

City of Alexandria, Virginia

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6-11-02

MEMORANDUM

DATE: JUNE 3, 2002

TO: THE HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL

FROM: PHILIP SUNDERLAND, CITY MANAGER *PS*

SUBJECT: WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
COORDINATED RAIL CAR PROCUREMENT FUNDING AGREEMENT

ISSUE: City Council consideration of the Rail Car Procurement Funding Agreement between the Washington Metropolitan Area Transit Authority (WMATA) and the District of Columbia, the State of Maryland and the five Northern Virginia jurisdictions (“Contributors”) that fund WMATA’s operating and capital programs, for the funding of rail cars to accommodate the growth of the existing Metrorail system.

RECOMMENDATION: That City Council approve the Rail Car Procurement Funding Agreement (“Agreement”) in principal, authorize staff to negotiate any needed changes to the Agreement (Attachment 2), and authorize the Mayor to execute the Agreement on behalf of the City when the Agreement is finalized.

DISCUSSION: The System Access/Capacity Program (SAP), a component of WMATA’s Capital Improvement Program, is beginning to address the needs of ridership growth and enhanced access to the existing Metrorail system by planning for additional rolling stock, parking and facilities. The rail system has experienced increased ridership over the last several years which has resulted in heavy passenger loads on some lines during the peak periods. In order to alleviate some of the crowding and to accommodate ongoing growth by enlarging the capacity of the current 103-mile system, the proposed additional rail cars will be used to expand the existing four-car trains to six-car trains and some of the six-car trains to eight-car trains. The Agreement calls for the purchase and funding, over six years (FY 2002 through FY 2007), of approximately 50 rail cars at a total cost of \$120 million funded entirely by the Contributors. No federal funds are available for this purchase. The City’s total share of the procurement is 4.59% of this total cost, which is estimated at \$5.5 million based on WMATA’s Projected Cash Flow and Obligation Profile (Attachment 1).

Initial funding of \$18 million will be provided to WMATA from Commonwealth of Virginia Transportation Act 2000 bonds on behalf of the Northern Virginia jurisdictions by the end of July 2002. The City’s rail car procurement obligation, (in FY 2003 and FY 2004 and partially through FY 2005, of \$3.0 million will be covered by the City’s share of that initial funding from the

Commonwealth. The remainder of the City's share under the Agreement will also be funded through the Virginia Transportation Act 2000 bonds, with additional Commonwealth bond sales totaling \$15.4 million already authorized by the General Assembly and planned for issuance sometime during or after FY 2004.

The obligation of the Contributors in the Agreement is structured as a "subject to annual appropriation" and "best efforts" commitment. Also the Agreement, while not joint and several in nature, does structure the failure of payment by one of the Contributors as a cause for procurement termination, with termination costs then becoming the joint responsibilities of the Contributors. In this unlikely event, cost overruns, if any, would also become joint responsibilities of the Contributors, the City would be responsible for approximately 4.59% of the termination cost.

The City, as well as other jurisdictions, have requested changes to the Agreement and will continue to negotiate those changes with WMATA. Staff requests that the draft Agreement be approved in principle and that the Mayor be authorized to execute the final Agreement on behalf of the City once those negotiations are completed.

FISCAL IMPACT: The City's share of the \$120 million Agreement is \$5.5 million, which will be funded from the Commonwealth of Virginia Transportation Act 2000 bonds, as well as any interest earnings on those bonds between the time of bond sale and expenditure of the funds by WMATA. No City General Fund financial support is contemplated.

ATTACHMENTS:

Attachment 1: WMATA Exhibit "B" Projected Cash Flow and Obligation Profile
Attachment 2: Draft Coordinated Rail Car Procurement Funding Agreement

STAFF:

Mark Jinks, Assistant City Manager
Gene Swearingen, Director, OMB
Morgan Routt, Budget Analyst, OMB
Betsy Massie, Division Chief/Transit, T&ES

EXHIBIT "B" Projected Cash Flow and Obligation Profile

TOTAL ESTIMATED CASH FLOW AND OBLIGATION BUDGET BY JURISDICTION (1000's)

Jurisdiction	% of Total	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	Total
District of Columbia	36.86%	\$ 3,981	\$ 6,192	\$ 7,077	\$ 24,327	\$ 1,327	\$ 1,327	\$ 44,230
Maryland	35.31%	\$ 3,813	\$ 5,932	\$ 6,779	\$ 23,304	\$ 1,271	\$ 1,271	42,370
Arlington County, Virginia	8.74%	\$ 944	\$ 1,469	\$ 1,678	\$ 5,770	\$ 315	\$ 315	10,490
Fairfax County, Virginia	14.02%	\$ 1,514	\$ 2,355	\$ 2,691	\$ 9,251	\$ 505	\$ 505	16,820
City of Alexandria, Virginia	4.59%	\$ 496	\$ 771	\$ 882	\$ 3,031	\$ 165	\$ 165	5,510
City of Fairfax, Virginia	0.18%	\$ 20	\$ 31	\$ 35	\$ 121	\$ 7	\$ 7	220
City of Falls Church, Virginia	0.30%	\$ 32	\$ 50	\$ 58	\$ 198	\$ 11	\$ 11	360
Total	100.00%	\$ 10,800	\$ 16,800	\$ 19,200	\$ 66,000	\$ 3,600	\$ 3,600	\$ 120,000

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**COORDINATED RAIL CAR PROCUREMENT
FUNDING AGREEMENT**

Among

**The State of Maryland,
Department of Transportation;**

The District of Columbia;

Arlington County, Virginia;

Fairfax County, Virginia;

City of Alexandria, Virginia;

City of Fairfax, Virginia;

City of Falls Church, Virginia;

And

Washington Metropolitan Area Transit Authority

For

**The Funding of Service Growth
Rail Cars**

THIS COORDINATED RAIL CAR PROCUREMENT FUNDING AGREEMENT

("Agreement"), is made and entered into this _____ day of _____ by and among the STATE OF MARYLAND, DEPARTMENT OF TRANSPORTATION (hereinafter "MDOT"); THE DISTRICT OF COLUMBIA (hereinafter "District"); the County Board of Arlington County, Virginia (hereinafter "Arlington County"); Fairfax County, Virginia (hereinafter "Fairfax County"); City of Alexandria, Virginia (hereinafter "City of Alexandria"); City of Fairfax, Virginia (hereinafter "City of Fairfax"); and City of Falls Church, Virginia (hereinafter "Falls Church") (collectively, MDOT, the District, Arlington County, Fairfax County, City of Alexandria, City of Fairfax, and Falls Church are the "Contributors") (collectively, Arlington County, Fairfax County, City of Alexandria, City of Fairfax, and Falls Church are the "Virginia Contributors"); and the WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY (hereinafter "WMATA"), an instrumentality of the District of Columbia, the Commonwealth of Virginia and the State of Maryland and

PROCEEDS UPON THE FOLLOWING MUTUAL UNDERSTANDINGS AMONG THE PARTIES HERETO:

RECITALS:

A. The WMATA was created through the Washington Area Transit Authority Compact formed by and among the State of Maryland, the Commonwealth of Virginia and the District of Columbia, authorized and approved by the United States Congress, for the purpose, among other activities, of planning, developing, financing and causing to be operated improved transit services in the Washington Area metropolitan area Transit Zone, as a part of a balanced regional system of transportation, which includes Metrorail; and

B. In the Transit Zone due to Metrorail service growth needs, there is a mutually recognized and agreed requirement for additional rail cars to service the level of projected passenger loads in the immediate future, and the parties to this Agreement desire to provide both for funding and a timely and an economic procurement of those Series 6000 rail cars by WMATA ("Coordinated Rail Car Procurement"); and

C. To enable the WMATA procurement of the Series 6000 rail cars necessary for projected Metrorail service growth, MDOT, the District, Arlington County, Fairfax County, City of Alexandria, City of Fairfax, and Falls Church desire to enter into this Agreement with WMATA, and to identify, appropriate, and obligate, at the appropriate times and junctures as further set forth in this Agreement, the individual funding each of those Contributors will be responsible for providing to WMATA; and,

D. Pursuant to this Agreement, WMATA is responsible for the development of a budget document and a cash flow document for the funding of the Coordinated Rail

Car Procurement (see, attached exhibits) with the written approval of MDOT, the District, Arlington County, Fairfax County, City of Alexandria, City of Fairfax, and Falls Church as to their individual funding shares, all as evidenced by the individual Contributor's execution of this Agreement; and,

E. The Contributors will be solely responsible for their respective shares of the Coordinated Rail Car Procurement costs under this Agreement (procurement cost shares identified as "[Individual Contributor, i.e., "Maryland," the "District," "Arlington County," "Fairfax County," "City of Alexandria," "City of Fairfax," and "Falls Church"] Procurement Cost Share"), as further specified in this Agreement, and for taking all necessary actions at the state, District, or jurisdictional unit level to assist WMATA in developing the budget and securing the funding for the procurement of the rail cars, however, a Contributor is only responsible for its own procurement cost share and in no circumstances will one Contributor be responsible for the procurement cost shares of the other Contributors; and,

F. The MDOT will administer its financial responsibilities for the Maryland Procurement Cost Share through its Office of Washington Area Transit Programs, which has budgetary oversight for annual Maryland financial responsibilities referenced in the WMATA Compact and associated with the Washington Suburban Transit District; and

G. The Contributors, except the District, subject to the annual budgetary appropriation of their respective legislative bodies, the General Assembly of Maryland, the Virginia Assembly, and/or the legislative bodies of the Virginia Contributors, to the full extent allowed by law, commit to provide the identified individual procurement cost share, on either an advance payment basis as requested by the individual Contributor, or an annual payment basis, to fund the Coordinated Rail Car Procurement. The District, to the full extent allowed by law, commits to provide its individual procurement cost share, as identified in Exhibit B, on either an advance payment basis, or on an annual payment basis, as requested by it, to fund the Coordinated Rail Car Procurement subject to the enactment of a lawful appropriation for that purpose and the availability of funds equal to that appropriation; and

H. WMATA has received funding from the Commonwealth of Virginia in the amount of Eighteen Million Dollars (\$18,000,000) for purposes of partially funding the Rail Car Procurement Budget on behalf of the Virginia Contributors. That Eighteen Million Dollars (\$18,000,000) shall be appropriated by WMATA among the Virginia Contributors for use by WMATA in providing the individual Virginia Contributor's quarterly payments until those monies are exhausted; and

I. The individual Contributors and WMATA desire to enter into this Agreement to define and provide the manner in which the parties will support the Coordinated Rail Car Procurement, and affirm that all costs to complete the Coordinated Rail Car

Procurement will be borne by the Contributors, in accordance with the provisions of this Agreement, and as more particularly set out in a separate yearly Rail Car funding agreements with MDOT and any side letter agreements with the District, Arlington County, Fairfax County, City of Alexandria, City of Fairfax, and Falls Church, as may be required by the statutory or budget funding requirements of the separate Contributors.

NOW THEREFORE, based upon the foregoing understandings and in consideration of the covenants contained herein, the Parties do covenant and agree as follows:

ARTICLE 1 -- DEFINITIONS AND INTERPRETATIONS

Section 1.01: Definitions. The definitions and the recitals set forth above are reaffirmed and incorporated herein by reference. The following are definitions of certain terms used in this Agreement:

- A. **"Agreement"** means this funding agreement for the Coordinated Rail Car Procurement of the Series 6000 rail cars among the MDOT, the District, Arlington County, Fairfax County, City of Alexandria, City of Fairfax, and Falls Church and WMATA.
- B. **"Rail Car Procurement Budget"** means the total of all costs of the Series 6000 rail cars for Metrorail service growth, through 2007, including, but not limited to, preliminary engineering, design and cost estimate effort required for a supply and service procurement from a contractor, review of the various elements of the supply and services proposal/contract for the rail cars, which WMATA evaluation work involves engineering of conceptual design and technical information, preliminary design and technical information, and acceptance of final design and technical information, inspection during rail car and rail car subsystem build, qualification and acceptance (conditional and final) testing of rail cars, review of training and manual programs necessary for final operation and maintenance plans, reliability testing of rail cars prior to revenue service, contractor and subcontractor auditing by WMATA, the initial stock of operation replacement parts, contingency amounts, and including WMATA's direct and indirect project management and technical oversight costs of the Project coupled with any audit, legal and other support WMATA services. The Rail Car Procurement Budget is attached hereto as Exhibit A and incorporated in this Agreement as if fully set forth herein.
- C. **"Projected Cash Flow and Obligation Profile ("Cash Flow")** means a separate yearly cash flow projection for the Coordinated Rail Car Procurement (estimated 50 cars) developed from the Rail Car Procurement Budget, as it may be amended, which shows on a yearly basis the quarterly amounts of money that

each Contributor is responsible for that year, which current Cash Flow is attached hereto as Exhibit B and incorporated in this Agreement as if fully set forth herein. The Cash Flow, Exhibit B, will be updated yearly by WMATA showing individual Contributor's projected quarterly payments (if the Contributor has advanced its share, then that exhibit will show the projected procurement payments from the moneys advanced by that Contributor) by WMATA and electronically sent to each Contributor prior to the commencement of the next fiscal year, but in no event later than April 1, and shall act as an invoice for each Contributor's quarterly payment (unless the Contributor's share was previously advanced), which shall be payable in advance of that up coming quarter by each Contributor. The Contributors agree that the first payment, under Exhibit B, shall be for two (2) quarters, and that the first year shall have a total of five (5) quarterly funding payments with the inclusion of the additional funding in the first payment, to enable WMATA to reasonably administer this multi-year expenditure funding for the service growth cars and to assure all parties that adequate funding monies have been advanced for future incurred actual quarterly costs.

- D. **"Financial Records"** are defined as any and all original documents which are used under OMB Circulars A-87 and A-133, as those circulars may be amended from time to time (collectively "federal guidelines"), to support federal grant costs. This definition includes all federal guideline documents submitted by WMATA staff, consultants and contractors working on the Coordinated Rail Car Procurement.

Section 1.02: Interpretations. For the purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

- A. All references in this Agreement to designated Articles, Sections and other subdivisions are to the designated Articles, Sections and other subdivisions of this Agreement as originally executed. The words "herein," "hereof," "hereunder," "herewith," and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or other subdivision hereof.
- B. The terms defined in this Article have the meanings assigned to them in this Article and include the plural as well as the singular.
- C. The headings and captions used in this Agreement are for convenience of reference only and shall not define, limit or describe any of the provisions hereof or the scope or intent hereof.

ARTICLE 2 -- RESPONSIBILITIES AND PROCUREMENT PROCESS

Section 2.01: WMATA and the Contributors' Responsibilities.

- A. **WMATA Responsibilities.** WMATA will publicize, award and administer the Coordinated Rail Car Procurement, and will exercise technical control and management oversight of that procurement during its contract term as further set forth elsewhere in this Agreement. To the extent that Federal Transit Administration ("FTA") approvals must be sought to obtain all possible federal funding under Federal Transit Programs requirements (collectively "Federal Program"), or to obtain either a federal letter of no prejudice, or to be in the posture to obtain potential federal participation under a future Federal Program application, WMATA will develop the required FTA documentation, with the assistance of the Contributor(s) which has the geographical jurisdiction of the geographical area that the rail cars may be attributed to for service growth needs or for the extension of Metrorail. In addition, WMATA will develop all related documents to meet all anticipated future FTA Federal Program requirements. The Contributors, as necessary, will fully support this effort.
- B. **MDOT Commitment and Responsibilities.** The MDOT hereby commits i) to initiate the necessary appropriations and, subject to annual budgetary appropriation by the General Assembly of Maryland, ii) to pay WMATA in the form of advance quarterly funding payments during the fiscal year pursuant to annual fiscal year funding agreements, a multi-year sum equal to thirty-five and thirty-one hundredths percent (35.31%) of the costs of the Coordinated Rail Car Procurement, as shown in Exhibit A. Subject to budgetary appropriations and with assurances to WMATA that all best efforts will be undertaken by the Maryland Executive Branch to secure those appropriations, the MDOT shall be solely responsible for iii) providing its share of the funds in the above percentage amount as shown in Exhibit B, iv) funding and promptly paying its percentage share of any termination for convenience costs under Section 2.05(C) of this Agreement which have not been previously advanced to WMATA in Maryland's quarterly payments, v) identifying and providing alternative funding for any monies payable under the Coordinated Rail Car Procurement that exceed the payment and expenditure schedule in any quarter as set out in the Cash Flow, Exhibit B, and vi) managing the timely disbursement of those state funds to WMATA (previously identified as "Maryland Procurement Cost Share"). In making these commitments, the MDOT acknowledges that WMATA has no independent funding apart from the funding to be provided pursuant to this Agreement.
- C. **District Commitment and Responsibilities.** The District has obtained appropriated authority to fund \$42.4 million of the Coordinated Rail Car Procurement. The District desires to pay the presently appropriated amount of its contribution in four (4) advance quarterly payments, which will be made on the following dates (each of which is the first business day of the month):

Tuesday, July 2, 2002;

Tuesday, October 1, 2002;

Thursday, January 2, 2003; and

Tuesday, April 1, 2003.

This \$42.4 million in advance payments is \$1.83 million less than the thirty-six and eighty-six hundredths percent (36.86%) of the total Coordinated Rail Procurement as shown in Exhibit A and Exhibit B, which percentage represents the District's agreed to share of the Rail Car Procurement Project ("District Procurement Cost Share"). In the event that accrued interest on the District's advance payments is insufficient to cover this shortfall, the Mayor of the District of Columbia agrees to include any shortfall amount in the Mayor's fiscal 2004 budget submitted to the Council of the District of Columbia. The District shall be solely responsible for i) providing its share of the funds in the above percentage amount as shown in Exhibit B, and ii) funding and promptly paying its percentage share of any termination for convenience costs under Section 2.05(C) of this Agreement which have not been previously advanced to WMATA in the District's payments, subject to the enactment of a lawful appropriation for that purpose and the availability of funds equal to that appropriation. In making these commitments, the District acknowledges that WMATA has no independent funding apart from the funding to be provided pursuant to this Agreement. WMATA, for its part, acknowledges that it does not construe any District commitment made herein as involving the District in a contract or obligation for the payment of money before an appropriation is made such as would violate the Anti-Deficiency Act, 31 USC § 1341.

- D. **Arlington County's Commitments and Responsibilities.** Arlington County hereby commits i) to initiate the necessary budget and appropriation actions and, ii) subject to annual budgetary appropriation by the County Board to pay WMATA a multi-year sum equal to eight and seventy-four hundredths percent (8.74%) of the total Coordinated Rail Car Procurement, as shown in Exhibit A, and Exhibit B. Subject to annual budgetary appropriations and with assurances to WMATA that all best efforts will be undertaken by the Arlington County Manager to secure those appropriations, Arlington County shall be solely responsible for i) providing its share of the funds in the above percentage amount, as shown in Exhibit B, ii) funding and promptly paying its percentage share of any termination for convenience costs under Section 2.05(C) of this Agreement which have not been previously advanced to WMATA in Arlington's quarterly payments, and which percentage share payable by Arlington County shall in no event exceed the balance of Arlington County's funding commitment

set forth in the Cash Flow, Exhibit B, iii) identifying and providing alternative funding for any monies payable under the Coordinated Rail Car Procurement that exceed the payment and expenditure schedule in any quarter as set out in the Cash Flow, Exhibit B, and iv) managing the timely disbursement of those funds to WMATA (previously identified as "Arlington County Procurement Cost Share"). In making these commitments, Arlington County acknowledges that WMATA has no independent funding apart from the funding to be provided pursuant to this Agreement. Arlington County may desire to make an advance payment prior to the time the procurement contractor is given its notice to proceed. In the event Arlington County elects to do so, it shall advise WMATA and WMATA shall submit an invoice to Arlington County for the amount Arlington County chooses to advance, and those funds shall be advanced by Arlington County, or its agent, to WMATA, within thirty (30) days. The remaining contribution funds will, at the sole option of the Arlington County, be paid in advance, or be paid quarterly in the fiscal year that those funds are needed for the procurement, pursuant to the Cash Flow, Exhibit B. It is further acknowledged and agreed that WMATA has received funding from the Commonwealth of Virginia in the amount of Eighteen Million Dollars (\$18,000,000) for the purposes of funding the Rail Car Procurement Budget on behalf of the Virginia Contributors (the Commonwealth Funding). The Commonwealth Funding shall be appropriated by WMATA among the Virginia Contributors and placed in an interest-bearing account for each Virginia Contributor for use by WMATA in providing the individual Virginia Contributor's quarterly payments.

- E. **Fairfax County's Commitments and Responsibilities.** Fairfax County hereby commits i) to initiate the necessary appropriations and, subject to annual budgetary appropriation by the Board of Supervisors, ii) to pay WMATA a multi-year sum equal to fourteen and two hundredths percent (14.02%) of the total Coordinated Rail Car Procurement, as shown in Exhibit A, and Exhibit B. Subject to budgetary appropriations and with assurances to WMATA that all best efforts will be undertaken by the Fairfax County Executive Branch to secure those appropriations, Fairfax County shall be solely responsible for iii) providing its share of the funds in the above percentage amount, as shown in Exhibit B, iv) funding and promptly paying its percentage share of any termination for convenience costs under Section 2.05(C) of this Agreement which have not been previously advanced to WMATA in Fairfax County's quarterly payments, v) identifying and providing alternative funding for any monies payable under the Coordinated Rail Car Procurement that exceed the payment and expenditure schedule in any quarter as set out in the Cash Flow, Exhibit B, and vi) managing the timely disbursement of those funds to WMATA (previously identified as "Fairfax County Procurement Cost Share"). In making these commitments, Fairfax County acknowledges that WMATA has no independent funding apart from the funding to be provided pursuant to this

Agreement. Fairfax County ~~may~~ desires to make an advance payment of _____ dollars (\$ _____) prior to the time the procurement contractor is given its notice to proceed. ~~In the event that Fairfax County elects to do so, it shall advise WMATA and WMATA shall submit an invoice to Fairfax County for that the amount Fairfax County chooses to advance, and those funds shall be advanced by Fairfax County, or its agent, to WMATA, within thirty (30) days. The remaining contribution funds will, at the sole option of the Fairfax County, be paid in advance, or be paid quarterly in the fiscal year that those funds are needed for the procurement, pursuant to the Cash Flow, Exhibit B. It is further acknowledged and agreed that WMATA has received funding from the Commonwealth of Virginia in the amount of Eighteen Million Dollars (\$18,000,000) for purposes of funding the Rail Car Procurement Budget on behalf of the Virginia Contributors (the "Commonwealth Funding"). The Commonwealth Funding shall be appropriated by WMATA among the Virginia Contributors and placed in an interest-bearing account for each Virginia Contributor for use by WMATA in providing the individual Virginia Contributor's quarterly payments.~~

- F. **City of Alexandria's Commitments and Responsibilities.** The City of Alexandria hereby commits i) to initiate the necessary appropriations and, subject to annual budgetary appropriation by the City Council, ii) to pay WMATA a multi-year sum equal to four and fifty-nine hundredths percent (4.59%) of the total Coordinated Rail Car Procurement, as shown in Exhibit A, and Exhibit B. Subject to budgetary appropriations and with assurances to WMATA that all best efforts will be undertaken by the City of Alexandria Executive Branch to secure those appropriations, the City of Alexandria shall be solely responsible for iii) providing its share of the funds in the above percentage amount, as shown in Exhibit B, iv) funding and promptly paying its percentage share of any termination for convenience costs under Section 2.05(C) of this Agreement which have not been previously advanced to WMATA in the City of Alexandria's quarterly payments, v) identifying and providing alternative funding for any monies payable under the Coordinated Rail Car Procurement that exceed the payment and expenditure schedule in any quarter as set out in the Cash Flow, Exhibit B, and vi) managing the timely disbursement of those funds to WMATA (previously identified as "City of Alexandria Procurement Cost Share"). In making these commitments, the City of Alexandria acknowledges that WMATA has no independent funding apart from the funding to be provided pursuant to this Agreement. The City of Alexandria ~~may~~ desires to make an advance payment of _____ dollars (\$ _____) prior to the time the procurement contractor is given its notice to proceed. ~~In the event that the City of Alexandria elects to do so, it shall advise WMATA and WMATA shall submit an invoice to the City of Alexandria for that the amount the City of Alexandria chooses to advance, and those funds shall be advanced by the City of Alexandria, or its agent, to WMATA, within thirty (30) days. The remaining~~

contribution funds will, at the sole option of the City of Alexandria, be paid in advance, or be paid quarterly in the fiscal year that those funds are needed for the procurement, pursuant to the Cash Flow, Exhibit B. It is further acknowledged and agreed that WMATA has received funding from the Commonwealth of Virginia in the amount of Eighteen Million Dollars (\$18,000,000) for purposes of funding the Rail Car Procurement Budget on behalf of the Virginia Contributors (the "Commonwealth Funding"). The Commonwealth Funding shall be appropriated by WMATA among the Virginia Contributors and placed in an interest-bearing account for each Virginia Contributor for use by WMATA in providing the individual Virginia Contributor's quarterly payments.

- G. **City of Fairfax's Commitments and Responsibilities.** The City of Fairfax hereby commits i) to initiate the necessary budget and appropriation actions and, ii) subject to annual budgetary appropriation by the City Council, to pay WMATA a multi-year sum equal to eighteen hundredths percent (0.18%) of the total Coordinated Rail Car Procurement, as shown in Exhibit A, and Exhibit B. Subject to annual budgetary appropriations and with assurances to WMATA that all best efforts will be undertaken by the City of Fairfax to secure those appropriations, the City of Fairfax shall be solely responsible for i) providing its share of the funds in the above percentage amount, as shown in Exhibit B, ii) funding and promptly paying its percentage share of any termination for convenience costs under Section 2.05(C) of this Agreement which have not been previously advanced to WMATA in the City of Fairfax's quarterly payments, and which percentage share payable by the City of Fairfax shall in no event exceed the balance of the City of Fairfax's funding commitment set forth in the Cash Flow, Exhibit B, iii) identifying and providing alternative funding for any monies payable under the Coordinated Rail Car Procurement that exceed the payment and expenditure schedule in any quarter as set out in the Cash Flow, Exhibit B, and iv) managing the timely disbursement of those funds to WMATA (previously identified as "City of Fairfax Cost Share"). In making these commitments, the City of Fairfax acknowledges that WMATA has no independent funding apart from the funding to be provided pursuant to this Agreement. The City of Fairfax may desire to make an advance payment prior to the time the procurement contractor is given its notice to proceed. In the event that City of Fairfax elects to do so, it shall advise WMATA and WMATA shall submit an invoice to City of Fairfax for the amount City of Fairfax chooses to advance, and those funds shall be advanced by City of Fairfax, or its agent, to WMATA, within thirty (30) days. The remaining contribution funds will, at the sole option of the City of Fairfax, be paid in advance, or be paid quarterly in the fiscal year that those funds are needed for the procurement, pursuant to the Cash Flow, Exhibit B. It is further acknowledged and agreed that WMATA has received funding from the Commonwealth of Virginia in the amount of Eighteen Million Dollars

(\$18,000,000) for purposes of funding the Rail Car Procurement Budget on behalf of the Virginia Contributors (the "Commonwealth Funding"). The Commonwealth Funding shall be appropriated by WMATA among the Virginia Contributors and placed in an interest-bearing account for each Virginia Contributor for use by WMATA in providing the individual Virginia Contributor's quarterly payments.

- H. **City of Falls Church's Commitments and Responsibilities.** Falls Church hereby commits i) to initiate the necessary appropriations and, subject to annual budgetary appropriation by the City Council, ii) to pay WMATA a multi-year sum equal to thirty hundredths percent (0.30%) of the total Coordinated Rail Car Procurement, as shown in Exhibit A, and Exhibit B. Subject to budgetary appropriations and with assurances to WMATA that all best efforts will be undertaken by the Falls Church Executive Branch to secure those appropriations, Falls Church shall be solely responsible for iii) providing its share of the funds in the above percentage amount, as shown in Exhibit B, iv) funding and promptly paying its percentage share of any termination for convenience costs under Section 2.05(C) of this Agreement which have not been previously advanced to WMATA in Falls Church's quarterly payments, v) identifying and providing alternative funding for any monies payable under the Coordinated Rail Car Procurement that exceed the payment and expenditure schedule in any quarter as set out in the Cash Flow, Exhibit B, and vi) managing the timely disbursement of those funds to WMATA (previously identified as the "Falls Church Cost Share"). In making these commitments, Falls Church acknowledges that WMATA has no independent funding apart from the funding to be provided pursuant to this Agreement. Falls Church may desire to make an advance payment of _____ dollars (\$ _____) prior to the time the procurement contractor is given its notice to proceed. In the event that Falls Church elects to do so, it shall advise WMATA and WMATA shall submit an invoice to Falls Church for that the amount Falls Church chooses to advance, and those funds shall be advanced by Falls Church, or its agent, to WMATA, within thirty (30) days. The remaining contribution funds will, at the sole option of Falls Church, be paid in advance, or be paid quarterly in the fiscal year that those funds are needed for the procurement, pursuant to the Cash Flow, Exhibit B. It is further acknowledged and agreed that WMATA anticipates receipt of funding from the Commonwealth of Virginia in the amount of Eighteen Million Dollars (\$18,000,000) for purposes of funding the Rail Car Procurement Budget on behalf of the Virginia Contributors (the "Commonwealth Funding"). The Commonwealth Funding shall be appropriated by WMATA among the Virginia Contributors and placed in an interest-bearing account for each Virginia Contributor for use by WMATA in providing the individual Virginia Contributor's quarterly payments.

Section 2.02: Process.

- A. **Coordinated Rail Car Procurement.** WMATA, using staff, consultants, and contractors, shall undertake all required work associated with the Coordinated Rail Car Procurement, as set forth in Section 1.01(B) and Section 2.01(A), and in accordance with WMATA procurement practices.
- B. **Procurement Cost Overruns.** WMATA shall monitor all costs, expenses and obligations and any change(s) in rail car procurement that may cause costs overruns which may exceed the Rail Car Procurement Budget, Exhibit A. Upon expending eighty percent (80%) of the Rail Car Procurement Budget, Exhibit A, as defined in Section 1.01(B), WMATA, by writing, shall notify the individual Contributors of the anticipated final costs, expenses and obligations. If, at any time, the anticipated final costs, expenses and obligations are projected to exceed the Rail Car Procurement Budget, WMATA shall promptly notify the individual Contributors in writing of such projection by a "Revised Draft Exhibit A (- Date -)." The Contributors and WMATA shall promptly meet and confer to resolve the funding shortfall. If the funding shortfall(s) is timely resolved by the parties, a Revised Exhibit A dated and signed by the parties shall be substituted for the proceeding Exhibit A and that signed and dated revision shall be considered a part of this Agreement. ~~Notwithstanding the foregoing, in the event the funding shortfall is not timely resolved,~~ WMATA at its sole discretion may still invoke Section 2.05(C) of this Agreement to terminate for convenience the Coordinated Rail Car Procurement and, accordingly, any time periods given by WMATA pursuant to Section 2.05(C) will run to the stated expiry concurrently with the meet and confer obligations imposed by this section.

Section 2.03: Funding.

- A. **Rail Car Procurement Costs Responsibilities.** As hereinafter limited, the Contributors shall be responsible for their respective allocated shares of all direct and indirect costs identified in the Rail Car Procurement Budget, Exhibit A as defined in Section 1.01(B), including but not limited to, applicable WMATA staff costs solely attributable to and funded from the Rail Car Procurement Budget, Exhibit A, and any other expenses for project administration as well as WMATA consultant/contractors.

1. **MDOT Funding.** MDOT will provide to WMATA the Maryland Procurement Cost Share, in advance, by quarterly payments based upon WMATA's (a) anticipated expenditures, (b) commitments, and (c) termination costs for the upcoming quarter as shown in Exhibit B. The MDOT will confirm, on or before each June 1 during the Term of this Agreement, to WMATA that the necessary annual budgetary appropriations have been made for the next fiscal year. MDOT, at its discretion, may request a WMATA invoice that exceeds its yearly quarterly payment(s) that are payable under the current Cash Flow, Exhibit B.

2. District Funding. The District will provide to WMATA \$42.4 million of the District Procurement Cost Share Funds, in advance payments as set forth in Section 2.01(C). In the event that accrued interest on the District's advanced payments is insufficient to cover any amount of shortfall difference between the \$42.4 million and the total amount of the District Procurement Cost Share as identified in Exhibits A and B, the District will pay such shortfall no later than forty-five (45) days after funds are appropriated for the purpose and become available. Any additional payments to WMATA arising from an amendment(s) to Exhibits A and B shall be made forty-five (45) days after such funds are appropriated and become available. During the Term of this Agreement and upon written inquiry by WMATA, the District will confirm to WMATA that any necessary annual budgetary appropriations have been made for the next WMATA fiscal year.

3. Arlington County Funding. Arlington will provide to WMATA, ~~subject to annual appropriation,~~ the Arlington Procurement Cost Share Funds, in advance, by either ~~by~~ lump sum payments, or quarterly payments ~~as set forth in Section 2.01(D),~~ based upon the WMATA's ~~(a)~~ anticipated expenditures, ~~(b)~~ commitments, and ~~(c)~~ ~~the percentage share of termination for convenience costs as shown in Exhibit B as further set forth in Section 2.01(D).~~ Unless the next fiscal year contribution has already been paid in full, Arlington will confirm, on or before each June 1 during the Term of this Agreement, to WMATA that the necessary annual budgetary appropriations have been made for the next fiscal year.

4. Fairfax County Funding. Fairfax County will provide to WMATA the Fairfax County Procurement Cost Share Funds, in advance, by either by lump sum payments, or quarterly payments as set forth in Section 2.01(E), based upon the WMATA's (a) anticipated expenditures, (b) commitments, and (c) termination costs as shown in Exhibit B. Unless the next fiscal year contribution has already been paid in full, Fairfax County will confirm, on or before each June 1 during the Term of this Agreement, to WMATA that the necessary annual budgetary appropriations have been made for the next fiscal year. ~~Limitation of personal liability – no covenant, agreement or obligation contained herein shall be deemed to be a personal covenant, agreement or personal obligation of any present or future commissioner, officer, employee or agent of Fairfax County in his/her individual capacity, nor shall any commissioner, officer, employee or agent of Fairfax County incur in his/her personal capacity any other action pursuant to this Agreement. Sovereign immunity – nothing in this Agreement shall be construed by any third party as a waiver of Fairfax County's sovereign immunity.~~

5. City of Alexandria Funding. The City of Alexandria will provide to WMATA the City of Alexandria Procurement Cost Share Funds, in advance, by either by lump sum payments, or quarterly payments as set forth in Section 2.01(F), based upon the WMATA's (a) anticipated expenditures, (b) commitments, and (c) termination costs as shown in Exhibit B. Unless the next fiscal year contribution has already been paid in full, the City of Alexandria will confirm, on or before each June 1 during the Term of this Agreement, to WMATA that the necessary annual budgetary appropriations have been made for the next fiscal year.

6. City of Fairfax Funding. The City of Fairfax will provide to WMATA, ~~subject to annual appropriation~~, the City of Fairfax Procurement Cost Share Funds, in advance, by either by lump sum payments, or quarterly payments as set forth in Section 2.01(G), based upon the WMATA's (a) anticipated expenditures, (b) commitments, and (c) the percentage share of termination for convenience costs as shown in Exhibit B and as further set forth in Section 2.01(D). Unless the next fiscal year contribution has already been paid in full, the City of Fairfax will confirm, on or before each June 1 during the Term of this Agreement, to WMATA that the necessary annual budgetary appropriations have been made for the next fiscal year.

7. City of Falls Church Funding. Falls Church will provide to WMATA the Falls Church Procurement Cost Share Funds, in advance, by either by lump sum payments, or quarterly payments as set forth in Section 2.01(H), based upon the WMATA's (a) anticipated expenditures, (b) commitments, and (c) termination costs as shown in Exhibit B. Unless the next fiscal year contribution has already been paid in full, Falls Church will confirm, on or before each June 1 during the Term of this Agreement, to WMATA that the necessary annual budgetary appropriations have been made for the next fiscal year.

8. It is intended by the parties that these advance payments by the MDOT, the District, and the Virginia Contributors shall be in sufficient amount so that WMATA does not have to resort to a line of credit to finance the Coordinated Rail Car Procurement. Each Contributor hereby pledges to each other Contributor and to WMATA its faithful cooperation and best efforts to obtaining all authorizations required by law to provide its full allocated procurement cost share each year during the Term of this Agreement.

B. **Pre-award Termination of Agreement.** If a supply and service procurement contract is not awarded for the 6000 Series rail cars under this Agreement, the parties will jointly make a final accounting of WMATA costs to the date of the decision not to let such a contract, and the MDOT, the District, and the Virginia Contributors will be jointly responsible for those costs ~~subject to appropriation~~

of funds if adequate monies are not on deposit with WMATA. If there is a balance of any Contributor's funds, made pursuant to this Agreement, on deposit at WMATA after the close-out and final audit of WMATA costs for the supply and service procurement contract, those funds shall be promptly returned to that Contributor with earned interest (see Section 2.03(D)). If WMATA costs associated with the procurement exceed any balance of the Contributors' funds on deposit at WMATA, the Contributors, based upon their individual contribution percentages subject to Section 2.01 and to an appropriation of funds, will promptly reimburse WMATA for their individual shares of those costs. Any Contributor's fund surplus will be returned within thirty (30) days of the final joint accounting, which in no event shall be completed later than one (1) year from the date of the decision to not award a contract.

- C. **Funds Advancement.** WMATA will not incur costs or obligations for the Coordinated Rail Car Procurement unless adequate funds are available, and the MDOT, the District, and the Virginia Contributors have obligated and will timely obligate the necessary funds and have provided and advanced sufficient funds for WMATA's expenditures and commitments for the coming quarter.
- D. **Interest Earning Account.** WMATA will place funds advanced under this Agreement by the MDOT, the District, and the individual Virginia Contributors in interest earning accounts. Interest earnings will be used to offset their respective obligations in the last quarterly payment (in the last fiscal year) due and payable to WMATA under Exhibit B and as set forth in Section 2.01(B), (C), (D), (E), (F), (G) and (H). Any interest earning surplus will be returned to the Contributor whose funds generated those earnings after final payment to the contractor and at the closure of the Coordinated Rail Car Procurement contract.

Section 2.04: Rail Car Procurement Budget and Schedule.

- A. **Rail Car Procurement Budget and Schedule Responsibilities.** WMATA has developed a budget and schedule for the overall Rail Car Procurement Budget (Exhibit A), which is concurred in by the MDOT, the District, and the Virginia Contributors through execution of this Agreement. Any revision to Exhibit A shall be made in accordance with 2.02(B).
- B. **Yearly Accounting Summary.** As a part of its budget responsibilities and on a yearly basis, WMATA shall provide to the Contributors, an accounting summary of its actual costs compared to the anticipated expenditures in the past year.

Section 2.05: Rail Car Procurement Contract and Funding Shortfall Termination.

- A. **WMATA - Pre-award Stage of the Rail Car Supply and Service Procurement.** WMATA's responsibilities under this Agreement are limited to taking such preparatory actions as it believes can be funded from the Contributors' funds that it has received, or will receive. Such preparatory work will include, but is not limited to, the advertisement and request for proposals of the Series 6000 Rail Car supply and service procurement contract. However, under no circumstances will WMATA award the procurement contract until i) it is either notified in writing by the individual Contributors that the first fiscal year contributions have been appropriated, and/or the individual Contributor's funds for that year have been advanced to WMATA, and ii) to the extent that this condition may be applicable (i.e., an advance yearly payment has not been made), the first and second quarters' funding has been advanced by each of the individual Contributors as to their procurement cost share (which includes a reasonable contingency amount), and received by WMATA.
- B. **WMATA Procurement Procedures are Applicable and Control.** WMATA shall procure the Series 6000 Rail Car procurement contract(s) in accordance with its standard procurement procedures and it shall have complete and overall management and administrative responsibility for said contract(s). In accordance with Section 22 of the WMATA Compact, WMATA may not make any commitments, i.e., award any contracts, or incur any obligations until funds are identified and available.
- C. **Post-Award Funding Shortfall Termination.** During any post award stage of the Coordinated Rail Car Procurement, if any Contributor for any reason: i) fails to appropriate, or in the case of the District, fails to have appropriated, the necessary funding for a fiscal year and/or fails to notify WMATA, pursuant to Section 2.03(A), that the necessary appropriation has been made for the fiscal year; ii) fails to provide timely advance quarterly funding for WMATA's procurement costs, and/or if the funds deposited with WMATA are forecasted as not being sufficient to fund the procurement and its projected ~~percentage of~~ termination costs ~~for any reason~~, including projected costs overruns, WMATA will give the Contributors written notification that it plans to terminate the Coordinated Rail Car Procurement for convenience ("Termination Trigger Notification") at a stated date. This section is not subject to the dispute resolution steps of Section 3.01 below. The "Termination Date" in the Termination Trigger Notification will be determined by the WMATA Project Manager based upon either factors 1) or 2) immediately below. The stated Termination Date will be based upon 1) the WMATA Project Manager's determination that the Contributors' stated appropriations, or advance funding deposits are insufficient to fund the procurement, including cost overruns, and

any termination for convenience costs for the current WMATA fiscal year, or 2) the Project Manager's finding that one of the Contributors has not timely advanced its quarterly payment, in accord with the Cash Flow (Exhibit B) for its procurement cost share. The Termination Trigger Notification shall be provided, if possible, to the Contributors at least thirty (30) days prior to the Termination Date. If the Contributor(s) has/have not remedied the inadequacy or failure identified in the notice, WMATA may take those steps to stop work, terminate, and close out the Coordinated Rail Car Procurement on or after the Termination Date. If the Coordinated Rail Car Procurement is terminated pursuant to this section, WMATA shall have no further responsibility to the Contributors to complete the procurement. The provisions of Section 2.01(B), (C), (D), (E), (F), (G) and (H) of this Agreement, relating to the Contributors' responsibilities, shall survive the termination of this procurement ~~and this Agreement~~.

Section 2.06: Other Agreements. Nothing in this Agreement shall be construed to modify, diminish, or supersede any existing rights, agreements, or arrangements between WMATA and the individual Contributors on other matters. However, any future federal grant agreement entered into by WMATA and the U.S.DOT/FTA for any part of the Coordinated Rail Car Procurement ("Future Grant"), which includes the FTA Master Agreement terms, shall govern the actions of the parties here, as to any of the stated conditions or actions reasonably necessary to obtain and to maintain a federal grant for this procurement. In the instance of an inconsistency or of inconsistencies, and/or a conflict or conflicts in stated definitions, terms and conditions as between this Agreement and the Future Grant that may directly pertain to this procurement, the terms of the Future Grant shall control.

ARTICLE 3 -- DISPUTES

Section 3.01: Dispute Resolution. Any disputes between any Contributor and WMATA arising out of this Agreement may be disposed of by the parties by written agreement and/or amendment of this Agreement. If the parties cannot resolve the dispute, then the party seeking a resolution shall provide written notice of the nature of the dispute and the issue(s) to the other party(ies). The other party may respond within thirty (30) days. If the dispute is not resolved within thirty (30) days following the response, the dispute will be resolved in accordance with Section 3.02.

Section 3.02: ADR and Court Jurisdiction.

- A. **Alternative Dispute Resolution ("ADR").** The parties agree to make their best good faith efforts to resolve any disputes which relate to or arise under this agreement. Absent resolution, the parties agree to pursue any type of alternative dispute resolution procedure which appears to have a likelihood of successfully resolving any dispute. Any party may propose and the parties

may agree to any type of dispute resolution procedure including but not limited to mediation, arbitration, mini trial, etc.

- B. **Court Jurisdiction.** In the event the parties do not jointly elect to use the procedure set forth in Section 3.02(A), any party may commence a civil action for resolution of the dispute in a court of competent jurisdiction.

ARTICLE 4 -- NOTICES

Section 4.01: Written Notice. All notices hereunder shall be in writing and shall be deemed to have been sufficiently given or served for all purposes when presented personally, or sent by a courier service or a national overnight delivery service, as the U.S. Overnight Express Mail, to any party hereunder as follows:

If to the MDOT:

Secretary
John D. Porcari
Maryland Department of Transportation
10 Elm Road
P.O. Box 8755
Baltimore/Washington International Airport,
Maryland 21240 - 0755

With a second copy to:

Director
Office of the Washington Area Transit Programs
877 Georgia Avenue, #904
Silver Spring, Maryland 20910

If to the District of Columbia:

Dan Tangherlini
Acting Director
Division of Transportation
Department of Public Works
2000 14th Street, N.W., 6th Floor
Washington, D.C. 20009

With a second copy to:

Corporation Counsel
Alan Bergstein, Esq.

Section Chief, Land Use
and Public Works
441 Fourth Street, N.W.
Washington, D.C. 20001

If to Arlington County:

County Manager
2100 Clarendon Boulevard
Suite 302
Arlington, Virginia 22201

With copies to:

Director, Department of Public Works
2100 Clarendon Boulevard
Suite 717
Arlington, Virginia 22201

Director, Department of Management and Finance
2100 Clarendon Boulevard
Suite 501
Arlington, Virginia 22201

If to Fairfax County:

Coordination and Funding Section
Department of Transportation

If to the City of Alexandria:

Rich Baier
Director, Transportation and Environmental Services

With a copy to:

Philip Sunderland
City Manager

If to the City of Fairfax:

City Manager
10455 Armstrong Street

Fairfax, Virginia 22030

With copies to:

Transportation Director
10455 Armstrong Street
Fairfax, Virginia 22030

City Attorney
Roeder and Associates, P.C.
8280 Greensboro Drive, Suite 601
McLean, Virginia 22102

If to the City of Falls Church:

Daniel McKeever
City Manager

If to WMATA:

General Manager
Washington Metropolitan Area Transit Authority
Jackson Graham Building
600 Fifth Street, N.W.
Washington, D.C. 20001

With a second copy to:

General Counsel, WMATA
Jackson Graham Building, Second Floor
600 Fifth Street, N.W.
Washington, D.C. 20001

ARTICLE 5 -- AMENDMENT(S)

Section 5.01: Amendment(s). This Agreement may be amended in writing by the parties. Such amendments will be valid upon execution by all of the parties.

ARTICLE 6 -- TERM

Section 6.01. The term of This Agreement shall begin on the date of the execution of this Agreement and shall terminate upon the last occurring event: i) three years after the Coordinated Rail Car Procurement is completed as evidenced by the revenue operation and final written acceptance by WMATA of the Series 6000 rail

cars; or ii) when all costs have been paid for the procurement contract(s) and the procurement is closed out by WMATA.

ARTICLE 7 -- CIVIL RIGHTS AND NONDISCRIMINATION

Section 7.01. The parties to this Agreement recognize and agree that WMATA, as the grantee of numerous present federal transit grants, will adhere to those federal laws, regulations, executive orders, or guidelines regarding civil rights and nondiscrimination strictures. Those applicable federal civil rights statutes, and implementing regulations include, but are not necessarily limited to, the following:

- A. **Nondiscrimination in Federal Transit Programs.** WMATA agrees to comply, and assures compliance by each third party contractor at any tier and each subrecipient at any tier under the Project, with the provisions of 49 U.S.C. § 5332, which prohibits discrimination on the basis of race, color, creed, national origin, sex, or age, and prohibits discrimination in employment or business opportunity.
- B. **Nondiscrimination -- Title VI of the Civil Rights Act.** WMATA agrees to comply, and assures compliance by each third party contractor at any tier and each subrecipient at any tier under the Project, with all requirements prohibiting discrimination on the basis of race, color, or national origin of Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d, and U.S. DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation -- Effectuation of Title VI of the Civil Rights Act," 49 C.F.R. Part 21, and any implementing requirements FTA may issue.
- C. **Equal Employment Opportunity.** WMATA agrees to comply, and assures the compliance by each third party contractor at any tier and each subrecipient at any tier, with all requirements of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, and 49 U.S.C. § 5332 and any implementing requirements FTA may issue. Those equal employment opportunity (EEO) requirements include, but are not limited to, the following:

(1) General Requirements.

(a) WMATA agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, sex, disability, age, or national origin. WMATA agrees to take affirmative action to ensure that applicants are employed and that employees are treated during employment, without regard to their race, color, creed, sex, disability, age, or national origin. Such action shall include, but not be limited to, employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for

training, including apprenticeship. WMATA also agrees to comply with any implementing requirements FTA may issue.

(b) If WMATA is required to submit and obtain Federal Government approval of its EEO program that EEO program approved by the Federal Government is incorporated by reference.

(2) **Equal Employment Opportunity Requirements for Construction Activities.** With respect to construction activities, WMATA agrees to comply, and assures the compliance by each third party contractor at any tier and each subrecipient at any tier, with all applicable EEO requirements of U.S. Department of Labor (U.S. DOL.) regulations, "Office of Federal Contract Compliance Programs Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000(e) note, and any Federal statutes, executive orders, regulations, and Federal policies pertaining to construction undertaken as part of the Project.

D. Disadvantaged Business Enterprise. WMATA agrees to take the following measures to facilitate participation by disadvantaged business enterprises (DBE) in the Project:

(1) WMATA agrees to comply with section 1101(b) of TEA-21, 23 U.S.C. § 101 note, and U.S. DOT regulations, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," 49 C.F.R. Part 26.

(2) WMATA agrees that it shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any third party contract, or sub-agreement supported with Federal assistance derived from the U.S. DOT or in the administration of its DBE program or the requirements of 49 C.F.R. Part 26. WMATA agrees to take all necessary and reasonable steps under 49 C.F.R. Part 26 to ensure nondiscrimination in the award and administration of all third party contracts and sub-agreements supported with Federal assistance derived from the U.S. DOT.

E. Nondiscrimination on the Basis of Sex. To the extent applicable, WMATA agrees to comply with Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. §§ 1680 et seq., which prohibit discrimination on the basis of sex, and any subsequent Federal requirements.

F. Nondiscrimination on the Basis of Age. WMATA agrees to comply with the applicable requirements of the Age Discrimination Act of 1975, as amended,

42 U.S.C. §§ 6101 et seq., and implementing regulations, which prohibits discrimination on the basis of age.

- G. **Access Requirements for Persons with Disabilities.** WMATA agrees to comply with the requirements of 49 U.S.C. § 5301(d) which expresses the Federal policy that the elderly and persons with disabilities have the same right as other persons to use mass transportation service and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement those policies. WMATA also agrees to comply with all applicable requirements of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of handicaps, and with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 et seq., which requires the provision of accessible facilities and services, and with the following Federal regulations, including any amendments thereto:

(1) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37;

(2) U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefitting from Federal Financial Assistance," 49 C.F.R. Part 27;

(3) Joint U.S. Architectural and Transportation Barriers Compliance Board/U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. Part 1192 and 49 C.F.R. Part 38;

(4) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 35;

(5) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. Part 36;

(6) U.S. GSA regulations, "Accommodations for the Physically Handicapped," 41 C.F.R. Subpart 101-19;

(7) U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630;

(8) U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises

Equipment for the Hearing and Speech Disabled," 47 C.F.R. Part 64, Subpart F; and

(9) FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. Part 609; and

(10) Any implementing requirements FTA may issue.

- H. Drug or Alcohol Abuse - Confidentiality and Other Civil Rights Protections. WMATA agrees to comply with the confidentiality and other civil rights provisions of the Drug Abuse Office and Treatment Act of 1972, Pub. L. 92-255, March 21, 1972, the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, Pub. L. 91-616, Dec. 31, 1970, and the Public Health Service Act of 1912, 42 U.S.C. §§ 290dd-3 and 290ee-3, including any amendments to these acts.

ARTICLE 8 -- ANTI-DRUG AND ALCOHOL POLICY

Section 8.01. The parties to this Agreement recognize and agree that WMATA, as the grantee to numerous transit federal grants, will adhere to those federal laws, regulations, executive orders, or guidelines strictures regarding anti-drug and alcohol policy in transit work and operations, which includes, but is not limited to, the following: "Drug-Free Workplace Act (DFWA) of 1988," 49 USC Sections 702 et seq.; "Requirements for a Drug-Free Workplace (Grants)," 49 C.F.R. Part 29; "Prevention of Prohibited Drug Use in Transit Operations," 49 C.F.R. Part 653; and "Prevention of Alcohol Misuse in Transit Operations," 49 C.F.R. Part 654.

ARTICLE 9 -- CERTIFICATION OF WMATA

Section 9.01. WMATA makes the following representations as of the date of the execution of this Agreement as a basis for the undertakings on the part of the MDOT, the District, Arlington County, Fairfax County, City of Alexandria, City of Fairfax, and Falls Church:

- A. WMATA has full power and authority to enter into the transactions contemplated by this Agreement and to carry out its obligations hereunder;
- B. WMATA by proper corporate action has duly authorized the execution and delivery of this Agreement;
- C. When executed and delivered by the Contributors 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 may be

limited by bankruptcy, reorganization, insolvency, moratorium or other laws affecting the enforcement of creditors' rights generally.

- D. No director, officer, or employee of WMATA, who exercises or has exercised any functions or responsibilities over the Agreement shall have or obtain a personal or financial interest or benefit from any activity in connection with the Agreement or have an interest in any contract, subcontract or agreement with respect therewith during the term of this Agreement.

ARTICLE 10 -- CERTIFICATION OF THE CONTRIBUTORS

Section 10.01. The MDOT, the District, Arlington County, Fairfax County, City of Alexandria, City of Fairfax, and Falls Church make the following representations as of the date of the execution of this Agreement as a basis for the undertakings on the part of WMATA:

- A. The MDOT, the District, and the Virginia Contributors have all necessary power and authority to enter into the transactions contemplated by this Agreement and to carry out their individual obligations hereunder;
- B. The MDOT, the District, and the Virginia Contributors have individually duly authorized the execution and delivery of this Agreement;
- C. When executed and delivered by the MDOT, the District, Arlington County, Fairfax County, City of Alexandria, City of Fairfax, Falls Church and by WMATA, this Agreement will constitute the legal, valid and binding obligation of the individual entity enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, reorganization, insolvency, moratorium or other laws affecting the enforcement of creditors' rights generally;
- D. No officer, or employee of the MDOT, the District, Arlington County, Fairfax County, City of Alexandria, City of Fairfax, and Falls Church, who exercises or has exercised any functions or responsibilities over the Agreement shall have or obtain a personal or financial interest or benefit from any activity in connection with the Agreement or have an interest in any contract, subcontract or agreement with respect therewith during the term of this Agreement.

COUNTERPARTS – This Agreement may be executed in eight (8) 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 given on page one.

MARYLAND DEPARTMENT OF TRANSPORTATION

Attest:

Witness

By: _____ [Seal]
John D. Porcari
Secretary

Dated: _____

Approved as to Form and Legal Sufficiency:

BY: _____
Assistant Attorney General

Dated: _____

DISTRICT OF COLUMBIA

Attest:

Witness

By: _____ [Seal]
Anthony A. Williams
Mayor

Approved as to Form and Legal Sufficiency:

By: _____
Corporation Counsel

Dated: _____

[signatures continued on following page]

COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA

Attest:

Clerk to the County Board

By: _____ [Seal]
Chair
County Board
Arlington County, Virginia

Approved as to Form and Legal Sufficiency:

By: _____
Arlington County Attorney

Dated: _____

FAIRFAX COUNTY, VIRGINIA

Attest:

Clerk to the Board of Supervisors

By: _____ [Seal]
Chair
Board of Supervisors
Fairfax County, Virginia

Approved as to Form and Legal Sufficiency:

By: _____
Assistant County Attorney

Dated: _____

[signatures continued on following page]

CITY OF ALEXANDRIA, VIRGINIA

Attest:

City Clerk

By: _____ [Seal]
Mayor

Approved as to Form and Legal Sufficiency:

By: _____
Assistant City Attorney

Dated: _____

CITY OF FAIRFAX, VIRGINIA

Attest:

City Clerk

By: _____ [Seal]
Mayor

Approved as to Form and Legal Sufficiency:

By: _____
Assistant City Attorney

Dated: _____

[signatures continued on following page]

CITY OF FALLS CHURCH, VIRGINIA

Attest:

City Clerk

By: _____ [Seal]
Daniel McKeever
City Manager

Approved as to Form and Legal Sufficiency:

By: _____
Assistant City Attorney

Dated: _____

**WASHINGTON METROPOLITAN AREA
TRANSIT AUTHORITY**

Attest:

Harold Bartlett
Secretary

By: _____ [Seal]
Richard A. White
Chief Executive Officer

Dated: _____

Approved as to Form and Legal Sufficiency:

BY: _____
Office of General Counsel