this Agreement, the following terms shall have the following meanings, unless the context otherwise requires:

- A. " Agreement" means this WMATA FY 2023 to 2031 PRIIA FUNDING AGREEMENT.
- B. "Capital Improvement Program" or "CIP" means the list of project elements contained therein approved by the WMATA Board of Directors and that advance the Authority's strategic objectives. The CIP is not considered a payment schedule.
- C. "Code" means the Code of Virginia (1950), as amended.
- D. "Commonwealth " means the Commonwealth of Virginia.
- E. "Contribution" means the \$50 million annual amount of funding to be disbursed to WMATA by DRPT paid with funds from the Commonwealth Mass Transit Fund in accordance with Code Section 33.2-1526.1.B.

- F. "Days" means calendar days.
- G. "DRPT" means the Virginia Department of Rail and Public Transportation.
- H. "Effective Date" means the date on which this Agreement becomes effective, as further defined in Section 10 of this Agreement.
- I. "Electronic Means" shall mean the following communications methods: e-mail, secure electronic transmission containing applicable authorization codes, passwords and/or authentication keys, or another method or system specified by the Parties as available for use in connection with this Agreement.
- J. "Fiscal Year" means each of DRPT's and WMATA's fiscal years beginning on July 1 and ending June 30.
- K. "Party" means a party to this Agreement. WMATA and DRPT, individually are a Party and collectively are the Parties.
- L. "WMATA" or "Authority" means the Washington Metropolitan Area Transit Authority.

SEC. 2 AGREEMENT OF THE PARTIES

WMATA and DRPT agree to comply with the terms and conditions of this Agreement and to carry out their respective obligations fully and faithfully under this Agreement. Any commitment or agreement of DRPT required by this Agreement shall be subject to the annual appropriation and allocation of funds and other limitations on expenditures or obligations under the law of the Commonwealth or under other applicable law. This Agreement shall not constitute an indebtedness of the Commonwealth or DRPT until funds are duly appropriated and allocated and monthly

payments become due pursuant to Section 4 of this Agreement, nor shall it constitute an obligation for which the Commonwealth is obligated to levy or pledge any form of taxation.

SEC. 3 CAPITAL IMPROVEMENT PROGRAM

The WMATA Board of Directors adopts a Capital Improvement Program each year. The CIP may include any capital project or program eligible for capital funding. At the conclusion of every quarter, WMATA shall prepare and provide to DRPT a report on the result of the preceding quarter for submittal to DRPT no later than forty-five (45) days following the close of the quarter, provided however, that the quarterly report for the fourth quarter/WMATA Fiscal Year end shall be due sixty (60) days following the close of the quarter. Such report shall contain a review of capital project scope, cost, and schedule changes; the status of contracts necessary for the implementation of capital projects; the status of year-to-date expenditures relative to budget and the Capital Budget; the status of all cash and debt sources relative to budget and the Capital Budget; updated project cash flow projections and program cash requirements; and a comparison of the billed amount to amounts actually paid out for the preceding quarter.

SEC. 4 DRPT RESPONSIBILITY

- A. Annual Commitment Letter. Subject to allocation and appropriation, and the other requirements contained in the Code, DRPT shall annually provide WMATA with written notice that funds have been, are intended to be, or will not be appropriated to cover its Contribution for the upcoming Fiscal Year and committing to disburse

such Contribution to WMATA per the terms of this Agreement. If the Commonwealth's appropriations process is not completed by June 1, DRPT shall provide to WMATA: (i) a written explanation for the failure to make such submissions by June 1 and confirmation that an amount equal to its Contribution has been or will be included in the next Fiscal Year budget to be considered by the Commonwealth's fiscal authority; and (ii) written assurances that all reasonable efforts will be undertaken to secure the ultimate appropriation of funds in a prompt and timely fashion. If funds will not be appropriated, then DRPT shall notify WMATA within five (5) business days of the fiscal body's action.

B. Disbursement of Contribution.

Quarterly Disbursements. Subject to allocation and appropriation, and the other requirements contained in the Code, DRPT shall disburse the Contribution, in advance, each quarter, in tranches established by WMATA.

- (1) The funding provided by DRPT for the Commonwealth's share of the PRIIA funding pursuant to this Agreement shall be paid quarterly and will total \$50 million per year on an annual basis.
- (2) Availability of Funding. Subject to allocation and appropriation, and other requirements contained in the Code, the disbursement of the Contribution shall be made pursuant to the schedule submitted annually by WMATA unless the funding available to DRPT is not sufficient to cover the disbursement amount, in which event DRPT shall disburse to WMATA the entire balance available. DRPT shall continue to disburse the entire funding available until such time as the disbursement has returned to the scheduled quarterly amounts and prior

disbursements have been made whole.

- (3) Notwithstanding any other provision of this Agreement, if at any time DRPT determines that the funds allocated for the purposes of PRIIA funding will not be sufficient to pay in full the Contribution, the following shall occur: (a) DRPT shall notify WMATA in writing that the available funds are expected to be insufficient to satisfy the current Contribution amount; (b) the written notification shall include a new Contribution amount; and (c) the remaining quarterly payments for that year combined with the payments made prior to notification of the new Contribution amount shall not exceed the new Contribution amount. If such notification occurs, the Parties agree to meet with representatives from Maryland and the District of Columbia to determine an appropriate course of action with respect to the annual CIP budget commitments. Under no circumstance will DRPT be obligated under this Agreement to pay more than what is authorized and appropriated for this purpose.

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

the necessary and appropriate budget, legislative, appropriation, and allocation actions in order to obtain funding in the full amount of its Contribution.

SEC. 5 WMATA RESPONSIBILITY

- A. WMATA shall apply DRPT's Contribution under this Agreement to items identified in the approved CIP.
- B. WMATA shall not use PRIIA funding for the payment of, or security for, debt service on bonds or other indebtedness of WMATA.
- C. WMATA may not use the DRPT PRIIA funding as the federally required match for Federal PRIIA funding when that funding is used exclusively for the Office of Inspector General as provided for in Section 30019 of Pub. L. 117-58.
- D. Schedule of Payments. Prior to the beginning of each Fiscal Year, WMATA shall submit a schedule of payments including the anticipated amount of each quarterly payment.
- E. Reporting. At the end of every quarter, WMATA shall prepare, and submit to DRPT, a report on WMATA financials of the preceding quarter in the same form and timeline as required by the CFA. Such report shall contain a roll forward of the balance provided under this Agreement held by WMATA. Subject to the conditions of this Agreement, if a quarterly report is received less than fifteen (15) Days before payment is due, DRPT reserves the right to delay payment for each day that the quarterly report is late. Delaying the payment as provided in this section will not constitute a breach of the Agreement.
- F. Interest on Payments. Interest shall accrue on all deposits made by DRPT to

WMATA until the funds are expended and the accrued interest will be credited to future payments due from DRPT.

G. WMATA shall invoice DRPT 45 days prior to the beginning of the next quarter.

SEC. 6 FINAL DISTRIBUTION

In the event that this Agreement is terminated pursuant to Section 8 of this Agreement, any amounts remaining on hand at WMATA on the termination date, except for any amounts incurred but not drawn, shall be credited or refunded to DRPT, as directed by DRPT.

SEC. 7 FINANCIAL RECORDS

A. Maintenance of Records. During the term of this Agreement, WMATA agrees to maintain complete accounting records which are consistent with U.S. generally accepted accounting principles and which accurately reflect all income and expenditures of funds which may be provided under this Agreement. WMATA will retain all such CIP records for the same period that records are required to be kept for the Federal Transit Administration ("FTA") or other federal grants, unless there is an outstanding written DRPT or FTA financial or audit question, which is not resolved by the DRPT or FTA auditor. The records of WMATA must be in sufficient detail to determine the character and timing of funded items and of contract obligation and expenditure transactions authorized by this Agreement.

B. Audits

(1) Timing for Performance. DRPT or its agent may perform an audit of

WMATA's expenditures of funds and the sources of those funds provided by this Agreement. The request for the performance of such audit under this Agreement may cover a period of up to three audited fiscal years immediately preceding such request provided that any such years are covered by the term of this Agreement. Any such audit shall be commenced within 60 days after the date of the request and shall be completed (to the maximum extent practicable) within 180 days after the date it is commenced. DRPT or its agent will assume all financial responsibility for any costs associated with the performance of such audit, exclusive of WMATA's internal costs. WMATA agrees to cooperate fully with DRPT or its agent in the conduct of any such audit carried out in accordance with this paragraph.

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

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

SEC. 8 NON-COMPLIANCE & TERMINATION

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

SEC. 9 REPRESENTATIONS AND WARRANTIES

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

(1) WMATA has full power and authority to enter into this Agreement, the transactions contemplated by this Agreement, and to carry out its obligations hereunder;

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

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

- a) No Director, officer or employee shall:
 - i. be financially interested, either directly or indirectly, in any contract, sale, purchase, lease or transfer of real or personal property to which the Board or the Authority is a party;
 - ii. in connection with services performed within the scope of his official duties, solicit or accept money or any other thing of value in addition to the compensation or expenses paid to him by the Authority;
 - iii. offer money or any thing of value for or in consideration of obtaining an appointment, promotion, or privilege in his

employment with the Authority.

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

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

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

SEC. 10 EFFECTIVE DATE, TERM OF AGREEMENT

A. Effective Date. This Agreement shall take effect on the date of execution by the last signatory to this Agreement.

B. Counterparts. This Agreement may be executed in identical counterparts, each of which shall constitute an original and all of which shall constitute, collectively, one agreement.

C. Term. The term of this Agreement shall be for the period July 1, 2022 through and including June 30, 2031. The Agreement shall terminate at the end of its term unless renewed by a writing signed by both Parties.

SEC. 11 NO THIRD PARTY BENEFICIARIES

The Parties to this Agreement do not intend any non-signatory to this Agreement

or any other third party to be a third-party beneficiary to this Agreement, nor do the Parties intend for any such third party to have any rights or benefits under this Agreement or to have standing to bring an action or claim in any court or other forum to enforce any provision of this Agreement.

SEC. 12 AMENDMENTS

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

SEC. 13 NOTICES

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

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

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

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

with a copy to:

and

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

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

and

and

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

To the Washington Metropolitan Area Transit Authority:

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

with copies to:

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

and

Chief Financial Officer
Washington
Metropolitan Area
Transit Authority
300 7th Street SW
Washington, DC 20024

and

Executive Vice President
Department of Strategy, Planning and
Program Management
Washington
Metropolitan Area
Transit Authority
300 7th Street SW
Washington, DC 20024

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

PO BOX 44390
WASHINGTON DC 20026-4390

SEC. 14 SUCCESSORS AND ASSIGNS

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

SEC. 15 NO DEBT GUARANTEES

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

SEC. 16 REQUIREMENT FOR ANNUAL APPROPRIATIONS

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

SEC. 17 MISCELLANEOUS PROVISIONS

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

B. SPECIAL CAPITAL PROVISIONS

(1) WMATA shall permit DRPT or its authorized representatives to inspect at any reasonable time, with reasonable prior notice and subject to WMATA safety requirements, all vehicles, facilities and equipment purchased or constructed by WMATA as part of the CIP with PRIIA funding; and all transportation services rendered by WMATA using such vehicles, facilities or equipment, and all relevant data and records.

(2) With respect to vehicles, facilities, and equipment purchased or constructed by WMATA as part of the CIP, WMATA shall maintain, in accordance with applicable laws, such insurance or self-insurance as will be adequate to protect such vehicles,

facilities and equipment, and persons using such vehicles, facilities and equipment, throughout WMATA's ownership and use of such vehicles, facilities and equipment.

C. APPLICABLE LAW

- (1) This Agreement shall be governed by the laws of the Commonwealth of Virginia.
- (2) Nothing in this Agreement shall constitute a waiver of DRPT's or WMATA's sovereign immunity.
- (3) The Parties acknowledge and agree that each shall comply with all applicable local, state, and federal laws, regulations, and ordinances. Nothing in this Agreement shall require WMATA to violate the WMATA Compact or applicable laws, regulations, or ordinances, or require DRPT to violate any applicable laws, regulations, or ordinances.

D. SEVERABILITY OF PROVISIONS

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

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

F. INDEMNIFICATION AND INSURANCE:

- (1) WMATA shall indemnify, defend, and hold harmless the Commonwealth and

DRPT, and their directors, officers, agents, and employees, from and against all claims, suits, judgments, actions, losses, damages, liabilities, costs and expenses of every name and description, including but not limited to reasonable attorney's fees and costs, brought by any third party caused by a negligent act or omission by WMATA, its contractors, subcontractors, agents, or employees in the performance of CIP work covered by this Agreement.

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

Certificates of Insurance listing the Commonwealth, DRPT, and their respective officers, agents, and employees, as Additional Insureds.

- (5) In lieu of carrying insurance for its agents, contractors, or subcontractors, WMATA may require all its agents, contractors or subcontractors who perform any CIP work or activity of any type to carry insurance sufficient to cover the risks for all damage to persons and property due to CIP work under this Agreement. However, such insurance does not relieve WMATA of the burden of being self-insured and/or carrying insurance to cover the actions of its employees. WMATA shall require of its agents, contractors, and subcontractors that the Commonwealth, DRPT, and their respective officers, agents, and employees, are identified as Additional Insureds on all such insurance policies obtained in lieu of WMATA providing such insurance for its agents, contractors or subcontractors , and WMATA shall require that its agents, contractors, and subcontractors provide Certificates of Insurance listing the Commonwealth, DRPT and their respective officers, agents, and employees as Additional Insureds for any such insurance policies.
- (6) Payment of any funds by DRPT shall not waive any of the rights of DPRT contained in this section nor release WMATA from any responsibilities or duties contained in this Agreement.
- (7) The obligations of this section shall survive the termination of this Agreement for the life of the assets purchased with the funding provided or for 20 years after termination, whichever is longer.

[Signature Page Follows]

IN WITNESS WHEREOF, WMATA and DRPT have executed this Agreement on

This _____ day of _____ 2022.

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

Attest:

By:

(Witness/Title)

Thomas J. Webster, Executive Vice President
Strategy, Planning, and Program Management

COMMONWEALTH OF VIRGINIA, DEPARTMENT OF RAIL AND PUBLIC
TRANSPORTATION

Attest:

By:

(Witness/Title)

(Name/Title)