

**AGREEMENT BETWEEN  
THE GOVERNMENT OF THE DISTRICT OF COLUMBIA  
AND THE WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY  
FOR AWARD AND USE OF DEDICATED FUNDING GRANT**

**(WMATA Dedicated Funding Grant Agreement)**

This Dedicated Funding Grant Agreement (“Agreement”) is made this 22 day of October, 2020, by and between the Government of the District of Columbia (“District”) and the Washington Metropolitan Area Transit Authority (“WMATA”), an instrumentality and agency of each of the Commonwealth of Virginia, the State of Maryland, and the District of Columbia and a body corporate and politic created by that interstate compact, as amended, between Maryland, Virginia, and the District of Columbia and approved by Congress. The District and WMATA are referred to collectively in this Agreement as the “Parties” and each individually is referred to in this Agreement as a “Party”.

**RECITALS**

(R1) The WMATA transit system has played a critical role in the growth and prosperity of the National Capital Region, and WMATA’s continued health and vitality is essential to the regional transportation system and important to the environmental quality, and economic, educational, and cultural life of the National Capital Region.

(R2) Through extensive financial analyses it was determined that WMATA faces a capital funding deficit and, without additional funding, will not be able to fund the capital infrastructure repairs and replacements necessary to return the WMATA transit system to a state of good repair. These state-of-good-repair capital requirements include track and station repairs and upgrades, the purchase of new railcars and buses, and upgrades of outdated information technology systems. Without the necessary state-of-good-repair improvements, the continued health and vitality of the WMATA transit system will be at risk.

(R3) Following years of discussions between the WMATA compact member jurisdictions, the legislatures of the District, Maryland, and Virginia passed legislation identifying ongoing dedicated funding sources and amounts for capital projects and programs as defined in this Agreement designed to address WMATA’s state-of-good-repair needs. *See* D.C. Code § 1–325.401; Md. Transportation Code Ann. § 10-205; and Va. Code § 33.2-3401. The jurisdictions agreed to provide WMATA, beginning in Fiscal Year 2020, dedicated funding for these capital needs.

(R4) The new dedicated funding is in addition to the existing, or regular, capital contributions that the Compact member jurisdictions already provide to WMATA and existing federal funding,

such as the federal Passenger Rail Investment Improvement Act of 2008 (PRIIA) funding, and jurisdictional matches to federal funding.

(R5) The new dedicated funding of the District is authorized by the “Dedicated WMATA Funding and Tax Changes Affecting Real Property and Sales Amendment Act of 2018,” which was approved as part of the Fiscal Year 2019 Budget Support Act of 2018, effective October 30, 2018 (D.C. Law 22-168; D.C. Official Code § 1-325.401). Under this act, the District will provide the new dedicated funding to WMATA through a grant agreement. This Agreement is the grant agreement required by the act to fund state-of-good-repair capital needs.

(R6) The general purpose of this Agreement is to establish the District’s long-term commitment to provide new dedicated funding to WMATA for its state-of-good repair capital improvements, and to establish the requirements WMATA must follow in receiving and spending the funds. The Agreement also identifies when the new dedicated funds are to be conveyed from the District to WMATA, the authorized uses of these funds by WMATA, WMATA’s authority to pledge these funds for the payment of debt service on capital borrowings to support the state of good repair capital needs in its capital improvement plan, how any unexpended funds are to be invested by WMATA, how any interest earned on those investments should be used, the term of this Agreement, the dispute resolution mechanisms, and reporting and audit requirements.

**NOW, THEREFORE**, in consideration of the mutual promises and obligations set forth herein, the Parties agree as follows:

## **SEC. 1. DEFINITIONS**

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

- (a) “Agreement” means this Dedicated Funding Grant Agreement and any successor agreement.
- (b) “Capital Budget” means the annual capital budget adopted by the WMATA Board of Directors.
- (c) “Capital Funding Agreement” (“CFA”) means that certain agreement entered into by and between the District of Columbia; the State of Maryland; Arlington County, Virginia; Fairfax County, Virginia; the City of Alexandria, Virginia; the City of Fairfax, Virginia; and the City of Falls Church, Virginia; and WMATA dated July 1, 2010, as amended, and each substantively similar successor agreement, including that Fiscal Year 2020 Capital Funding Agreement and all related Local Capital Funding Agreements and any future Capital Funding Agreement, including but not limited to agreements where Loudoun County, Virginia is a party as and if required by applicable law or the WMATA Board of Directors.

- (d) “Capital Improvement Program” (“CIP”) means the list of projects and programs, adopted by the WMATA Board of Directors pursuant to the terms and conditions, including applicable selection or ranking requirements that advance strategic objectives identified in the CIP. The CIP is not considered a payment schedule.
- (e) “Capital Projects” means those projects and programs authorized in the WMATA CIP; provided, however, that this Agreement authorizes expenditure only for State of Good Repair (“SGR”) projects as defined herein and expressly does not authorize funding for system expansion projects. For purposes of this Agreement system expansion means, for example, any new rail infrastructure inclusive of infill stations and line extensions. Further, this Agreement does not authorize funding for increases to the number of revenue vehicles in WMATA’s fleet, except where those increases are incidental to a larger SGR purchase, to meet demand/service levels on then-existing infrastructure or hours of service, or as required to address a documented safety hazard. For clarity, debt service associated with Dedicated Funding Debt issued to fund SGR Capital Projects is an authorized expense.
- (f) “Dedicated Funding Grant” means the estimated annual amount of funding to be disbursed to WMATA by the District of Columbia paid with funds from the Washington Metropolitan Area Transit Authority Dedicated Financing Fund, as provided in this Agreement.
- (g) “Days” means calendar days, unless otherwise specifically provided.
- (h) “Debt” means any bond, security, debt issuance, certificate of participation, or other evidence of indebtedness, and includes commercial paper, lines of credit, and letters of credit.
- (i) “Dedicated Funding Debt” means specifically that debt that may be authorized by the Board of Directors as backed by a pledge of those funds committed to WMATA pursuant to the following legislative enactments: (a) from the District of Columbia under D.C. Official Code § 1-325.401 or any successor statute, as the same may be amended from time to time; (b) from the State of Maryland under Md. Transportation Code Ann. § 10-205(g) or any successor statute, as the same may be amended from time to time; and (c) from the Commonwealth of Virginia under the Va. Code §33.2-3401.B or any successor statute, as the same may be amended from time to time.
- (j) “District” means the District of Columbia.
- (k) “District Fiscal Year” means the period from and including October 1 through September 30. Each District Fiscal Year is numbered by the calendar year after the calendar year in which the District Fiscal Year begins, such that, for example, District Fiscal Year 2021 begins on October 1, 2020.
- (l) “Effective Date” means the date on which this Agreement becomes effective, as further defined in Section 14 of this Agreement.
- (m) “Other Dedicated Funding” means the funds authorized by Md. Transportation Code Ann. § 10-205; and Va. Code § 33.2-3401 to be provided to WMATA by the Commonwealth of Virginia and the State of Maryland including funds paid by any other authorized person or entity in-lieu-of such amounts.

(n) “State of Good Repair” or “SGR” means Capital Projects for the replacement, rehabilitation, or annual capital maintenance of existing capital assets necessary for system preservation. Eligible activities within replacement or rehabilitation projects include the incorporation of then-current design standards and additional and new features necessary for the proper functioning of the new facility or as required by federal, state, or local laws. Assets to be replaced must have either i) reached or exceeded their minimum useful life; ii) been deemed obsolete or unsafe; or iii) been identified as not cost effective to maintain or repair. In addition to replacement and rehabilitation, critical needs, including but not limited to new maintenance, repair, administrative, or overhaul facilities or maintenance equipment or non-revenue vehicles are eligible for Dedicated Funding Grant funds if they are needed to maintain the operations or administration of the then-existing Metrorail, Metrobus or MetroAccess systems. More specifically, these Capital Projects include replacing, rehabilitating, and modernizing existing capital assets of the system to address issues of safety and reliability including:

- (i) Railcars, including but not limited to railcar acquisition for replacement vehicles, non-revenue equipment, railcar maintenance, repair, and overhaul facilities, etc.;
- (ii) Rail Systems, including but not limited to propulsion, signals and communications, etc.;
- (iii) Track and Structures Rehabilitation including but not limited to fixed guideway, structures, track maintenance, equipment, etc.;
- (iv) Stations and Passenger Facilities including but not limited to platforms and structures, customer information and wayfinding, vertical transportation, fare collections, parking facilities, station systems, etc.;
- (v) Bus and Paratransit including but not limited to bus acquisition, maintenance facilities, passenger facilities/systems, paratransit, non-revenue vehicles etc.; and
- (vi) Business Support including but not limited to real and personal property supporting administrative, non-revenue, and revenue functions, IT upgrades, support equipment and services, security equipment and services, etc.

(o) “Washington Metropolitan Area Transit Authority Dedicated Financing Fund” means the fund established pursuant to D.C. Official Code § 1-325.401.

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

(q) “WMATA Fiscal Year” means the period from and including July 1 through June 30. Each WMATA Fiscal Year is numbered by the calendar year after the calendar year in which the WMATA Fiscal Year begins, such that, for example, WMATA Fiscal Year 2020 begins on July 1, 2019.

## **SEC. 2. GENERAL AGREEMENT OF THE PARTIES**

WMATA and the District agree to comply with the terms and conditions of this Agreement and to fully and faithfully carry out their respective obligations under this Agreement. A CFA to which both WMATA and the District are parties shall be incorporated by reference

as a material requirement of this Agreement. The District shall not be required to make any Dedicated Funding Grant payment under this Agreement unless and until a CFA that covers the corresponding time period is signed by WMATA and DC. Any commitment or agreement of the District required by this Agreement shall be subject to the appropriation and allocation of funds and other limitations on expenditures or obligations under District and federal law. This Agreement shall not constitute an obligation of the District until funds are duly appropriated and allocated and semi-annual payments become due pursuant to Section 3(b) of this Agreement.

**SEC. 3. DEDICATED FUNDING GRANT: AMOUNT, TIMING, INVOICING, NOTICE**

- (a) Amount. Pursuant to D.C. Official Code § 1-325.401 and this Agreement the District will provide WMATA a Dedicated Funding Grant in the amount of \$178.5 Million in each of District Fiscal Years 2021 2022, 2023, 2024, 2025, and 2026, unless a lesser amount is prescribed by District or federal law or authorized by this section. The District will increase its Dedicated Funding Grant by up to 3% in each year of this Agreement in direct proportion to any increase above the respective minimum Other Dedicated Funding provided by both Maryland and Virginia, unless a lesser amount is prescribed by District or federal law or authorized by this section. The parties acknowledge that at this time neither Maryland nor Virginia have passed legislation authorizing the 3% increase contemplated above and found in the District legislation. Until such time as WMATA provides the District notice that both Maryland and Virginia have agreed to an increase in the amount of their Other Dedicated Funding, the District shall have no obligation to increase the amount of this Dedicated Funding Grant beyond the base year amount specified in the District's legislation.
- (b) If Maryland or Virginia does not pay, in full or in part, the amount of Other Dedicated Funding for a WMATA Fiscal Year, or if WMATA receives notice that Maryland or Virginia will not pay, in full or in part, such amount, WMATA shall notify the District of any such failure or expected failure within five (5) business days after the failure or within five (5) business days after the date it becomes aware of the expected failure, whichever is applicable. The District may, in its sole discretion, reduce its Dedicated Funding Grant in that WMATA Fiscal Year by a proportional amount of any Maryland or Virginia reduction of their respective Other Dedicated Funding for a WMATA Fiscal Year or incremental payment. In the event that the District has already made its semi-annual payments described in subsection (b) of this section prior to receiving notice that either Maryland or Virginia did not pay its full amount of Other Dedicated Funding, then the District may direct WMATA to not use a proportional amount of Dedicated Funding Grant in that WMATA Fiscal Year and credit an equal amount to

the required District payment under this Agreement, or any successor agreement, for the next WMATA Fiscal Year.

- (c) Semi-annual Payments. The District shall pay the Dedicated Funding Grant to WMATA on a semi-annual basis, with one payment due October 1 and one payment due April 1, and each payment being made in response to an invoice provided by WMATA pursuant to subsection (c) below.
- (c) Invoices.
  - (i) WMATA shall submit an invoice, separate from the invoices that WMATA issues that are applicable to the Capital Funding Agreement, to the District for each semi-annual payment under this Agreement at least forty-five (45) days prior to the date the payment is due. Thus, for example, for the October through March semi-annual period, WMATA will include the amount in the Capital Budget as approved or adjusted for October through March and send the District an invoice for its Dedicated Funding Grant payment no later than the immediately preceding August 15.
  - (ii) The amount invoiced by WMATA shall be the amount set forth in subsection (a) of this section, subject to any adjustment made by the District, in its sole discretion, to reflect underpayments by other jurisdictions in the current or prior WMATA Fiscal Year.
  - (iii) Any debt service included in the invoice shall be separately identified by issuance on the invoice.
  - (iv) The amount invoiced by WMATA for any District Fiscal Year shall not exceed the amount specified above in Section 3(a) for each District Fiscal Year.
- (d) Annual Notice. The District shall annually provide WMATA with written notice that funds have been, are intended to be, or will not be appropriated to cover the Dedicated Funding Grant for the upcoming WMATA Fiscal Year. If the District's appropriations process is not completed by July 1, the District shall provide to WMATA:
  - (i) a written explanation why funds have not been appropriated and confirmation that an amount equal to the Dedicated Funding Grant has been or will be included in the next District Fiscal Year budget that the Mayor of the District of Columbia forwards to the Council of the District of Columbia; and
  - (ii) written assurance that all reasonable efforts will be undertaken to secure the ultimate appropriation of funds in a prompt and timely fashion.

If the District becomes aware that funds will not be appropriated in full for the Dedicated Funding Grant, then the District shall notify WMATA within five business days of the action taken by the Council.

#### **SEC. 4. USE OF DEDICATED FUNDING GRANT BY WMATA**

- (a) Use Purposes. The Dedicated Funding Grant may be expended by WMATA only for State of Good Repair Capital Projects in the CIP. The Dedicated Funding Grant may not be used for purposes of system expansion or for WMATA operating expenses.
- (b) Conformity with Agreement. WMATA shall use the Dedicated Funding Grants only for capital expenditures or for debt service on WMATA borrowings for State of Good Repair Capital Projects consistent with the CIP and this Agreement.
- (c) Inclusion in Capital Improvement Program and Capital Budget. The Dedicated Funding Grant may be expended by WMATA only for State of Good Repair Capital Projects that are included in the then-current approved CIP and Capital Budget as those documents may be amended by the WMATA Board subject to the coordination required pursuant to the CFA.
- (d) Types of Financing. The Dedicated Funding Grant may be used by WMATA to pay for debt service payments on borrowings or designed to address WMATA's SGR or critical funding needs for pay-as-you-go (paygo) cash funding for State of Good Repair Capital Projects that are identified in the Capital Budget or CIP.

#### **SEC. 5. CAPITAL IMPROVEMENT PROGRAM**

- (a) Adoption of Capital Improvement Program. Pursuant to and in compliance with the review and approval processes established in the CFA the WMATA Board has adopted the CIP for the period of July 1, 2020 through June 30, 2026 (the "WMATA FY2021-FY2026 CIP"), which is attached as **Attachment 1**, and incorporated as a material part of this Agreement by reference as if fully stated herein.
- (b) Incorporation of CFA Requirements. The Parties incorporate the CFA by reference as if fully stated herein so as to apply those terms and conditions to the actions of the Parties with regard to the Dedicated Funding Grant, except to the extent that this Agreement creates a conflict with the CFA, then this Agreement shall control only for Dedicated Funding Grants provided by the District of Columbia.
- (c) Cost. The estimated program cost of the WMATA FY2021-FY2026 CIP over its six-year period is approximately \$10,396,000,000 in year-of-expenditure dollars inclusive of projects to be funded with Dedicated Funding Grants.

(d) Schedule. Implementation of the WMATA FY2021-FY2026 CIP will be over the period beginning in WMATA Fiscal Year 2021 and ending in WMATA Fiscal Year 2026.

(e) No Personal Interest. No director, officer, or employee of WMATA or the District who exercises any functions or responsibilities over any procurement contract in connection with the CIP shall have any personal or financial interest or benefit derived from any activity in connection with any procurement contract or have an interest in any contract, subcontract, or agreement with respect thereto during the term of this Agreement.

(f) Annual Changes to the CIP. The Parties agree that WMATA will adjust the Capital Projects included in the CIP, according to the process referenced in the CFA, each year within the term of this Agreement on a rolling basis, as required to meet WMATA's ongoing and updated CIP and other capital needs, and for planning WMATA's ongoing and updated CIP and other capital needs for years beyond the term of this Agreement, subject to the availability of funding.

## **SEC. 6. DEDICATED FUNDING GRANT REQUIREMENTS NOT ADDRESSED IN CFA**

(a) Eligible CIP Projects. The Dedicated Funding Grant from the District may only be used for State of Good Repair Capital Projects as defined in this Agreement.

(b) Rollover of Unexpended Funds. If there are unexpended Dedicated Funding Grant funds in the Capital Budget at the end of any WMATA Fiscal Year, the unexpended funds shall be "rolled over" to the succeeding WMATA Fiscal Year for programming by the WMATA Board through the CFA process as part of the funding for State of Good Repair Capital Projects shown in the Capital Budget. The unexpended funds shall not reduce funding requirements for the succeeding year's Dedicated Funding Grant to the Capital Budget, subject to the provisions of Section 5. The provision of this Section 6(b) shall not apply to any funding reduced or carried-forward at the District's direction pursuant to Section 3(a) above.

## **SEC. 7. CAPITAL BUDGETS**

(a) Capital Budget Requirement. WMATA shall, as a part of its annual budget process each year, develop a Capital Budget pursuant to the terms and conditions of the Capital Funding Agreement, in accordance with applicable laws and WMATA Board policies.

(b) Contents of the Capital Budget. For purposes of compliance with this Agreement, WMATA shall apply the budgeting and project identification requirements of the Capital Funding Agreement to the District's Dedicated Funding Grant and state in the Capital Budget how the Dedicated Funding Grant is proposed to be utilized based on a schedule of projected quarterly cash needs, including an identification of what portion (if any) of the Dedicated Funding Grant is a direct capital contribution (or paygo), and what portion (if any) is to be budgeted by WMATA to pay debt service on Dedicated Funding Debt (to be stated separately in the Capital Budget) for the

current year and each year in the current CIP period. In addition, WMATA must identify the primary purpose of each Capital Project.

## **SEC. 8. IMPLEMENTATION OF CIP AND CAPITAL BUDGET**

WMATA will administer the CIP and Capital Budget and carry out all necessary procurement actions, reporting requirements, and management oversight. All procurement actions will be undertaken in accordance with WMATA procurement policies and applicable law. WMATA agrees to comply with all final 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.

## **SEC. 9. QUARTERLY PROGRESS REPORTS**

Within forty-five (45) days after the end of each quarter, WMATA shall prepare and submit to the District a Capital Budget/CIP progress report (referred to herein as the “Quarterly Progress Report”). Each Quarterly Progress Report shall contain, with respect to each SGR Capital Project, funded by this Agreement and included in the Capital Budget, (a) the status of the project; (b) a review of the project’s scope and schedule changes; (c) the status of acquisition and construction contracts necessary for the implementation of the project; (d) the status of year-to-date expenditures for each project relative to Capital Budget; (e) the status of all cash and debt sources relative to Capital Budget, including a break out of District Dedicated Funding; (f) updated project cash flow projections and program cash requirements; and (g) a comparison of the billed amount to amounts actually expended for the preceding quarter. Each report shall be provided in a quarterly financial report in the same form and with the same level of detail that is required by the CFA.

## **SEC. 10. FINANCIAL REPORTING AND AUDIT PROVISIONS**

WMATA shall adhere to the annual budget reconciliation process required by the Capital Funding Agreement or any successor agreement, other applicable law and any other corresponding procedures.

### **(a) Financial Records.**

(i) Maintenance of Records. WMATA shall maintain separate and complete accounting records that are consistent with generally accepted governmental accounting principles that accurately reflect all income and expenditures of funds provided by the District under this Agreement. WMATA shall retain all records, financial records, supporting documents, statistical records, and any other documents (including electronic storage media) pertinent to this Agreement, for three (3) years, or for the same period that records are required to be kept for the Federal Transit Administration or other federal grants, as applicable, whichever is longer; unless there is litigation based on the terms of this Agreement or an outstanding District or Federal financial or audit question that is not

resolved by the District or Federal government, in which case the records shall be maintained until three (3) years after the final resolution of the audit finding or any litigation which is based on the terms of this Agreement, whichever is later. The records of WMATA must be in sufficient detail to determine the character and timing of transactions authorized by this Agreement.

(ii) Annual Reporting Requirement for Capital Expenditures, Indirect and Overhead Costs

Each year WMATA shall have an Indirect Cost Rate Proposal (ICRP) prepared by an independent consultant with expertise in ICRP preparation, that establishes the Indirect Cost Rates that WMATA proposes to apply to capital expenditures. WMATA shall submit each prepared ICRP to the Federal Transit Administration (FTA) for review and approval, and forward courtesy copies of the documentation provided to the FTA to each of the contributing jurisdictions. WMATA will only propose use of Indirect Cost Rates that have received FTA approval to the WMATA Board of Directors for review during the annual budget process. As part of its annual budget process, the WMATA Board of Directors shall review the most recent FTA-approved ICRP to determine if those Indirect Cost Rates are appropriate to be applied to the portion of the capital program funded by the contributing jurisdictions for the upcoming year (Plan). WMATA shall provide supporting documentation to the WMATA Board of Directors for its review during the annual budget process that (a) identifies the Indirect Cost Rates being proposed in the budget for the upcoming fiscal year, (b) quantifies the dollar amount of indirect costs that is budgeted to be charged to the capital program, and (c) shows that the indirect costs budgeted to be charged to the capital program also reduce the budgeted operating subsidy by an equal amount. By June 30 each year, WMATA shall provide to the District a full copy of the approved ICRP to be applied to the relevant portion of capital expenditures for the fiscal year beginning July 1, along with documentation of FTA's approval of the ICRP. The District may audit this Plan at any time for the duration of the period that the Plan is in use.

Within forty-five (45) days after the completion of its annual financial audit, WMATA shall provide a report (Indirect/Overhead Audit Report) to the District that demonstrates that all indirect and overhead costs that WMATA actually recovered from the overall Capital Budget for the recently completed fiscal year were subtracted from the calculation of the overall actual operating subsidy for that year. The Indirect/Overhead Audit Report will use information from WMATA's financial system that shows (a) the amount of Indirect Costs charged to each project during the fiscal year, and the aggregate of all projects, and (b) the aggregate amount by which the operating subsidy was reduced for the Indirect Costs charged to the capital program. Indirect costs shall be budgeted and assessed only on the portion of a capital project attributable to WMATA direct labor costs.

(ii) Audits.

(A) Timing for Performance. The District or its agent may perform an audit or other review of WMATA's expenditures of funds provided by this Agreement for up to three fiscal years prior to the date of the request. The District will assume all financial responsibility for any costs associated with the performance of such audits exclusive of WMATA internal costs. If the District and any party providing Other Dedicated Funding initiates an audit under this requirement or similar requirements in other agreements, the audits shall be consolidated into a single audit for the applicable fiscal years, subject to the agreement of the entities providing Other Dedicated Funding. WMATA agrees to cooperate fully with the District or its authorized agent or designee in the conduct of any audit carried out in accordance with this paragraph.

(B) Survival of Audit Rights. The audit rights provided under this paragraph shall survive the termination date of this Agreement for three years. The audit rights provided herein shall not limit any other rights of the District under this Agreement.

**SEC. 11. MISCELLANEOUS PROVISIONS: INTEREST ON PAYMENTS, SECURITY INTERESTS, RISK MITIGATION, AND NOTIFICATION OF LACK OF DEDICATED FUNDING**

(a) Interest on Payments. WMATA may invest unexpended proceeds from the Dedicated Funding Grant in a manner consistent with WMATA's investment policies until such funds are needed for capital expenditures. WMATA may retain and spend the interest earned on any such investments for capital expenditures only.

(b) Security Interests. WMATA may create security interests in its rights and interests in amounts paid or received from the District 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 debt incurred for capital expenditures. WMATA shall not create any security interest in the Dedicated Funding Grant for the purpose of meeting WMATA's operating cash flow needs. Nothing in this subsection shall be construed as requiring the District to make any payment under this Agreement to anyone other than WMATA.

(c) 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." See D.C. Code § 9-1107.01. The Parties acknowledge that the commitments of the District under this Agreement are intended to satisfy the requirements of Section 22 of the WMATA Compact under an expenditure-based

budget. In order to address the risk of non-appropriation or late payment of funds by a Contributing Jurisdiction, 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. Pursuant to Section 20(f) of this Agreement, any debt issued by WMATA, the debt service of which is at least partially secured by amounts received from the District pursuant to this Agreement, shall not constitute an indebtedness of the District.

(d) Notification of Lack of Appropriation of Other Dedicated Funding. WMATA will notify the District within five (5) business days if it receives notification from either Maryland or Virginia that Maryland or Virginia does not intend to appropriate or pay, in full or in part, the amount of its share of Other Dedicated Funding or if either Maryland or Virginia fails to appropriate or pay, in full or in part, the amount of its Other Dedicated Funding at any time during the fiscal year. WMATA will also notify the District within five (5) business days following the close of the WMATA Fiscal Year of the amount of Other Dedicated Funding that Maryland and Virginia paid for the WMATA Fiscal Year, and whether it satisfies their respective share.

## **SEC. 12. DISPUTES**

(a) Informal Resolution. The Parties agree to use all reasonable efforts to resolve any disputes that 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. The other Party shall respond within 30 days, stating its position in writing on the issue presented and its 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 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, either Party may pursue a civil action for appropriate relief in a court of competent jurisdiction in the District of Columbia.

## **SEC. 13. 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:

- (i) WMATA has full power and authority to enter into this Agreement and to carry out its obligations hereunder;
  - (ii) WMATA has duly authorized the execution and delivery of this Agreement;
  - (iii) When executed and delivered by the District 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; and
  - (iv) 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 has any personal or financial interest or benefit derived from any activity in connection with any procurement contract or has an interest in any contract, subcontract, or agreement with respect thereto during the term of this Agreement.
- (b) By the District. The District makes the following representations as of the Effective Date of this Agreement as a basis for the undertakings pursuant to this Agreement:
- (i) The District has all necessary power and authority to enter into this Agreement and to carry out its individual obligations hereunder;
  - (ii) The District has duly authorized the execution and delivery of this Agreement;
  - (iii) When executed and delivered by the District and by WMATA, this Agreement will constitute the legal, valid and binding obligation of the District 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
  - (iv) No officer or employee of the District who exercises or has exercised any functions or responsibilities over a procurement contract in connection with the Capital Improvement Program has a personal or financial interest or benefit from any activity in connection with the procurement contract or has an interest in any contract, subcontract, or agreement with respect therewith during the term of this Agreement.

**SEC. 14. EFFECTIVE DATE AND TERM OF AGREEMENT**

- (a) Effective Date. This Agreement shall take effect on the later of October 1, 2020, or the date the last party executes this Agreement.

(b) Term.

(i) The term of this Agreement shall begin October 1, 2020 and shall terminate on September 30, 2026.

(ii) The District may, if legally permitted, exercise options to renew this Agreement no more than six (6) times, each for a six (6) year period (each a “Successive Term”), or any fraction of a Successive Term, which taken together with any additional fractions equaling a six (6) year period shall constitute one Successive Term, by written notice to WMATA before expiration of the Agreement, provided that the District shall give WMATA preliminary written notice of its intent to renew at least thirty (30) days before the Agreement expires. The preliminary notice does not commit the District to exercise any option to renew. Any renewal of this Agreement shall be effective upon the District providing written notice to WMATA of the exercise of the option and WMATA countersigning such notice and agreeing to continue to be bound by the terms and conditions expressed herein.

(iii) WMATA may waive the thirty (30) days’ notice requirement by providing a written notice to the District prior to the expiration of the Agreement.

(iv) If the District exercises an option to renew, the Agreement as renewed shall be considered to include this option provision.

(v) Any renewal of this Agreement for a Successive Term, or any increase in dedicated grant funding for the CIP, shall be subject to the availability and application of appropriations for that purpose.

(c) Future Negotiations. No later than March 30, 2026, the District and WMATA agree to commence discussions to determine if the District will renew this Agreement for a Successive Term.

(d) Termination of Agreement for Cause. Upon sixty (60) calendar days’ notice to WMATA, the District may terminate, in whole or in part, this Agreement if WMATA fails to apply provided funds as intended under this Agreement or if WMATA spends funds provided under this Agreement in a manner or for a purpose not authorized by this Agreement. The District shall notify WMATA promptly in writing of such a determination, the proposed cure and the effective date of the termination. WMATA may request reconsideration and an opportunity to cure by notifying the District within thirty (30) calendar days after the date of the District's notification. The District shall not terminate this Agreement until after WMATA’s reconsideration request has been considered but may withhold funds in the interim. The District’s decision upon reconsideration, if requested, will be final.

(e) Termination of Agreement for Change in Law. The District shall provide WMATA notice as soon as possible of any proposed change in law that would render the funding contemplated in this Agreement impossible.

**SEC. 15. 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 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. 16. AMENDMENTS**

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

**SEC. 17. NOTICES**

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

To the District of Columbia:

Director  
District Department of Transportation  
55 M Street, S.E., Suite 400  
Washington, D.C. 20003

Chief Financial Officer for the District of Columbia  
John A. Wilson Building, Room 203  
1350 Pennsylvania Avenue, N.W.  
Washington, DC 20004

Attorney General for the District of Columbia  
John A. Wilson Building, Room 409  
1350 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004

To the Washington Metropolitan Area Transit Authority:

General Manager  
Washington Metropolitan Area Transit Authority

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

General Counsel  
Washington Metropolitan Area Transit Authority  
600 Fifth Street, N.W., Second Floor  
Washington, D.C. 20001

Executive Vice President  
Strategy, Planning, and Program Management  
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, N.W., Sixth Floor  
Washington, D.C. 20001

**SEC. 18. SUCCESSORS**

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

**SEC. 19. NO DEBT GUARANTEES**

The District does not guarantee the debt of WMATA, the Commonwealth of Virginia, or the State of Maryland or any obligation of WMATA, the Commonwealth of Virginia, or the State of Maryland.

**SEC. 20. REQUIREMENT FOR ANNUAL APPROPRIATIONS**

(a) Notwithstanding any other provisions of this Agreement, all obligations of the District are subject to discretionary annual appropriation and allocation of funds by the governing bodies of the District and shall be consistent with and subject to the anti-deficiency laws applicable to the District.

(b) In no circumstance shall the District be responsible under this Agreement for the dedicated funding commitments or other obligations of the Commonwealth of Virginia or the State of Maryland. If there is a failure to appropriate and allocate the full annual Dedicated Funding Grant, that portion of the Capital Budget attributable to the Dedicated Funding Grant shall be revised to conform to the available funds and be submitted to the WMATA Board of Directors.

(c) Pursuant to the provisions of (i) the federal Anti-Deficiency Act, 31 U.S.C. §§ 1341, 1342, 1349-1351 1511-1519 (2008), and D.C. Official Code §§ 1-206.03(e) and 47-105; (ii) the District of Columbia Anti-Deficiency Act, D.C. Official Code §§ 47-355.01 – 355.08 ((i) and (ii) collectively, as amended from time to time, the “Anti-Deficiency Acts”); and (iii) Section 446 of the District of Columbia Home Rule Act, D.C. Official Code § 1-204.46, the District cannot obligate itself to any financial commitment in any present or future year unless the necessary funds to pay that commitment have been appropriated and are lawfully available for the purpose committed. Thus, pursuant to the Anti-Deficiency Acts, nothing in this Agreement creates an obligation of the District in anticipation of an appropriation for such purpose, and the District’s legal liability for the payment of any amount under this Agreement does not and may not arise or obtain in advance of the lawful availability of appropriated funds for the applicable fiscal year.

(d) During the term of this Agreement, the Mayor of the District of Columbia or other appropriate official shall, for each fiscal period, include in the budget proposal submitted to the Council of the District of Columbia the amount necessary to fund the District’s known potential financial obligations under this Agreement for such fiscal period. In the event that a request for such appropriations is excluded from the budget approved by the Council and submitted to Congress for the applicable fiscal year or if no appropriation is made by Congress to pay any amount under this Agreement for any period after the fiscal year for which appropriations have been made, and in the event appropriated funds for such purposes are not otherwise lawfully available, the District will not be liable to make any payment under this Agreement upon the expiration of any then-existing appropriation.

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

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

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

## **SEC. 21 INDEMNIFICATION AND INSURANCE**

(a) WMATA shall indemnify, defend, and hold harmless the District, and its 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.

(b) 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 District, and its respective officers, agents, and employees as Additional Insureds. WMATA certifies that as of the Effective Date of this Agreement, all commercial insurance and self-insurance lists the District and its respective officers, agents and employees as Additional Insureds. WMATA shall not remove the District, or its respective officers, agents, and employees as Additional Insureds for any self-insurance without the written consent of the District.

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

(d) For commercial insurance, WMATA shall provide Certificates of Insurance listing the District, and its respective officers, agents, and employees, as Additional Insureds. WMATA shall provide a self-insurance letter indicating the extent of WMATA's self-insurance.

(e) 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 District, and its respective officers, agents, and employees, are identified as Additional Insureds on all such insurance policies obtained in lieu of WMATA providing such insurance for its agents, contractors or subcontractors, and WMATA shall require that its agents, contractors, and subcontractors provide Certificates of Insurance listing the District and its respective officers, agents, and employees as Additional Insureds for any such insurance policies.

(f) Payment of any funds by or through the District shall not waive any of the rights of the District contained in this section nor release WMATA from any responsibilities or duties contained in this Agreement.

(g) 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.

**SEC. 22. 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 by the Parties to this Agreement.

IN WITNESS WHEREOF, WMATA and the District have executed this Agreement on this 22 day of October, 2020.

WASHINGTON METROPOLITAN AREA  
TRANSIT AUTHORITY

Attest:

Marc Biondi      Date: 2020.10.08  
E007371 WMATA 16:26:26 -04'00'

\_\_\_\_\_  
Witness

By:

Thomas J      Digitally signed by Thomas J  
Webster      Webster  
Date: 2020.10.08 13:24:37 -04'00'

\_\_\_\_\_  
Executive Vice President  
Strategy, Planning & Program Management

Dated: \_\_\_\_\_

[signatures continued on following page]

DISTRICT OF COLUMBIA

Attest:

Kimberly Bassett  
Witness

By: Philip Bowser  
Mayor

Approved as to Form and Legal Sufficiency:

By: Karl A. Racine/by JP  
Attorney General

Dated: October 22, 2020

## Attachment A

**Financial Plan by Investment Category**

<b>Capital Investment Categories (\$M)</b>	<b>FY2021 Budget</b>	<b>FY2022 Plan</b>	<b>FY2023 Plan</b>	<b>FY2024 Plan</b>	<b>FY2025 Plan</b>	<b>FY2026 Plan</b>	<b>6 Year Total</b>
Railcar	\$280	\$257	\$333	\$347	\$454	\$565	\$2,236
Rail Systems	\$165	\$131	\$163	\$153	\$147	\$132	\$891
Track and Structure Rehabilitation	\$148	\$176	\$166	\$193	\$161	\$170	\$1,014
Stations and Passenger Facilities	\$546	\$526	\$391	\$252	\$192	\$179	\$2,085
Bus and Paratransit	\$208	\$225	\$293	\$313	\$284	\$216	\$1,539
Business Support	\$475	\$550	\$218	\$236	\$243	\$227	\$1,949
<b>Total Capital Investments</b>	<b>\$1,821</b>	<b>\$1,865</b>	<b>\$1,563</b>	<b>\$1,493</b>	<b>\$1,481</b>	<b>\$1,490</b>	<b>\$9,714</b>
Revenue Loss from Capital Projects	\$23	\$24	\$25	\$25	\$26	\$27	\$149
Debt Service - Dedicated Funding	\$31	\$52	\$84	\$104	\$121	\$140	\$533
<b>Total Capital Program Cost</b>	<b>\$1,875</b>	<b>\$1,941</b>	<b>\$1,672</b>	<b>\$1,623</b>	<b>\$1,628</b>	<b>\$1,657</b>	<b>\$10,396</b>

**Financial Plan - Allocation of State & Local Contributions**

	FY2021 Budget	FY2022 Plan	FY2023 Plan	FY2024 Plan	FY2025 Plan	FY2026 Plan	6 Year Total
<b>Federal Funding</b>							
Federal Formula Programs	\$321,106,774	\$321,106,774	\$321,106,774	\$321,106,774	\$321,106,774	\$321,106,774	\$1,926,640,644
Federal PRIIA	\$148,500,000	\$0	\$0	\$0	\$0	\$0	\$148,500,000
Other Federal Grants	\$19,964,914	\$4,428,532	\$2,800,000	\$2,960,000	\$2,840,000	\$2,840,000	\$35,833,446
<b>Total - Federal Grants</b>	<b>\$489,571,688</b>	<b>\$325,535,306</b>	<b>\$323,906,774</b>	<b>\$324,066,774</b>	<b>\$323,946,774</b>	<b>\$323,946,774</b>	<b>\$2,110,974,090</b>
<b>State &amp; Local Funding Contributions</b>							
<b>District of Columbia</b>							
Formula Match & System Performance	\$95,116,884	\$99,240,193	\$101,357,944	\$105,205,060	\$107,436,033	\$108,760,022	\$617,116,136
PRIIA	\$49,500,000	\$49,500,000	\$49,500,000	\$49,500,000	\$49,500,000	\$49,500,000	\$297,000,000
Dedicated Funding	\$178,500,000	\$178,500,000	\$178,500,000	\$178,500,000	\$178,500,000	\$178,500,000	\$1,071,000,000
<b>Subtotal - District of Columbia</b>	<b>\$323,116,884</b>	<b>\$327,240,193</b>	<b>\$329,357,944</b>	<b>\$333,205,060</b>	<b>\$335,436,033</b>	<b>\$336,760,022</b>	<b>\$1,985,116,136</b>
<b>State of Maryland</b>							
Montgomery County	\$45,005,174	\$45,864,257	\$47,564,988	\$48,676,827	\$50,496,360	\$52,746,682	\$290,354,288
Prince George's County	\$45,181,684	\$46,915,584	\$48,154,482	\$49,877,126	\$51,081,137	\$52,036,091	\$293,246,104
MD PRIIA	\$49,500,000	\$49,500,000	\$49,500,000	\$49,500,000	\$49,500,000	\$49,500,000	\$297,000,000
MD Dedicated Funding	\$167,000,000	\$167,000,000	\$167,000,000	\$167,000,000	\$167,000,000	\$167,000,000	\$1,002,000,000
<b>Subtotal - Maryland</b>	<b>\$306,686,858</b>	<b>\$309,279,841</b>	<b>\$312,219,470</b>	<b>\$315,053,953</b>	<b>\$318,077,497</b>	<b>\$321,282,773</b>	<b>\$1,882,600,392</b>
<b>Commonwealth of Virginia</b>							
City of Alexandria	\$12,401,646	\$12,773,528	\$13,146,057	\$13,535,690	\$13,943,924	\$14,363,906	\$80,164,751
Arlington County	\$22,641,546	\$23,012,708	\$23,880,758	\$24,388,260	\$25,350,214	\$26,575,529	\$145,849,016
City of Fairfax	\$715,612	\$717,184	\$751,711	\$761,431	\$798,856	\$852,639	\$4,597,433
Fairfax County	\$40,760,743	\$41,487,654	\$43,046,454	\$44,013,681	\$45,699,476	\$47,814,951	\$262,822,959
City of Falls Church	\$757,037	\$792,724	\$807,605	\$840,022	\$855,791	\$862,074	\$4,915,253
Loudoun County (1)	\$5,797,066	\$5,624,882	\$6,011,578	\$5,965,127	\$6,399,330	\$7,111,061	\$36,909,044
VA PRIIA	\$49,500,000	\$49,500,000	\$49,500,000	\$49,500,000	\$49,500,000	\$49,500,000	\$297,000,000
VA Dedicated Funding	\$154,500,000	\$154,500,000	\$154,500,000	\$154,500,000	\$154,500,000	\$154,500,000	\$927,000,000
CMAQ	\$877,153	\$903,467	\$930,571	\$958,488	\$987,243	\$1,016,860	\$5,673,783
<b>Subtotal - Virginia</b>	<b>\$287,950,804</b>	<b>\$289,312,148</b>	<b>\$292,574,734</b>	<b>\$294,462,699</b>	<b>\$298,034,834</b>	<b>\$302,597,020</b>	<b>\$1,764,932,238</b>
Jurisdiction Planning Projects	\$3,000,000	\$3,000,000	\$3,000,000	\$3,000,000	\$3,000,000	\$3,000,000	\$18,000,000
Silver Line (MVAA)	\$26,556,000	\$17,747,000	\$0	\$0	\$0	\$0	\$44,303,000
Potomac Yard (Alexandria)	\$59,050,000	\$88,900,000	\$33,870,000	\$38,580,000	\$0	\$0	\$220,400,000
Purple Line (MDOT)	\$89,000	\$194,000	\$0	\$0	\$0	\$0	\$283,000
<b>Subtotal - Jurisdictional Reimbursable</b>	<b>\$88,695,000</b>	<b>\$109,841,000</b>	<b>\$36,870,000</b>	<b>\$41,580,000</b>	<b>\$3,000,000</b>	<b>\$3,000,000</b>	<b>\$282,986,000</b>
<b>Total - State &amp; Local</b>	<b>\$1,006,449,546</b>	<b>\$1,035,673,182</b>	<b>\$971,022,148</b>	<b>\$984,301,712</b>	<b>\$954,548,364</b>	<b>\$963,639,814</b>	<b>\$5,915,634,766</b>
<b>Debt</b>	<b>\$379,346,720</b>	<b>\$580,141,220</b>	<b>\$376,817,384</b>	<b>\$314,501,415</b>	<b>\$349,140,047</b>	<b>\$368,938,324</b>	<b>\$2,368,885,110</b>
<b>Grand Total Funding (2)</b>	<b>\$1,875,367,954</b>	<b>\$1,941,349,709</b>	<b>\$1,671,746,306</b>	<b>\$1,622,869,901</b>	<b>\$1,627,635,184</b>	<b>\$1,656,524,913</b>	<b>\$10,395,493,966</b>

- (1) The jurisdictional shares of Formula Match and System Performance contributions are calculated using the original methodology which fully includes Loudoun County, rather than the prorated method used for the FY2021 Operating Subsidy calculation
- (2) Total funding requirement includes capital program expenditures, debt service, and estimated revenue loss from major shutdowns Note: Does not assume reauthorization of Federal PRIIA.