

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
DEDICATED CAPITAL FUNDING AGREEMENT

Among

The State of Maryland, Acting By and Through
the Washington Suburban Transit District and
the Maryland Department of Transportation

And

The Washington Metropolitan Area Transit Authority

WMATA DEDICATED CAPITAL FUNDING AGREEMENT

THIS WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY DEDICATED CAPITAL FUNDING AGREEMENT ("Agreement") is made and entered into this 26 day of ~~September~~ 2019 by and between the Washington Metropolitan Area Transit Authority ("WMATA"), a body corporate and politic created by interstate compact between Virginia, the District of Columbia, and the State of Maryland ("the State"), acting by and through the Washington Suburban Transit District ("WSTD") and the Maryland Department of Transportation ("MDOT") (collectively, the "Parties").

RECITALS

The WMATA system was built and is operated through the substantial investment of public funds by the Federal Government, the State of Maryland, the District of Columbia, and Commonwealth and local governments in Virginia.

In order to provide a dedicated source of revenue (\$167,000,000 each year), the General Assembly of Maryland passed, and the Governor signed, Chapters 351 and 352 in the Acts of the Maryland, 2018 as amended ("Chapters 351 and 352").

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 Dedicated Capital Funding Agreement.
- B. "Capital Project" means the definition in 49 USC §5302(3).
- C. "Capital Improvement Program" or "CIP" means the list of project elements contained therein approved by the WMATA Board of Directors and that advance the WMATA's strategic objectives. The CIP is not considered a payment schedule.
- D. "Contribution" means the estimated annual amount of funding to be disbursed to WMATA by the State paid with funds in accordance with Chapters 351 and 352.
- E. "Days" means calendar days.
- F. "Debt" means any bond, security, debt issuance, certificate of participation, or other evidence of indebtedness issued by a public body, and includes commercial paper, lines of credit, and letters of credit to finance the program of projects to be completed

under the terms of this Agreement.

- G. "Effective Date" means the date on which this Agreement becomes effective, as further defined in Section 9 of this Agreement.
- H. "Fiscal Year" means the State's and WMATA's fiscal year beginning on July 1 and ending on June 30.
- I. "Party" means a party to this Agreement. WMATA and the State, acting by and through the Washington Suburban Transit District and Maryland Department of Transportation, individually are a Party and collectively are the Parties.

SEC. 2 AGREEMENT OF THE PARTIES

WMATA and the State agree to comply with the terms and conditions of this Agreement and to fully and faithfully carry out their respective obligations under this Agreement. Any commitment or agreement of the State 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 State or under other applicable law. This Agreement shall not constitute an indebtedness of the State until funds are duly appropriated.

SEC. 3 STATE RESPONSIBILITY

- A. The State of Maryland is required under Transportation Article ("TR") §10-205(g) to provide an annual grant of at least \$167,000,000 to the Washington Suburban Transit District to be used only to pay the capital costs of the Washington Metropolitan Area Transit Authority. The District of Columbia and Commonwealth of Virginia, also provide dedicated funding capital grants for capital costs on terms and conditions established by their respective jurisdictions.
- B. To ensure MDOT is fully able to carry out its fiduciary duty to Maryland taxpayers, and as a condition of the funds being distributed to WSTD for WMATA in accordance with TR §10-205(g), MDOT will conduct a fiscal/compliance audit of the combined dedicated capital funds to ensure they are spent in accordance with WMATA's approved CIP.

SEC. 4 WMATA RESPONSIBILITY

- A. WMATA shall apply the Contribution provided under this Agreement to items identified in the approved CIP.
 - (1) The approved CIP shall contain:
 - a. The Authority's safety, state of good repair, and financial accountability goals;
 - b. Program priorities;
 - c. The criteria used to select capital projects for inclusion in the CIP;
 - d. The manner in which each project was evaluated and ranked;

- e. Descriptions of capital projects;
 - f. A list of capital projects, including reimbursable projects and an estimate of program level expenditures, for the budget request year, and the 5 successive planning years, including estimates of future funding requirements for the planning year;
 - g. For each listed capital project, an indication whether the revenue source anticipated to support that project consists of federal, jurisdictional, or other funds;
 - h. The Authority's estimates of the levels and sources of revenues to be used to fund the projects in the Program; and
 - i. A glossary of terms.
- B. WMATA shall submit, annually by June 1 for the most recently audited fiscal year, to MDOT and WSTD the Authority's:
- (1) Annual independent financial audit and Single Audit;
 - (2) Annual National Transit Database profile; and
 - (3) Assessment of safety-critical infrastructure and state of good repair needs.
- C. WMATA shall prepare and submit, annually by June 1, for the next to occur fiscal year, to MDOT and WSTD:
- (1) Annual budget, including funding sources for the budget, anticipated debt capacity, and any anticipated cash reserves and dedicated funding debt, if any;
 - (2) Policies and procedures for the capital planning process, which includes prioritizing and selecting individual projects based on specific and clearly-stated methodology;
 - (3) Annual approved CIP;
 - (4) Debt Policy reviewed and approved by the Board at least annually;
 - (5) Asset inventory and condition assessment procedures; and
 - (6) Measures to assess capital project investments and measures to gauge performance toward outcomes demonstrating responsible investment of grant funds toward meeting the goals of keeping WMATA safe and its infrastructure in a state of good repair.
- D. WMATA shall prepare and submit as available, quarterly updates on the measures established in C.6 above.
- E. The Parties recognize that the scope, pricing, scheduled completion date, or priority of some projects will change during the term of this Agreement. To address these possibilities, WMATA agrees to provide the State with monthly reports regarding reprogramming of project budgets into or out of Capital Projects 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 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 on a quarterly basis.

- F. WMATA shall submit, annually by December 31 for the most recently audited fiscal year, to MDOT a reconciliation report that addresses expenditures made in excess of the one-year capital budget as follows:
 - (1) For Capital Projects exceeding approved one-year budget:
 - a. The amount by which costs exceed projected costs during the completed fiscal year; and
 - b. The total amount that has been expended for the project to date;
 - (2) For new Capital Projects added during a fiscal year:
 - a. A purpose and need summary statement that includes:
 - i. A general description and summary that describes why the project is necessary and satisfies WMATA's safety, state of good repair, and financial accountability goals;
 - ii. The location of the project, including a map of the project limits, project area, or transportation corridor;
 - iii. A summary of how the project meets the selection criteria for inclusion in the CIP; and
 - iv. Any other information that WMATA believes would be useful to MDOT and WSTD.

G. WMATA shall provide any and all documentation requested by State auditors to fulfill the State's responsibilities under Section 3 of this Agreement. Failure to provide requested documentation in accordance with this Agreement may result in full or partial withholding of funds covered by this Agreement.

SEC. 5 PROVISION OF FUNDS – COMMONWEALTH OF VIRGINIA AND DISTRICT OF COLUMBIA

If the Commonwealth of Virginia or the District of Columbia reduce the amount of dedicated funding appropriated for the Washington Metropolitan Area Transit Authority, the Governor may reduce the Maryland appropriation by a proportional amount.

SEC. 6 FINANCIAL RECORDS.

A. Maintenance of Records. During the term of this Agreement, WMATA agrees to maintain complete accounting records which are consistent with generally accepted governmental accounting principles that accurately reflect all income and expenditures of funds provided under this Agreement. WMATA will retain all such 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 State or FTA financial or audit question, which is not resolved by the State or FTA auditor. The records of WMATA must be in sufficient detail to determine the character and timing of transactions authorized by this Agreement.

B. Audits

- (1) Timing for Performance. The State or its agent may perform or engage a third party

to perform an audit of WMATA's expenditures of funds in accordance with the information provided under this Agreement. The request for the performance of such audit may cover a period of up to three fiscal years immediately preceding such request. The State or its authorized 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 the State or its authorized agent in the conduct of any such audit carried out in accordance with this Agreement.

- (2) **Audit Findings.** Any issue identified by the auditor during the course of the audit that may result in a finding will be discussed with WMATA management, who may provide additional input or information to the auditor. If WMATA management disagrees with a preliminary audit finding, reasonable efforts shall be made to resolve the dispute before the final audit report is issued. The auditor's final report will contain the audit findings along with a response from WMATA and, if appropriate, any rebuttal from the auditor.
- (3) **Audit Results.** If it is determined by the auditor as a result of such audit under this section that funds provided by the State have not been administered pursuant to the terms and conditions of this Agreement or have been administered in a way contrary to law, WMATA shall make appropriate accounting adjustments, including, the return of funds to the State. 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 the State under this Agreement.

Sec. 7 NON-COMPLIANCE & TERMINATION

In the event either Party determines that the other Party to the Agreement is not satisfactorily 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. If no satisfactory resolution is achieved, either Party may, upon 30 Days' notice to the other Party, terminate this Agreement.

SEC. 8 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:
 - a. WMATA has full power and authority to enter into this Agreement, the transactions contemplated by this Agreement, and to carry out its obligations hereunder;
 - b. When executed and delivered by the State 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.
- c. WMATA procurement contracts in connection with the Capital Improvement Program shall be administered pursuant to the applicable WMATA procurement requirements and the WMATA Code of Ethics.

- B. By the State. The State makes the following representations as of the Effective Date of this Agreement as a basis for the undertakings pursuant to this Agreement:
- a. The State 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;
 - b. When executed and delivered by the State and by WMATA, this Agreement will constitute the legal, valid, and binding obligation of the State 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. 9 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 begin on the Effective Date and shall automatically renew each July 1 unless one Party provides written notice requesting to amend or modify the agreement at least 90 Days prior to July 1.

SEC. 10 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. 11 AMENDMENTS

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

SEC. 12 NOTICES

All notices under this Agreement shall be in writing and shall be deemed to have been sufficiently given or served when presented personally, electronically, 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 Maryland Department of Transportation acting by and through the
Washington Suburban Transit District:

Secretary
Maryland Department of Transportation
7201 Corporate Center Drive
Hanover, Maryland 21076

Chair
Washington Suburban Transit Commission
4351 Garden City Drive
Suite 305
Hyattsville, Maryland 20785

With copies to:
Attorney General
Maryland Department of Transportation
7201 Corporate Center Drive
Hanover, Maryland 21076

Chief Financial Officer
Maryland Department of Transportation
7201 Corporate Center Drive
Hanover, Maryland 21076

To the Washington Metropolitan Area Transit Authority:

General Manager
Washington Metropolitan Area Transit Authority
600 Fifth Street, NW
Washington, DC 20001

With copies to:
General Counsel
Washington Metropolitan Area Transit Authority
600 Fifth Street, NW, Second Floor Washington, DC 20001

Chief Financial Officer
Washington Metropolitan Area Transit Authority
600 Fifth Street, NW, Sixth Floor
Washington, DC 20001

SEC. 13 SUCCESSORS AND ASSIGNS

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

SEC. 14 NO DEBT GUARANTEES

The State does not guarantee the debt of WMATA or any obligation of WMATA. Any bonds issued by WMATA do not constitute a debt or a pledge of the faith and credit of the State, MDOT, or WSTD, and neither the faith and credit nor the taxing power of the State nor the revenues of the Department are pledged to payment of bonds issued by WMATA. The issuance of any bonds by WMATA does not directly, indirectly, or contingently obligate, morally or otherwise, the State, MDOT, or WSTD.

SEC. 15 REQUIREMENT FOR ANNUAL APPROPRIATIONS

Notwithstanding any other provisions of this Agreement, all obligations of the State 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 the State.

SEC. 16 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 the MDOT, WSTD, 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; and all transportation services rendered by WMATA using such vehicles, facilities or equipment.

(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 law of the State of Maryland. Nothing

in this Agreement shall constitute a waiver of the State's or WMATA's sovereign immunity.

(2) 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 the State 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 State and WSTD, 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 arising out of, resulting from, or in connection with any negligent act or omission by WMATA, its contractors, subcontractors, agents, or employees, or anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, relating to any 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, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable related to any 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 State, WSTD, and their respective officers, agents, and employees as Additional Insured's. WMATA certifies that as of the Effective Date of this Agreement, all commercial insurance and self-insurance lists the State, WSTD, and their respective officers, agents and employees as Additional Insured's. WMATA shall not remove the State, WSTD, or their respective officers, agents, and employees as Additional Insured's for any self-insurance without the written consent of the State.

(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 WSTD with prompt notice. WMATA shall provide 30-days advance written notice to WSTD of any cancellation or material adverse change to any self-insurance.

(4) For commercial insurance, WMATA shall provide Certificates of Insurance listing the State, WSTD, and their respective officers, agents, and employees, as

Additional Insured's. WMATA shall provide a self-insurance letter indicating the extent of WMATA's self-insurance.

(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 State, WSTD, and their respective officers, agents, and employees, are identified as Additional Insured's 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 State, WSTD and their respective officers, agents, and employees as Additional Insured's for any such insurance policies.

(6) Payment of any funds by or through the WSTD shall not waive any of the rights of the State, MDOT or WSTD 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.

[Signatures appear on following page]

STATE OF MARYLAND


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

Approved as to Form and Legal Sufficiency as a Grant:

By: 
Assistant Attorney General

Dated: 9/25/19


MARYLAND DEPARTMENT OF TRANSPORTATION

By: 
Secretary

Dated: 9-26-19

and

WASHINGTON SUBURBAN TRANSIT DISTRICT

By: 
Chairman

Dated: 9-26-19

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

By: 
Paul J. Wiedefeld
General Manager and Chief Executive Officer

Dated: 9/26/19