

Washington Metropolitan Area Transit Authority
Board Action/Information Summary

☒ Action ☐ Information

MEAD Number:
201766

Resolution:
☒ Yes ☐ No

TITLE:

Renewal of Virginia PRIIA Funding Agreement

PRESENTATION SUMMARY:

Staff seeks Board approval to renew the Passenger Rail Investment and Improvement Act (PRIIA) funding agreement between Washington Metropolitan Area Transit Authority (WMATA) and the Virginia Department of Rail and Public Transportation (DRPT).

PURPOSE:

Staff seeks Board approval to renew the PRIIA funding agreement between WMATA and DRPT. The Commonwealth of Virginia's annual share of required PRIIA match funding is provided through this agreement.

DESCRIPTION:

Key Highlights:

- The previous agreement between WMATA and DRPT for Virginia PRIIA match funding was signed in 2010 with a six-year term that expired on June 30, 2016.
- WMATA and DRPT have reached concurrence on a renewed agreement for an additional four years (covering the remaining period of the current ten-year PRIIA authorization), and DRPT has already executed the renewed agreement.
- Following WMATA Board approval and execution of the renewed agreement by the GM/CEO, DRPT will provide the required PRIIA match funding for the first quarter of FY2017.

Background and History:

The federal funding that WMATA receives annually under PRIIA requires a 50 percent local match that is allocated equally between the District of Columbia, the State of Maryland, and the Commonwealth of Virginia. Virginia's share of the PRIIA match funding has been provided through an agreement signed in 2010 between WMATA and DRPT. This agreement specifies the terms and conditions of the PRIIA funding and provides DRPT with WMATA's capital plan and anticipated uses of the funding.

The agreement between WMATA and DRPT for the Virginia PRIIA match funding had a six-year term that expired on June 30, 2016. WMATA and DRPT staff have worked jointly to renew the existing agreement, which will extend the current terms and conditions for an additional four years to cover the remaining period of the current ten-

year PRIIA authorization.

Discussion:

A substantive addition to the renewed agreement is language referencing an Executive Directive 8 issued by Virginia Governor Terry McAuliffe. On May 25, 2016, this directive required DRPT to examine and pursue all available and appropriate remedies to ensure that WMATA complies with safety directives issued by the Federal Transit Administration, including but not limited to withholding capital funds from WMATA.

In a letter dated July 11, 2016, DRPT affirmed to WMATA that Virginia will continue to provide funding for its share of the PRIIA matching funds. DRPT also confirmed that the required funding is included in the Commonwealth's biennium budget for both FY2017 and FY2018 that was recently adopted by the Virginia General Assembly and signed by the Governor. In addition, Virginia's Commonwealth Transportation Board recently approved a Six-Year Improvement Program that includes funding for Virginia's PRIIA match through FY2020.

DRPT executed the renewed agreement on June 30, 2016, which is included as an attachment. Following WMATA Board approval and execution of the renewed agreement by the GM/CEO, DRPT will transmit the PRIIA match funding for the first quarter of FY2017.

FUNDING IMPACT:

Renewal of agreement will allow Virginia to provide PRIIA matching funds already included in the FY2017 capital budget.	
Project Manager:	Thomas J. Webster
Project Department/Office:	CFO/OMBS

TIMELINE:

Previous Actions	2010 - Original agreement signed between WMATA and DRPT
Anticipated actions after presentation	Following Board approval and GM/CEO execution, DRPT will transmit FY2017-Q1 PRIIA match payment.

RECOMMENDATION:

Staff recommends Board approval to renew the agreement between WMATA and DRPT for Virginia's annual share of PRIIA match funding.

PRESENTED AND ADOPTED: July 28, 2016

SUBJECT: APPROVAL OF 2016 PRIIA FUNDING AGREEMENT WITH THE VIRGINIA DEPARTMENT OF RAIL AND PUBLIC TRANSPORTATION

2016-37

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

WHEREAS, The Washington Metropolitan Area Transit Authority (WMATA) receives federal funding annually under the Passenger Rail Investment and Improvement Act of 2008 (PRIIA) which requires a 50 percent local match that is allocated equally between the District of Columbia, the State of Maryland, and the Commonwealth of Virginia; and

WHEREAS, Resolution 2010-36 authorized WMATA to enter into an agreement with the Virginia Department of Rail and Public Transportation (DRPT) for the funding of Virginia's share of the PRIIA local match; and

WHEREAS, WMATA and DRPT desire to continue the Virginia PRIIA local match funding agreement through WMATA Fiscal Year 2020; and

WHEREAS, The agreement is embodied in the 2016 PRIIA Funding Agreement, appended as Attachment A; and

WHEREAS, Resolution 2011-30 requires Board of Directors approval prior to entering into a capital funding agreement; and

WHEREAS, WMATA has submitted an application for PRIIA funding to the Federal Transit Administration; and

WHEREAS, DRPT has executed the 2016 PRIIA Funding Agreement in the form appended as Attachment A; now, therefore be it

RESOLVED, That the Board of Directors approves the terms of the 2016 PRIIA Funding Agreement as shown in Attachment A; and be it further

RESOLVED, That the General Manager/Chief Executive Officer is authorized to execute the 2016 PRIIA Funding Agreement on behalf of WMATA; and be it finally

Motioned by Ms. Carmody, seconded by Mr. Corcoran

Ayes: 8 – Mr. Bulger, Ms. Harley, Mr. Corcoran, Mr. Costa, Mr. Price, Mr. Goldman, Mrs. Hudgins and Ms. Carmody

RESOLVED, That in order to ensure that WMATA may comply with the terms of the 2016 PRIIA Funding Agreement, and remain eligible for award of the PRIIA grant, 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

EXECUTION COPY

2016-2020 PRIIA FUNDING AGREEMENT

Between

**The Commonwealth of Virginia Acting By and Through
The Virginia Department of Rail and Public Transportation**

And

The Washington Metropolitan Area Transit Authority

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FY2017**

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PRIIA FUNDING AGREEMENT

THIS PRIIA FUNDING AGREEMENT (Agreement) is made and entered into this 28th day of July, 2016, 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 Commonwealth of Virginia (Commonwealth) acting by and through the Virginia Department of Rail and Public Transportation** (collectively, the "Parties").

RECITALS

1. The WMATA transit system has played a critical role in the growth and prosperity of the National Capital Region and environs, and WMATA's continued economic vitality is essential to the regional transportation system and the environmental quality, and economic, educational and cultural life of the Washington region.
2. The WMATA 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. The lack of sufficient secure and reliable funding to rehabilitate and maintain the WMATA transit system and to replace rail cars, buses, and other key transit assets is creating a transportation crisis, threatening the continued health and vitality of the system and jeopardizing the public investment.
4. The Federal Government passed the Passenger Rail Investment and Improvement Act of 2008 (PRIIA) (Pub. L. 110-432) to provide 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.

5. On May 25, 2016, Virginia Governor McAuliffe issued Executive Directive 8, requiring the Virginia Department of Rail and Public Transportation (DRPT) to examine and pursue all available and appropriate remedies to ensure that WMATA complies with safety directives issued by the entity providing state safety oversight per 49 C.F.R. pt. 659 and its successor regulation, 49 C.F.R. pt. 674, including but not limited to the withholding of capital funds being provided for WMATA under this funding agreement.

NOW, THEREFORE, in consideration of the mutual promises and obligations hereinafter set forth, 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:

- (1) "Agreement" means this PRIIA Funding Agreement.
- (2) "Allocated Contribution" means the Commonwealth's financial share of the cost of the Capital Improvement Program to be provided to match the Dedicated Funding (PRIIA) funds.
- (3) "Annual Work Plan" means the annual plan developed by WMATA on both obligation and expenditure bases and submitted to the Contributing Jurisdictions and the Commonwealth which identifies the Capital Improvement Program projects and activities to be undertaken in the Capital Budget for a specific fiscal year and the estimated annual cash requirement of those projects and activities and the sources of funds expected to be used on an expenditure basis to meet that cash requirement.
- (4) "Capital Budget" is synonymous with the term Annual Work Plan.

(5) “Capital Improvement Program” (“CIP”) means the list of project elements including the useful life computations for each project contained therein for the period of July 1, 2016 through June 30, 2022 approved by the WMATA Board of Directors for the period of July 1, 2017 – June 30, 2023 as may subsequently be updated for this or each successive six-year period (for planning purposes only) and specific fund sources for use in supporting the specific scope, schedule, and budget (expressed in both obligation and expenditure terms) of projects that advance the Authority’s strategic objectives. See Attachment 1 for the FY2017-2022 CIP. The CIP is not considered a payment schedule. The CIP shall be updated annually as described in this Agreement.

(6) “Commonwealth” means the Commonwealth of Virginia acting by and through DRPT.

(7) “Contributing Jurisdictions” means the State of Maryland acting by and through the Washington Suburban Transit District and the Maryland 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. These Contributing Jurisdictions have entered into a Capital Funding Agreement.

(8) “Days” means calendar days, unless otherwise specifically provided.

(9) “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. Debt shall be classified as either Short-Term Debt or Long-Term Debt.

(10) “Dedicated Funding” (PRIIA) means those federal funds provided to WMATA under the PRIIA. The PRIIA matching funds will be made available to WMATA pursuant to the

applicable laws of the District of Columbia, Maryland, and the Commonwealth of Virginia, the provision of which by the Commonwealth is the purpose of this Agreement.

(11) “Discretionary Grant” means any award of discretionary Federal financial assistance for a new or existing fixed guideway system from the capital investment grant program authorized under Section 5309 of Title 49 of the U.S. Code, or from any other discretionary grant program from any federal agency under which funds are provided on other than a formula basis.

(12) “Federal grant” means an award of financial assistance, including formula grants, discretionary grants, and cooperative agreements, in the form of money, or property in lieu of money, by the Federal Government through the Federal Transit Administration or any other federal agency to an eligible grantee. The term does not include technical assistance which provides services instead of money, or other assistance in the form of revenue sharing, loans, loan guarantees, interest subsidies, insurance, or direct appropriations. Also, the term does not include assistance, such as a fellowship or other lump sum award, which the grantee is not required to account for.

(13) “FTA” means the Federal Transit Administration.

(14) “Formula grant” means any award of Federal financial assistance from the urban formula program authorized under Section 5307 of Title 49 of the U.S. Code or the fixed guideway modernization program authorized under Section 5309 of Title 49 of the U.S. Code, or similar successor programs.

(15) “Funding Sources” shall be the various categories of funds to be used to pay for the projects covered in the CIP. These funds may be either from federal or non-federal sources. Where the Agreement requires a more detailed description of the funding source, then the following categories shall be used: Dedicated Funding, Dedicated Funding matching funds,

Formula Grants, Formula Grants matching funds, Other Federal Grants, Other Federal Grants matching funds, System Performance Funds, and Other funds.

(16) “Interim Funding Sources” means one or more letters of credit or lines of credit and related reimbursement agreements, standby bond purchase agreements, commercial paper, or similar agreements or obligations, or any combination of the foregoing, issued to or for WMATA or entered into with WMATA by a bank, insurance company, or other financial institution, or other evidence of indebtedness of WMATA.

(17) “Long-Term Debt” means Debt with a maturity greater than 1 year.

(18) “Non-Federal funds” means funds provided by State and local sources and debt sources.

(19) “Party” or “Parties” means WMATA and the Commonwealth of Virginia acting by and through DRPT.

(20) “Preventive Maintenance” means upgrades to, repairs to, and maintenance of, capital assets that provides additional value to the capital asset. The FTA definition of “preventive maintenance” is separate from and not connected to Preventive Maintenance as defined herein.

(21) “Reprogramming” means a change to an Annual Work Plan or Capital Budget that occurs outside of the Annual Work Plan process.

(22) “Short-Term Debt” means Debt with a maturity of one year or less.

(23) “WMATA” or “Authority” means the Washington Metropolitan Area Transit Authority.

SEC. 2 AGREEMENT OF THE PARTIES

(a) **Agreement of the Parties.** WMATA and the Commonwealth 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 Commonwealth 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 of Virginia or under other applicable law. This Agreement shall not constitute an indebtedness of the Commonwealth until funds are duly appropriated and allocated and quarterly payments become due pursuant to Section 5(b)(3)(C) of this Agreement, nor shall it constitute an obligation for which the Commonwealth is obligated to levy or pledge any form of taxation or for which the Commonwealth has levied or pledged any form of taxation.

SEC. 3. CAPITAL IMPROVEMENT PROGRAM

WMATA and the Contributing Jurisdictions have agreed to and adopted the Capital Improvement Program attached as Attachment 1.

(a) **Elements of Capital Improvement Program.**

(1) **Program Elements.** The PRIIA portion of the Capital Improvement Program proposed to be funded in part by this Agreement consists of those projects identified for funding along with the sources of that funding in the annually approved CIP as they are updated in accordance with this Agreement. The CIP may include any capital project or purchase eligible for capital funding and may include, for example, projects in any of the following categories:

(A) Vehicles and Vehicle Parts, such as replacement or purchase of new rail cars, buses, paratransit vehicles and/or service vehicles, rehabilitation of rail cars and buses and replacement parts to maintain the rail fleet.

(B) Rail System Infrastructure Rehabilitation, such as multiple systems and equipment within the rail stations and tunnels that enable safe, reliable Metrorail service.

(C) Maintenance Facilities, such as rehabilitation, maintenance, replacement and/or new bus garages and rail yards to support repairs to vehicle fleet.

(D) Systems and Technology, such as technology systems, software and equipment supporting transit operations and business functions.

(E) Track and Structures, such as steel running rail that guides Metrorail trains, the cross ties and fasteners that hold the rail in place, the ballast bed that supports the cross ties and the third rail that provides power to the train. Structures include the retaining walls that protect the track bed and underground tunnels, the concrete pads that keep the track bed properly elevated and the bridges that span roads and bodies of water.

(F) Passenger Facilities, such as facilities at Metrorail stations, including bus loops, bus stops, parking garages, surface lots, Kiss-and-Ride spaces, access roads and bus loops, bike racks and lockers.

(G) Maintenance Equipment such as equipment to rehabilitate track and maintain the vehicle fleet (rail and bus).

(H) Other Facilities, such as facilities that house administrative offices, training rooms, revenue processing activities, material storage, police work and a print shop.

(I) Program Management and Support including Credit Facility and Other Financial Fees and Expenses and Program Contingencies.

(J) Safety and Security Projects.

(K) Preventive Maintenance as defined in this Agreement.

(2) **Description.** The specific projects and activities and the sources of funding to support those specific projects and activities will be set forth in the Annual Work Plan.

(b) **Cost.** The estimated program cost of the initial Capital Improvement Program is approximately \$6,000,000,000 in year of expenditure dollars inclusive of projects to be funded with Dedicated Funding and covering a six-year period. The initial CIP covering FY 2017-2022 is provided as Attachment 1.

(c) **Schedule.** The initial Capital Improvement Program will be implemented over the period beginning in WMATA fiscal year 2017 and ending fiscal year 2022. There will be an

Annual Work Plan for each fiscal year, as more specifically described in Section 5 of this Agreement.

(d) **Agreement to Fund PRIIA Projects Contained in the Capital Improvement Program.** Subject to allocation and appropriation, the Commonwealth agrees to provide its share of the PRIIA matching funds up to a maximum of \$50 million in FY2017 and an additional cumulative \$50 million annually as follows: \$100 million through FY2018; \$150 million through FY2019; \$200 million through FY2020, necessary to obtain federal Dedicated Funding amounts necessary for the PRIIA funded projects in the Capital Improvement Program.

SEC. 4 CAPITAL IMPROVEMENT PROGRAM FINANCIAL PLAN

(a) **Funding Sources.**

The projects and activities in the Capital Improvement Program shall be funded in the most cost effective manner from one or more of the following sources: (A) Funding Sources; (B) the issuance of Short-Term Debt by WMATA, with WMATA's debt service to be paid with funds received from the Contributing Jurisdictions and the Commonwealth; and (C) such other funding sources, cash management strategies or financing methods as the WMATA Board determines to be appropriate to accomplish the goals of the Capital Improvement Program. The specific amounts estimated from each Funding Source will be set forth in each Annual Work Plan.

(b) **Formula for Commonwealth Funding.** Subject to allocation and appropriation of funds, the Commonwealth shall provide a maximum of \$50 million in FY2017 and an additional cumulative \$50 million annually as follows: \$100 million through FY2018; \$150 million through FY2019; \$200 million through FY2020, to cover one-third of all PRIIA matching funds required to obtain the federal share of PRIIA funds. The other two-thirds are to be paid by the District of Columbia and the State of Maryland in equal shares.

SEC. 5 IMPLEMENTATION OF CAPITAL IMPROVEMENT PROGRAM

(a) Programmatic Aspects.

(1) Long Term Programming. Based on comments received from the Commonwealth and the Contributing Jurisdictions, the WMATA Board of Directors will approve a six-year capital program each year, with such program covering potential funding sources, a description of the project prioritization process, an explanation of how the CIP would further the strategic goals of WMATA, and an identification of the performance metrics by which the outcome of the CIP will be measured. The prioritization process shall rank and select projects based on the projects' support of WMATA's strategic goals and funding availability.

The annual documentation of the capital program will describe qualitatively and quantitatively the broad outlines of the proposed capital spending and sources for that spending for the forthcoming fiscal year and the outcomes expected to be achieved by the proposed program. The documentation of the proposed spending shall include at least the following: (i) the sources of funds for the proposed spending, (ii) expenditures by mode (e.g. bus, rail, paratransit), (iii) expenditures by project phase (e.g. planning, design, land acquisition, construction), (iv) the indicators of the outcomes to be achieved by the proposed projects, and (v) projected spending compared to prior year actual spending rate.

(2) Annual Work Plan. WMATA shall, as a part of its annual budget process each year during this Agreement, develop and submit to the Contributing Jurisdictions and the Commonwealth a draft Annual Work Plan for the Capital Improvement Program which shall include the preliminary results of the Budget Reconciliation process contained in Section 6 of this Agreement. The Annual Work Plan shall be based upon and be consistent with the updated Capital Improvement Program prepared pursuant to the reconciliation process under Section 6 of this Agreement. The Annual Work Plan along with the Capital Improvement

Program will be approved by the WMATA Board of Directors prior to the start of the fiscal year covering the specific Annual Work Plan.

(3) **Contents of Plan.** The Annual Work Plan shall include:

(A) an identification of the projects and activities in the Capital Improvement Program for which funds will be obligated or expended during the next WMATA fiscal year;

(B) a budget for the Annual Work Plan that includes a cost estimate and source of funds for each project and activity in the Plan, by CIP category and shall include the projects proposed to be funded by Dedicated Funding;

(C) a statement of the Commonwealth's share of the Dedicated Funding matching amounts based on a schedule of projected quarterly cash needs including an identification of what portion of that contribution is a direct capital contribution, and what portion (if any) is to be used by WMATA to pay debt service on WMATA Short-Term Debt (to be stated separately in the Plan);

(D) a summary of the CIP projects and activities undertaken in the then-current WMATA fiscal year, together with the costs incurred to date and the estimated remaining costs for those projects and activities; and

(E) the preliminary results of the Budget Reconciliation process contained in Section 6 of this Agreement and a revised proposed CIP.

(4) **Schedule for Approval of CIP and Annual Work Plan.** To ensure a coordinated program, the Parties agree that each annual program will be developed and approved under the following schedule:

(A) The updated six-year CIP will be provided to the Contributing Jurisdictions and the Commonwealth no later than the 10th business day in October.

(B) Prior to December 1, a presentation will be offered to DRPT.

(C) WMATA will also present the capital program and the Annual Work Plan information to affected legislative bodies as requested.

(D) The draft Annual Work Plan shall be submitted to the Contributing Jurisdictions and the Commonwealth by December 15.

(E) Comments are due from the Contributing Jurisdictions and the Commonwealth no later than February 15. WMATA may not be able to consider comments received after February 15 in the development of the proposed Annual Work Plan.

(F) The proposed Annual Work Plan shall be provided to the Contributing Jurisdictions and the Commonwealth immediately following the March WMATA Board meeting and shall be used to consult with WMATA Board representatives. The final CIP and Annual Work Plan will be adopted by the WMATA Board no later than the June meeting.

(5) WMATA Implementation Responsibilities.

(A) General. WMATA will administer the Capital Improvement Program and carry out all necessary procurement actions and management oversight. All procurement actions will be undertaken in accordance with WMATA procurement policies and applicable law. WMATA agrees to comply with all safety directives issued by the entity providing state safety oversight per 49 C.F.R. pt. 639 and its successor regulation, 49 C.F.R pt. 674.

(B) Federal Grants. To the extent that Federal financial assistance is provided for any project or activity in the Capital Improvement Program, WMATA will develop the required Federal grant applications and/or other necessary documentation to meet FTA or other Federal program requirements, and will carry out the federally assisted project or activity in compliance with all applicable Federal requirements.

(C) Use of Commonwealth Funding. In accordance with Federal requirements, WMATA shall use the Commonwealth's and the Contributing Jurisdictions' Dedicated Funding as dollar for dollar match to the PRIIA funds from the federal government. When Commonwealth Dedicated Funding is spent, a comparable amount of the matching funds from the federal government and the Contributing Jurisdictions shall also be spent. In no circumstance should the Commonwealth's Dedicated Funding be expended unless a proportionate amount of matching funding is also expended at the same time.

(6) Funding Methodology for Projects in the Annual Work Plan. New projects for the Annual Work Plan will be listed with their funding identified by both year and Funding Source. A project may be funded by more than one type of funding. If a project is a multi-year project, then in the second and succeeding years, that project will continue to use the same funding source unless another funding source is identified. In every case, funds needed for debt service including Short Term Debt and Interim Funding Sources on projects in the Annual Work Plan paid for with Dedicated Funding shall have priority. Projects which are underway but which have remaining amounts budgeted for them in the CIP shall have the unexpended funds "rolled over" to the succeeding fiscal year. The unexpended funds shall be in addition to the succeeding year's CIP funding requirements, subject to the provisions of Section 6.

(b) Financial Aspects.

(1) Cash Sources.

(A) Federal Funds. WMATA commits to take all necessary and appropriate actions to secure Federal funding in the CIP (including Federal formula and discretionary grant funds under the Federal transit/highway program, the PRIIA, and such other Federal financial assistance as may be made available during the term of this Agreement) to assist in the funding of the Capital Improvement Program. WMATA will manage the Capital

Improvement Program within the funding amounts agreed to by the Contributing Jurisdictions and the Commonwealth, except as otherwise provided in paragraph (C) of this subsection.

(B) Jurisdictional Commitments. To the extent applicable, the Commonwealth agrees to make its Allocated Contribution to fund the Dedicated Funding matching funds component of the CIP; provided, however, that in no case will the Allocated Contribution be more than a maximum of \$50 million in FY2017 and an additional cumulative \$50 million annually as follows: \$100 million through FY2018; \$150 million through FY2019; \$200 million through FY2020. Such contributions shall be made in accordance with the requirements and procedures in subsection (3) of this Section. The source of funds for such capital contributions is in the discretion of Commonwealth; provided that such funds must qualify as local match under PRIIA. WMATA agrees to provide the Commonwealth with its estimated Allocated Contribution by the 10th business day in October each year.

(2) Debt Sources.

(A) General. In accordance with the Annual Work Plan, all or any portion of the Dedicated Funding component of the Capital Improvement Program may be funded through short-term financing as described in this subsection and in accordance with Section 21 and Articles IX and X of the WMATA Compact.

(B) WMATA Responsibility. WMATA may issue Short-Term Debt to assist in the financing of the PRIIA-funded projects portion of the Capital Improvement Program. Any Debt issued by WMATA under this subsection may be secured by a lien and pledge of WMATA's gross revenues, or (subject to any required FTA approval) of WMATA's capital assets.

(C) Commonwealth Responsibility. The Commonwealth, subject to annual appropriations and allocations, shall make the annual contributions necessary in order that

WMATA can make payments of debt service on Short-Term Debt issued by WMATA under paragraph (B) of this subsection. The amount of such contributions will be included in the Commonwealth's Allocated Contribution amount set forth in the CIP. Such contributions shall be made in accordance with the requirements and procedures in subsection (3) of this Section.

(D) Responsibility for Repayment. If the Commonwealth issues Debt to make its Allocated Contribution, the Commonwealth shall be solely responsible for the repayment of the principal and interest of any debt it issues under this paragraph.

(3) **Commonwealth Commitment.**

(A) General. Nothing in this Agreement shall be construed to obligate the Commonwealth to have, as of the date that it enters into this Agreement, funding or an appropriation in the full amount of its Allocated Contribution of the Dedicated Funding matching funds component of the CIP. Subject to allocation and appropriation, the Commonwealth shall be solely responsible for its Allocated Contribution. The Commonwealth 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 share of the Dedicated Funding matching funds as described in the draft Annual Work Plan in the Commonwealth'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 Allocated Contribution. In no circumstance shall the Commonwealth be responsible for the Allocated Contribution or other obligations of any Contributing Jurisdiction under this Agreement. If there is a failure to appropriate and allocate the full annual Allocated Contribution, the Dedicated Funding portion of the Annual Work Plan shall be revised to

conform to the available funds and submitted to the WMATA Board of Directors, the Commonwealth, and the Contributing Jurisdictions for approval.

(B) Annual Commitment. The Commonwealth shall annually provide WMATA with written notice that funds have been, are intended to be, or will not be appropriated to cover its Allocated Contribution for WMATA's upcoming fiscal year, and committing to make payment of such Allocated Contribution to WMATA. No CIP or Annual Work Plan containing projects to be funded with Dedicated Funding shall be approved without the certification of each Contributing Jurisdiction and the Commonwealth that the funding levels are reasonable and accurate reflections of funds to be made available. If the Commonwealth's appropriations process is not completed by June 1, the Commonwealth shall provide to WMATA: (i) a written explanation for the failure to make such submissions by June 1 and confirmation that amounts equal to its Allocated Contribution have 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 the Commonwealth shall notify WMATA within five business days of the fiscal body's action. WMATA will notify the Commonwealth of Virginia of a failure to appropriate the full amount of the PRIIA matching funds by either the District of Columbia or the State of Maryland. If there is a failure to appropriate the full annual Allocated Contribution, the Dedicated Funding portion of the Annual Work Plan shall be revised to conform to the available funds and submitted to the WMATA Board of Directors, the Commonwealth, and the Contributing Jurisdictions for approval.

(C) Quarterly Payments. The Commonwealth's Allocated Contribution shall be based on the approved Annual Work Plan covering the Dedicated Funding

funded projects and any subsequent adjustments derived from the Annual Budget Reconciliation Process for the quarter covered by the invoice, and be paid to WMATA on a quarterly basis, no later than the first day of each quarter, throughout the term of this Agreement. Any debt service included in the invoice for Short-Term Debt shall be separately identified on the invoice. WMATA shall submit a bill to the Commonwealth for such quarterly payments 45 days prior to the date such payments are due. Thus, for example, for the July-September quarter WMATA will bill the amount in the Annual Work Plan as approved or adjusted for July-September and send the Commonwealth an invoice for its Allocated Contribution no later than the immediately preceding May 15. Payment must be received by WMATA no later than July 1, except for the first quarterly payment in fiscal year 2017. WMATA sent an invoice for the first quarterly payment in fiscal year 2017, totaling \$16,327,008, on May 17, 2016. DRPT paid \$3,905,967 of the invoice prior to July 1, 2016. The remainder shall be paid within five business days of execution of this Agreement by the Parties. The sum of the Commonwealth's quarterly invoices during a given fiscal year shall not exceed the Commonwealth's Allocated Contribution or a maximum of \$50 million in FY2017 and an additional cumulative \$50 million annually as follows: \$100 million through FY2018; \$150 million through FY2019; \$200 million through FY2020, whichever is less, in the approved Annual Work Plan. Based upon quarterly reconciliation of payments, any additional amount due available to be paid by the Commonwealth for a particular fiscal year under this Agreement shall be carried over to the next quarter until all funds have been expended for that fiscal year as provided for under this Agreement.

In the event the Commonwealth determines that WMATA is not satisfactorily complying with safety directives, the Commonwealth shall provide 90 days written notification to WMATA before withholding funds to allow WMATA time to demonstrate satisfactory compliance with

the safety directives issued by the entity providing state safety oversight under the federal regulations. If satisfactory compliance is not obtained during the 90 days, the Commonwealth will provide written notice to WMATA, and funds under this Agreement may then be withheld, at the Commonwealth's sole discretion, until satisfactory compliance with the applicable safety directives is achieved. The terms of this paragraph shall be in force until such time as the Virginia General Assembly passes legislation to create the Metro Safety Commission; at which time the terms of this paragraph become null and void.

(4) **System for Billings.** WMATA shall continue the Quarterly Reporting required under the Agreement for the 1st quarter which closes on September 30, 2016, with the content of the report being progressively refined to meet the requirements of section 5(b)(5).

(5) **Quarterly Reports.** At the conclusion of every quarter, WMATA shall prepare a report on the result of the preceding quarter for submittal to the Contributing Jurisdictions and the Commonwealth no later than 45 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 Annual Work Plan; the status of all cash and debt sources relative to budget and the Annual Work Plan; 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. Such report shall be provided in a quarterly financial report to the WMATA Board and the Commonwealth.

(6) **Interest on Payments.** Interest shall accrue on all payments made by the Commonwealth until the funds are expended. WMATA shall place such funds so contributed into an interest earning account, with interest to be compounded monthly at WMATA's then current earnings rate for its short-term investments. Interest earned on funds contributed by the

Commonwealth shall be applied as a credit against future payments for the Allocated Contribution due from the Commonwealth under this Agreement, unless otherwise directed in writing by the Commonwealth.

(7) **Interim Funding Sources and Security Interests.**

(A) Interim Funding Authority. The WMATA Board of Directors is authorized to use Interim Funding Sources, including borrowing, on behalf of WMATA in such amounts and at such times as, in the Board's sole judgment, are necessary and appropriate for the purpose of implementing the projects and activities in the Capital Improvement Program and any Annual Work Plan funded through direct capital contributions.

(B) Security Interests. WMATA may create security interests in its rights and interests in amounts paid or received as direct capital contributions from the Commonwealth under this Agreement, as such amounts shall become available and are paid to or for the account of WMATA under the terms of this Agreement. Such amounts may be pledged as security for the costs of Interim Funding Sources. Notwithstanding the foregoing, WMATA shall not create a security interest in the revenue paid pursuant to the Agreement for any Interim Funding Source entered into solely for the purpose of meeting WMATA's operating cash flow needs. Nothing in this subsection shall be construed as requiring any Contributing Jurisdiction or the Commonwealth to make any payment under this Agreement to anyone other than WMATA. For purposes of this subsection, the "cost of Interim Funding Sources" includes payments of principal and interest thereunder and all fees, expenses, and other amounts incurred or payable under any Interim Funding Sources.

(C) Limitation. The borrowing authority authorized by this subsection may not be used by the Commonwealth to satisfy its funding obligations under this Agreement.

(8) **WMATA Risk Mitigation.** Section 22 of the WMATA Compact prohibits WMATA from making any commitment or incurring any obligations with respect to the construction or acquisition of any transit facilities “until funds are available therefor.” The Parties acknowledge that the commitments of the Commonwealth under this Agreement are intended to satisfy the requirements of Section 22 under an expenditure-based budget. In order to address the risk of non-appropriation or late payment of funds by a Contributing Jurisdiction, the Commonwealth, or insufficient funding by the Federal Government, and to assure compliance with Section 22 of the WMATA Compact, WMATA intends to continue to maintain a risk mitigation credit facility using one or more of the following: a line of credit, letter of credit, commercial paper program, or other credit facility determined by WMATA in its discretion to be appropriate and feasible. Such risk mitigation credit facility shall be in addition to any other credit facility which may be put in place as a working capital or other cash flow aid.

(9) **Annual Changes to the CIP.** The Parties agree to adjust the program of projects included in the scope of this Agreement, each year within the term of this Agreement on a rolling basis, in order to provide the Dedicated Funding required to meet WMATA’s ongoing and updated CIP needs and other capital needs, and for planning WMATA’s ongoing and updated CIP needs and other capital needs on a rolling basis for years beyond the term of this Agreement.

SEC. 6 ANNUAL BUDGET RECONCILIATION PROCESS

(a) **Reconciliation.** As part of its annual budget process in each year during the term of this Agreement, WMATA shall prepare a reconciliation of –

(1) the actual expenditures for Dedicated Funding funded projects and activities under the current Capital Improvement Program to date, and for that fiscal year, as compared to the planned expenditures for such projects and activities for the same fiscal year;

(2) the actual Allocated Contribution of each of the Contributing Jurisdictions and the Commonwealth to date, as compared to the scheduled Allocated Contribution of each Contributing Jurisdiction and the Commonwealth for the current CIP;

(3) the projected Allocated Contribution of each Contributing Jurisdiction and the Commonwealth for the current CIP;

(4) the actual amount of Federal grant funds received for the Capital Improvement Program, as compared to the budgeted or projected amount of Federal grant funds for the same fiscal year; and

(5) the current forecast of expenditures; and

(6) the estimated cost to complete the remaining projects and activities in the current Capital Improvement Program and expected sources of those funds.

(b) Application of Reconciled Payment Amounts. On or before October 15, WMATA shall have performed the reconciliation described in the above section, including whether there is a surplus of funds paid in by the Contributing Jurisdictions and the Commonwealth. The results of this reconciliation shall be used in the Annual Work Plan currently under development as well as to review the Annual Work Plan for the fiscal year then currently in effect at the time that the reconciliation is completed. If the results of the reconciliation indicate a need to adjust the then-current year's Annual Work Plan billing amounts, those adjustments shall become effective with the billing for the 3rd quarter, which begins on January 1. The surplus amount may be made available to the Contributing Jurisdictions only if there is no expectation that those funds will be needed within the next six succeeding quarters measured from WMATA's fiscal year 3rd quarter (beginning on January 1) and that the refund of the surplus will not result in WMATA receiving less funds (including the surplus funds) than is required to be needed to meet the expected costs of the program over the

next six calendar quarters. If surplus funds are provided to the Contributing Jurisdictions and the Commonwealth, the funds will be made available prior to the 3rd or 4th quarter of the fiscal year in which the reconciliation was completed.

(c) **Revenue Shortfalls.** If the reconciliation process conducted under subsection (a) of this Section reveals that there are shortfalls in revenues for the Capital Improvement Program due to late or insufficient contributions by a Contributing Jurisdiction or the Commonwealth, or to the receipt of less than the assumed level of Federal funds, or other funds that support the CIP, WMATA shall develop a recovery plan for addressing such shortfalls. Such recovery plan, as approved by the WMATA Board of Directors through its annual budget process, shall include one or more of the following alternatives: (1) utilization of Interim Funding Sources; (2) value engineering, project re-design, or other cost reduction measures for future projects or activities; (3) re-scheduling of projects or activities in the Capital Improvement Program; and/or (4) the implementation of Project Deferrals under subsection (e) of this Section.

(d) **Revenue Increases.** If the reconciliation process conducted under subsection (a) of this Section reveals that Federal or other funds have been received which substantially exceed the assumed level of funding, such excess funds shall be applied (1) to the unfunded priorities in the Capital Needs Inventory (which is WMATA's prioritized list of all capital needs, not merely those needs that are funded) or to other needs identified by the WMATA Board; or (2) to any outstanding indebtedness, thereby reducing the Allocated Contribution of the Commonwealth and the Contributing Jurisdictions, as determined by the WMATA Board of Directors through its annual budget process.

(e) **Project Deferrals.** If WMATA is unable to satisfactorily address revenue shortfalls under subsection (c) of this Section, the WMATA Board may, through the next WMATA budget process, modify the Capital Improvement Program to defer certain projects or

activities in order to assure that the Capital Improvement Program can be funded during the term of this Agreement within the amount of available financial resources.

(f) **Updated Capital Improvement Program.** The WMATA staff shall, as soon as practical after each annual reconciliation process conducted under this Section, develop an updated Capital Improvement Program. This updated document, if approved by the WMATA Board, will replace and supercede all previous versions of the Capital Improvement Program.

(g) **Reprogramming of Funds and Projects During the Term of this Agreement.** The Parties recognize that the scope, pricing or desirability of some projects will change during the term of this Agreement. To address these possibilities, WMATA agrees to provide the Commonwealth and the Contributing Jurisdictions with 30 days advance notice in writing of any request to reprogram funds in an amount greater than \$1,000,000 per project.

(h) **Final Distribution.** In the event that this Agreement is terminated pursuant to Section 9 of this Agreement, any amounts remaining at the expiration of this Agreement shall be first used to fund any remaining Dedicated Funding projects. If any funds remain, they will be credited or refunded to the Commonwealth, as directed by the Commonwealth.

(i) **Financial Records.**

(1) **Maintenance of Records.** During the term of this Agreement, WMATA agrees to maintain separate and complete accounting records which are consistent with generally accepted governmental accounting procedures 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 FTA or other federal grants, unless there is an outstanding written Commonwealth or FTA financial or audit question, which is not resolved by the Contributing Jurisdiction or FTA auditor. The records of

WMATA must be in sufficient detail to determine the character and timing of fund items; and of contract obligation and expenditure transactions authorized by this Agreement.

(2) **Audits.**

(A) **Timing for Performance.** The Commonwealth or its agent may perform an audit of WMATA's expenditures of funds and the sources of those funds provided by this Agreement for a period of up to three fiscal years preceding a request for audit from the Commonwealth provided that the request is received no later than 180 days after the release of the WMATA audit for the preceding year and transmittal of the audit to the Commonwealth with a notice of its audit rights under 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. The Commonwealth will assume all financial responsibility for any costs associated with the performance of such audits exclusive of WMATA internal costs. If more than one Contributing Jurisdiction or the Commonwealth initiates an audit on a timely basis under this paragraph, the audits shall be consolidated into a single audit for the applicable fiscal years and the Contributing Jurisdictions and the Commonwealth participating in the audit shall share in the cost of the audit. WMATA agrees to cooperate fully with the Commonwealth or its authorized agent or designee in the conduct of any audit carried out in accordance with this paragraph. In addition to the foregoing, in the event that the Commonwealth's bond, the proceeds of which were used to meet the funding obligation of the Agreement or any transaction pertaining to such bond, is the subject of any tax, securities or similar federal or state law investigation, inquiry or suit, WMATA shall promptly allow the Commonwealth access, at the Commonwealth's expense, to any record it may have relating to WMATA's use of the proceeds of such bond so that the Commonwealth may participate and respond to any aspect of such investigation, inquiry or suit. WMATA shall promptly notify the

Commonwealth and allow the Commonwealth to participate in all aspects of the conduct or any response WMATA may make in such regard.

(B) Audit Results. If it is determined as a result of such an audit under this paragraph that the Commonwealth has made payments in excess of or less than the amount(s) provided for pursuant to the terms and conditions of this Agreement and the CIP, including but not limited to WMATA failing to apply funds as intended under this Agreement, WMATA will make appropriate adjustments in the amount due to WMATA from the Commonwealth in the next fiscal year or, at the end of the Agreement, will invoice the Commonwealth or remit payment due the Commonwealth, unless otherwise provided in a successor agreement. The audit rights provided under this paragraph shall survive the termination date of this Agreement and shall not limit any other rights of the Commonwealth under this Agreement.

SEC. 7 DISPUTES

(a) Informal Resolution. The Parties agree to use all reasonable efforts to resolve any disputes, which arise under or otherwise relate to this Agreement. If the Parties, at staff level, cannot resolve such a dispute through initial discussions within 30 days after the date it first arises, then the Party seeking a resolution shall provide written notice of the nature of the dispute and the issues involved to the other Party involved. Such other Parties shall respond within 30 days, stating their position in writing on the issue presented and their proposal for resolution. The Parties shall then meet within the next 30 days in an attempt to resolve the dispute.

(b) Alternative Resolution. If a dispute arising under this Agreement is not resolved pursuant to subsection (a) of this Section, the Parties thereto may agree to pursue a mutually acceptable alternative dispute resolution procedure. If such a procedure is not utilized or does

not result in a final and binding resolution of the dispute, any Party thereto may pursue a civil action for appropriate relief in a circuit court of the Commonwealth of Virginia.

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.

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

(2) WMATA, by proper WMATA Board action, has duly authorized the execution and delivery of this Agreement;

(3) When executed and delivered by the Commonwealth 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, bankruptcy, reorganization, insolvency, moratorium or other laws affecting the enforcement of creditors' rights generally.

(4) No director, officer, or employee of WMATA who exercises or has exercised any functions or responsibilities over any procurement contract in connection with the Capital Improvement Program shall have or obtain a personal or financial interest or benefit from any activity in connection with the procurement contract or have an interest in any contract, subcontract, or agreement with respect thereto during the term of this Agreement.

(b) **By the Commonwealth.** The Commonwealth makes the following representations as of the Effective Date of this Agreement as a basis for the undertakings pursuant to this Agreement.

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

(2) The Commonwealth has individually duly authorized the execution and delivery of this Agreement;

(3) When executed and delivered by the Commonwealth, this Agreement will constitute the legal, valid and binding obligation of the individual entity 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; and

(4) No officer or employee of the Commonwealth who exercises or has exercised any functions or responsibilities over a procurement contract in connection with the Capital Improvement Program shall have or obtain a personal or financial interest or benefit from any activity in connection with the procurement contract or have an interest in any contract, subcontract, or agreement with respect therewith during the term of this Agreement.

SEC. 9 EFFECTIVE DATE AND TERM OF AGREEMENT

(a) **Effective Date.** This Agreement shall take effect on the date of execution by the last signatory to this Agreement.

(b) **Term.** The term of this Agreement shall begin on the Effective Date and shall terminate on June 30, 2020. Where there are projects which have been started during the term of the Agreement, the Commonwealth, subject to annual appropriations and allocations, agrees to continue to make its Allocated Contribution for those projects up to a maximum of \$50 million in FY2017 and an additional cumulative \$50 million annually as follows: \$100 million through FY2018; \$150 million through FY2019; \$200 million through FY2020.

(c) **Termination of Agreement.** Upon 30 calendar days notice to WMATA, the Commonwealth may terminate, in whole or in part, the funding under this Agreement at any time if: (1) WMATA fails to apply provided funds as intended under this Agreement, or (2) statutory changes affecting the program under which these funds were provided render funding this Agreement impossible. The Commonwealth shall notify WMATA promptly in writing of such a determination and the effective date of the termination. WMATA may request reconsideration by notifying the Commonwealth within 30 calendar days of the date of the Commonwealth's notification. The Commonwealth shall not terminate funding until after the request has been reconsidered but may withhold funds in the interim. Following reconsideration, if requested, the decision of the Commonwealth will be final.

(d) **Future Negotiations.** No later than June 30, 2019, WMATA and the Commonwealth agree to commence discussions for a successor PRIIA funding agreement. WMATA will ask the Commonwealth for an affirmative response to whether it wishes to participate in a successor agreement. The Commonwealth shall give an affirmative written notice in accordance with Section 12 of this Agreement no later than October 1, 2019, either that: (1) it intends to continue under the Agreement, or (2) it wishes to terminate the agreement as of June 30, 2020. If the Commonwealth does not respond by October 1, 2019, it will be deemed an election to terminate the Agreement. If the Commonwealth gives or is deemed to give the required notice that it is terminating its participation in this Agreement, then the Agreement shall terminate as of June 30, 2020, except as covered by subsection (b), above.

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 Commonwealth of Virginia acting by and through the
Virginia Department of Rail and Public Transportation:

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

with a copy to:

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

and

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

To the Washington Metropolitan Area Transit Authority:

General Manager
600 Fifth Street, N.W.,
Washington, D.C. 20001

with copies to:

General Counsel
Washington Metropolitan Area Transit Authority
600 Fifth Street, N.W., Second Floor
Washington, D.C. 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 Commonwealth and WMATA.

SEC. 14 NO DEBT GUARANTEES

The Commonwealth does not guarantee the debt of WMATA or any Contributing Jurisdiction, nor any obligation of WMATA or any Contributing Jurisdiction.

SEC. 15 REQUIREMENT FOR ANNUAL APPROPRIATIONS

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

SEC. 16 MISCELLANEOUS PROVISIONS

(a) WMATA agrees to comply with the General Terms and Conditions set forth in Attachment 2 to this Agreement.

(b) Within 120 days of the execution of this Agreement, WMATA will provide the DRPT with information concerning WMATA's rolling stock requested by the Department in a mutually acceptable electronic format.

SEC. 17 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. The counterpart with the most recent date shall determine the date of entry of this Agreement by the Parties listed on page one.

IN WITNESS WHEREOF, WMATA and the Commonwealth have executed this Agreement on this 28th day of July, 2016.

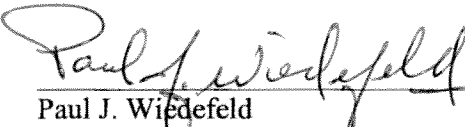
WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

Attest:



Secretary

By:



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

Dated: 7/28/2016

Approved as to Form and Legal Sufficiency:

By: 


Office of General Counsel

[signatures continued on following page]

COMMONWEALTH OF VIRGINIA
ACTING BY AND THROUGH THE VIRGINIA
DEPARTMENT OF RAIL AND PUBLIC TRANSPORTATION

Attest:


Witness

By:  [Seal]
Jennifer Mitchell
Director

ATTACHMENT A-1
FY2017-2022 Proposed Capital Improvement Program (CIP)
\$ in millions

Investment by Program	FY2017 Budget	FY2018 Plan	FY2019 Plan	FY2020 Plan	FY2021 Plan	FY2022 Plan	6 Year Total
Railcar Acquisition	\$203.8	\$266.2	\$269.4	\$127.6	\$117.9	\$148.7	\$1,133.6
Railcar Maintenance/Overhaul	115.0	94.9	93.9	94.8	96.1	97.5	592.1
Railcar Maintenance Facilities	34.8	24.6	8.0	7.0	7.2	14.8	96.6
Railcar Investments	\$353.6	\$385.7	\$371.4	\$229.5	\$221.2	\$260.9	\$1,822.3
Bus Acquisition	66.6	67.9	50.8	102.7	102.7	102.9	493.6
Bus Maintenance/Overhaul	81.0	70.8	69.0	69.2	71.9	73.7	435.6
Bus Maintenance Facilities	55.0	99.1	38.3	31.8	33.8	25.9	284.0
Bus Passenger Facilities/Systems	6.7	9.8	2.5	2.4	2.7	2.6	26.8
Paratransit	8.8	11.4	12.0	11.9	11.5	12.4	68.0
Bus and Paratransit Investments	\$218.1	\$259.1	\$172.5	\$218.1	\$222.6	\$217.5	\$1,308.1
Platforms & Structures	46.4	93.6	39.3	54.7	35.4	40.4	309.8
Vertical Transportation	47.5	61.6	62.6	62.2	50.2	58.2	342.3
Fare Collection	10.3	34.3	49.9	35.4	9.7	11.9	151.5
Station Systems	24.4	36.7	23.7	25.6	21.5	20.6	152.5
Parking Facilities	4.4	8.1	4.2	6.4	7.4	10.2	40.6
Stations and Passenger Facilities Investments	\$133.0	\$234.3	\$179.6	\$184.4	\$124.2	\$141.2	\$996.7
Propulsion	39.8	48.1	44.2	45.4	49.0	55.1	281.7
Signals & Communications	64.5	113.8	116.5	94.7	60.0	56.7	506.1
Rail Systems Investments	\$104.3	\$162.0	\$160.6	\$140.1	\$109.0	\$111.8	\$787.8
Fixed Rail	78.9	88.8	98.2	96.4	96.0	96.7	555.1
Structures	10.4	9.7	8.6	10.1	10.4	13.2	62.5
Track Maintenance Equip		9.4	6.9	10.2	10.8	10.7	48.0
Track and Structures Rehabilitation Investments	\$89.3	\$107.9	\$113.7	\$116.8	\$117.3	\$120.7	\$665.7
IT	40.8	52.7	45.5	49.8	42.7	42.1	273.5
MTPD	1.0	2.5	2.0	1.3	1.3	1.2	9.4
Support Equipment/Services	9.8	11.4	12.1	12.4	12.5	12.1	70.3
Business Support Investments	\$51.6	\$66.5	\$59.7	\$63.5	\$56.4	\$55.5	\$353.2
Contingency		\$13.2	\$13.2	\$13.2	\$13.2	\$13.2	\$66.2
Total Capital Programs	\$950.0	\$1,228.7	\$1,070.9	\$965.6	\$863.9	\$920.9	\$6,000.0

ATTACHMENT A-2**FY2017-2022 Capital Improvement Program (CIP)****Financial Plan - Funding Sources***(dollars in millions)*

	FY2017 Budget	FY2018 Plan	FY2019 Plan	FY2020 Plan	FY2021 Plan	FY2022 Plan	6 Year Total
Federal							
Federal Formula Programs	\$317.3	\$304.0	\$304.0	\$304.0	\$304.0	\$304.0	\$1,837.3
Federal PRIIA	172.0	150.0	150.0	150.0	150.0	150.0	922.0
Resiliency Grant	7.1	6.9					14.1
Other Federal Grants	3.6	5.5	6.7	4.4	4.0	4.0	28.3
Subtotal Federal	500.1	466.5	460.7	458.4	458.0	458.0	2,801.7
State and Local							
Match to Federal Formula	79.3	76.0	76.0	76.0	76.0	76.0	459.3
System Performance	117.2	125.9	137.7	135.4	143.5	150.6	810.4
State and Local PRIIA	172.0	150.0	150.0	150.0	150.0	150.0	922.0
Match to Resiliency Grant	2.4	2.3					4.7
Rail Power System Upgrades	8.4	5.1					13.5
Other State and Local	12.4	14.4	1.5	0.9	0.8	0.8	30.7
Subtotal State and Local	391.7	373.7	365.2	362.3	370.3	377.4	2,240.6
Financing							
Planned Long-Term Financing	58.3	388.5	245.0	144.9	35.6	85.4	957.7
Subtotal Financing	58.3	388.5	245.0	144.9	35.6	85.4	957.7
Total	\$950.0	\$1,228.7	\$1,070.9	\$965.6	\$863.9	\$920.9	\$6,000.0

ATTACHMENT A-3
FY2017-2022 Capital Improvement Program (CIP)
Financial Plan - Allocation of State and Local Contributions
(dollars in millions)

	FY2017 Budget			FY2018 Plan	FY2019 Plan	FY2020 Plan	FY2021 Plan	FY2022 Plan	FY2017-2022 Total
	Carry-Over	New	Total						
Federal Formula Match & System Performance									
District of Columbia	\$3.8	\$70.4	\$74.2	\$75.9	\$79.4	\$78.6	\$81.6	\$84.2	\$473.9
Montgomery County	1.7	32.3	34.0	34.8	36.4	36.0	37.4	38.6	217.4
Prince George's County	1.8	33.6	35.3	36.2	37.8	37.4	38.9	40.1	225.8
Maryland Subtotal	3.5	65.9	69.4	71.0	74.3	73.5	76.3	78.8	443.2
City of Alexandria	0.5	8.5	9.0	9.2	9.6	9.5	9.8	10.2	57.2
Arlington County	0.8	15.8	16.7	17.0	17.8	17.6	18.3	18.9	106.4
City of Fairfax	0.0	0.5	0.5	0.5	0.5	0.5	0.6	0.6	3.3
Fairfax County	1.5	27.8	29.3	30.0	31.3	31.0	32.2	33.2	187.0
City of Falls Church	0.0	0.6	0.6	0.6	0.7	0.7	0.7	0.7	4.0
Commonwealth of Virginia									
Virginia Subtotal	2.8	53.2	56.0	57.3	60.0	59.3	61.6	63.6	357.9
Subtotal Federal Formula Match & System Performance	10.1	189.4	199.6	204.3	213.7	211.4	219.5	226.6	1,275.1
State and Local PRIIA									
District of Columbia	7.8	49.5	57.3	50.0	50.0	50.0	50.0	50.0	307.3
State of Maryland	7.8	49.5	57.3	50.0	50.0	50.0	50.0	50.0	307.3
Commonwealth of Virginia	7.8	49.5	57.3	50.0	50.0	50.0	50.0	50.0	307.3
Subtotal State and Local PRIIA	23.5	148.5	172.0	150.0	150.0	150.0	150.0	150.0	922.0
Other State and Local									
District of Columbia	6.5		6.5	7.1					13.6
Montgomery County	2.0		2.0	2.2					4.2
Prince George's County	2.0		2.0	2.3					4.3
State of Maryland	2.0		2.0	2.1					4.2
Maryland Subtotal	6.0		6.0	6.7					12.7
City of Alexandria	0.5		0.5	0.6					1.1
Arlington County	1.0		1.0	1.1					2.0
City of Fairfax	0.0		0.0	0.0					0.1
Fairfax County	1.7		1.7	1.9					3.6
City of Falls Church	0.0		0.0	0.0					0.1
Commonwealth of Virginia	4.2	0.2	4.4	2.1	1.5	0.9	0.8	0.8	10.4
Virginia Subtotal	7.4	0.2	7.6	5.7	1.5	0.9	0.8	0.8	17.3
Total Other State and Local	19.9	0.2	20.1	19.5	1.5	0.9	0.8	0.8	43.6
Total Contributions before Debt	\$53.6	\$338.1	\$391.7	\$373.7	\$365.2	\$362.3	\$370.3	\$377.4	\$2,240.6
Additional Contribution or Debt									
District of Columbia		21.7	21.7	144.4	91.0	53.9	13.2	31.8	356.0
Montgomery County		9.9	9.9	66.2	41.8	24.7	6.1	14.6	163.3
Prince George's County		10.3	10.3	68.8	43.4	25.7	6.3	15.1	169.6
Maryland Subtotal		20.3	20.3	135.1	85.2	50.4	12.4	29.7	332.9
City of Alexandria		2.6	2.6	17.4	11.0	6.5	1.6	3.8	43.0
Arlington County		4.9	4.9	32.4	20.4	12.1	3.0	7.1	79.9
City of Fairfax		0.2	0.2	1.0	0.6	0.4	0.1	0.2	2.5
Fairfax County		8.5	8.5	57.0	35.9	21.2	5.2	12.5	140.5
City of Falls Church		0.2	0.2	1.2	0.8	0.5	0.1	0.3	3.0
Commonwealth of Virginia									
Virginia Subtotal		16.4	16.4	109.1	68.8	40.7	10.0	24.0	268.8
Total Debt (Opt Out)		\$56.3	\$56.3	\$388.5	\$245.0	\$144.9	\$35.6	\$85.4	\$957.7
Grand Total State and Local Funding with Debt	\$53.6	\$396.4	\$450.0	\$762.3	\$610.1	\$507.2	\$405.9	\$462.9	\$3,198.3

FFY 2016 PRIIA Appropriation - Projects Included

Project #	Project Name	Amount	Description
CIP0018	Track Welding Program	\$ 6,500,000	This ongoing project improves the electrical and signal conductivity of running rails, eliminates rail joint defects, reduces noise and minimizes rail wear. It also reduces maintenance and inspection costs by decreasing the number of open rail joints throughout the rail system.
CIP0021	Track Pad/Shock Absorber Rehab	3,835,000	This project rehabilitates the grout pads that support the track structure. Sections of track structure often require rehabilitation in conjunction with new fasteners, switches and switch machines. The grout pads provide elevation and support for the running rails and are the main support for the rail fasteners, which maintain track geometry, cross-level and gauge.
CIP0022	Track Structural Rehabilitate	2,366,000	This project rehabilitates structural components and restores elevated platforms, bridges and retaining walls to designed load carrying capacity. The goals are based on annual inspections and critical engineering assessments, as the loss of one of these structures could affect an entire Metrorail line segment.
CIP0023	Third Rail Rehabilitation	6,000,000	This project replaces the original steel third rail with new aluminum and steel composite third rail, which is necessary to improve electrical current flow for increased revenue service. Composite third rail also reduces stray electrical current which contributes to deterioration of track and third rail components.
CIP0024	Track Rehabilitation	45,947,000	This project rehabilitates the track structure by replacing deteriorated running rail, crossties, direct fixation fasteners, third rail insulators and switches annually in addition to track stabilization and tamping. Replacing these components maintains a state of good repair while preventing service delays and speed restrictions.
CIP0026	Station/Tunnel Leak Mitigation	7,096,000	This project eliminates unsafe conditions created by water leaks and prevents service delays resulting from water intrusion. This project restores the structural integrity of tunnel liners, prevents leaks, eliminates stray currents and reduces corrosion of wayside equipment and track components. In addition, drainage improvements will be implemented to allow water to properly drain from the track bed.
CIP0057	1000 Series Rail Car Replacement	104,349,088	This project replaces all 300 of the 1000 series railcars, which were purchased between 1974 and 1978, with new 7000 series railcars. This project is one component of a combined program plan structured to avoid repetitive developmental cost associated with a new car design and procurement.
CIP0072	Elevator Rehabilitation	8,620,000	This project rehabilitates the oldest and poorest performing elevators as necessary to maintain elevator safety, availability and reliability. The elevators are rehabilitated with energy saving devices.
CIP0073	Escalator Rehabilitation	7,650,000	This project rehabilitates and replaces escalators as necessary to maintain escalator availability, safety and reliability. The escalators are rehabilitated with energy saving devices.
CIP0116	Rail Yard Facility Repairs	24,525,645	This project is for the rehabilitation of Alexandria, Brentwood and New Carrollton Rail yards that were put into service between 1976 and 1983. The scope of work varies across the facilities and rehabilitation work will include all systems and infrastructure to increase overall efficiency. Safety hazard corrections and emergency rehabilitation work at other rail yards will be done as needed. Rehabilitation of the railcar lifts at rail yards is also included.
CIP0136	FCC Radio Frequency Comm	30,095,956	This project will replace the existing WMATA Comprehensive Radio Communications System (CRCS) operating in 450-490 MHz frequency band (also referred to as T-Band) with a new system operating in the 700 MHz band, as required by the new Federal Communications Commission (FCC) T-Band relocation requirement that affects the agency's Ultra High Frequency radio system. This project also maintains the current CRCS in working order until the frequencies are secured and replaced.
CIP0139_06	Replace GRS Track Circuits	8,648,000	Due to the susceptibility of pulse-type parasitic oscillation that can cause a loss of train detection by the Generation 2 General Railway Signal Company audio frequency track circuit modules, this project establishes a program to permanently remove all of that specific type of module from the Metrorail system. This project addresses NTSB recommendation R-10-08 and FTA SMI R-8-43-a

FFY 2016 PRIIA Appropriation - Projects Included

Project #	Project Name	Amount	Description
CIP0139_19	Onboard Event Recorders 1K/4K	146,806	This project originally funded the installation of event recorders on 1000 and 4000 series railcars. However due to WMATA's plan to retire the 1000 series vehicles, the Authority presented the FTA with a plan, which the FTA accepted, to not install the recorders on these vehicles.
CIP0139_20	Program to Monitor Recorders	3,151,398	In order to address NTSB recommendation R-10-22, this project will develop and implement a program to monitor onboard event recorders on railcars.
CIP0139_S1	Critical/Non-Critical Notifications	178,000	In order to address FTA SMI R-1-4-a, with this project WMATA will complete its assessment regarding the identification of critical versus non-critical notifications and alarms in the Rail Operations Control Center (ROCC). Additionally, this task evaluates and implements options for removing non-critical notifications within the ROCC.
CIP0139_S11	Enterprise Learning Mgmt System Eval	1,225,000	In this project WMATA will evaluate the existing Enterprise Learning Management recordkeeping system and take corrective action as necessary to ensure that accurate training, re-certification and professional certification records are created, maintained and readily accessible to appropriate managers and employees. This project addresses FTA SMI R-7-39-a.
CIP0139_S12	Maintenance Mgmt System	2,495,000	In this project WMATA will develop a training strategy for improving the capabilities of employees to enter, analyze and assess information into the agency's Maintenance Management Information System. This project addresses FTA SMI R-7-40-a/b/c.
CIP0139_S13	Training for AIMS	275,000	With this project WMATA addresses FTA SMI R-7-41-b. WMATA's IT Department will develop common tools and processes which ensure that all WMATA departments use IT applications in the same manner, to ensure data sharing, coordination of training and to conduct audits in a consistent manner.
CIP0139_S14	Rail & Operations Data Analysis Procedure	2,010,000	This project addresses FTA SMI R-7-42-b. Proactive safety analysis of information provided by Operating and Maintenance departments is not routinely conducted. This negatively impacts the ability of WMATA to provide more support for proficiency testing, conduct more in- depth safety studies, reviews and accident/incident investigations.
CIP0139_S9	Replacement of Pneumatic Control Boxes	1,777,000	In this project WMATA will complete replacement of the pneumatic control boxes for ventilation fans with Programmable Logic Control systems within the next five years. This project addresses FTA SMI R-6-37-a.
CIP0185	Escalator Replacement	27,664,203	This project will replace the oldest and poorest performing escalators in the system as needed to maintain escalator safety, availability and reliability. The new escalators will be equipped with more energy efficient devices and capabilities. This program will result in the replacement of approximately 128 escalators at 34 stations.
CIP0196	Safety Measurement System	2,444,904	This project will develop an automated and centralized safety management system that will capture information from accidents and incidents that occur at WMATA stations, facilities or involve WMATA vehicles including: MetroAccess, Metrobus and Metrorail vehicles. This system will give WMATA a single repository of safety data and will be capable of generating reports.
		\$297,000,000	

GENERAL TERMS AND CONDITIONS

A. LIABILITY WAIVER

WMATA shall be responsible to the extent allowable by law for all damage to life and property due to its activities and those of its employees in connection with the work performed under this Agreement. Even if WMATA is not allowed by law to indemnify, WMATA shall either be sufficiently self-insured and/or carry sufficient insurance which is comparable to the insurance and/or self-insurance maintained by WMATA on similar projects to cover the risks for work performed under this Agreement, its employees, agents and subcontractors. In lieu of carrying insurance for its agents or subcontractors, WMATA may require all its agents or subcontractors who perform any work or activity of any type in connection with this Agreement to carry insurance sufficient to cover the risks for all damage to life and property due to any and all activities in connection with the work performed 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. Such insurance, purchased by either WMATA or its agents or subcontractors, shall list the Commonwealth of Virginia, the Department, the Virginia Department of Transportation and the officers or agents and employees of these entities as additional insureds. Payment of any funds by the Department shall not waive any of the rights of the Department contained in this section nor release WMATA from any responsibilities or duties contained in this Agreement. Further, to the extent allowable under law, it is expressly understood that WMATA shall indemnify, defend and hold harmless the Commonwealth of Virginia, the Department, the Virginia Department of Transportation, its officers, agents, and employees from and against all damages, claims, suits, judgments, expenses, actions and costs of every name and description, arising out of or resulting from any negligent act or omission in the

performance by WMATA or its subcontractors of the work covered by this Agreement. The obligations of this section shall survive the termination or completion of this Agreement.

B. CONFLICT OF INTEREST

The following shall apply to WMATA since it is not subject to the Virginia State and Local Government Conflict of Interests Act, § 2.2-3100 *et seq.*, of the *Code of Virginia* (1950), as amended:

1. The following definitions shall apply concerning conflict of interest provisions in this Agreement:

"Contract" or "agreement" means any agreement, including any contract or subcontract, whether written or not, to which WMATA is a party or any agreement on behalf of WMATA, including any subcontract, which involves the payment of funds appropriated by the General Assembly of Virginia distributed pursuant to or subject to this Agreement.

"Employee" means any person employed by WMATA, whether full time or part time.

"Thing of pecuniary value" means anything having a monetary value including gifts, loans, services, securities, tangible objects, and business and professional opportunities.

2. Other than the salary and remuneration received from WMATA as a normal attribute of employment with WMATA, no employee of WMATA shall solicit, offer to accept, or accept, any money or other thing of pecuniary value or financial benefit or advantage, for the employee or for any other person, related to this Agreement for any of the following reasons:

a. in consideration of the use of the employee's position or status with WMATA to obtain for any person or business any employment with or any contract with WMATA or with

any subcontractor or supplier of WMATA, including any consulting or professional services contract.

b. from any person or business other than WMATA for performing any services for WMATA in connection with any projects funded pursuant to or subject to this Agreement.

c. from any person or business other than WMATA for rendering any decision or directing any course of action in connection with any Projects funded pursuant to or subject to this Agreement.

C. 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.

D. NON-DISCRIMINATION

1. In the solicitation or awarding of any contracts directly related to this Agreement, WMATA shall not discriminate against a bidder or offeror because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by law relating to discrimination in employment.

2. During the performance of this Agreement, WMATA agrees as follows: (a) WMATA will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or other basis prohibited by law relating to discrimination in employment. WMATA agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this

nondiscrimination clause; (b) WMATA, in all solicitations or advertisements for employees placed by or on behalf of WMATA, will state that WMATA, where applicable, is an equal opportunity employer. Notices, advertisements and solicitations placed in accordance with Federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.

3. In all solicitations, either by competitive bidding or negotiation made by WMATA for work to be performed under a subcontract including procurement of materials or equipment, each potential subcontractor or supplier shall be notified by WMATA of WMATA's obligations under this Agreement and the regulations relative to nondiscrimination on the grounds of age, race, religion, sex, color, disability or national origin.

E. DRUG-FREE WORKPLACE

1. During the performance of this Agreement, WMATA agrees to (a) provide a drug-free workplace for its employees; (b) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the workplace and specifying the actions that will be taken against employees for violations of such prohibition; (c) state in all solicitations or advertisements for employees placed by or on behalf of WMATA that WMATA maintains a drug-free workplace; and (d) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor. For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to a contractor in accordance with this chapter, the employees of whom are prohibited from engaging in the unlawful manufacture, sale,

distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the Agreement.

F. PERSONS WITH DISABILITIES

WMATA, its agents, employees, assigns or successors, and any persons, firms or agencies of whatever nature with whom it may contract or make an agreement shall comply with the applicable provisions of the Americans with Disabilities Act (42 USC § 12101, *et seq.*, as amended), the terms of which are incorporated herein by reference.

G. SPECIAL CAPITAL PROVISIONS

1. WMATA shall permit the Department or its authorized representatives to inspect at any time all vehicles, facilities and equipment purchased or constructed by WMATA as part of the Project; all transportation services rendered by WMATA using such vehicles, facilities and equipment; and all relevant Project data and records.

2. WMATA shall maintain, in accordance with applicable laws, such insurance or self-insurance as will be adequate to protect Project Facilities or Equipment and persons using such Facilities or Equipment throughout the period of required use.

H. MISCELLANEOUS PROVISIONS

1. This Agreement shall be governed by the laws of the Commonwealth of Virginia, except that in the case of any direct and irreconcilable conflict between Virginia law and the WMATA Compact, the Compact shall govern WMATA's obligations under this Agreement.

2. 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.

I. UNAUTHORIZED ALIENS

WMATA certifies that it does not, and that it shall not, during the performance of this Agreement, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986 (the "Act"). WMATA will also contractually require any contractors who participate in any Project funded pursuant to this Agreement to comply with this provision. Unauthorized alien means, with respect to the employment of an alien (which is defined as any person not a citizen or national of the United States), at a particular time, that the alien is not at that time either: (a) an alien lawfully admitted for permanent residence, or (b) authorized to be so employed by the Act or by the United States Attorney General.