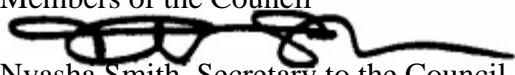


COUNCIL OF THE DISTRICT OF COLUMBIA
1350 Pennsylvania Avenue, N.W.
Washington D.C. 20004

Memorandum

To : Members of the Council

From : 
Nyasha Smith, Secretary to the Council

Date : March 19, 2018

Subject : The attached proposed funding agreement between the Washington Metropolitan Area Transit Authority (WMATA), the Maryland Department of Transportation (MDOT), and the District Department of Transportation (DDOT) for the construction of improvements to the Metrorail Station at Union Station, including improvements to the 1st Street Entrance to the Station was filed in the Office of the Secretary on March 15, 2018.

The proposed contract Washington Metropolitan Area Transit Authority (WMATA), the Maryland Department of Transportation (MDOT), and the District Department of Transportation (DDOT) {{ Fill-in the DC Official text }} was filed in the Office of the Secretary on Thursday, March 15, 2018.

The Council's 45 day review begins Friday, March 16, 2018, including Saturdays, Sundays, Council recess, and legal holidays. The proposed contract will be deemed disapproved on Sunday, April 29, 2018, unless a resolution of approval is adopted by the Council within the 45 days.

INTRODUCED BY: Chairman Mendelson at the request of the Mayor

Retained by the Council with comments from the Committee of the Whole.

Attachment

cc: General Counsel
Budget Director
Legislative Services



2010 MAR 15 PM 4: 16

OFFICE OF THE
SECRETARY

MURIEL BOWSER
MAYOR

MAR 15 2010

The Honorable Phil Mendelson, Chairman
Council of the District of Columbia
John A Wilson Building
1350 Pennsylvania Avenue, NW, Suite 504
Washington, DC 20001

Dear Chairman Mendelson:

Pursuant to D.C. Official Code §§ 1-301.01(j-1) and 1-204.51, enclosed for consideration by the Council of the District of Columbia, is a proposed funding agreement between the Washington Metropolitan Area Transit Authority (WMATA), the Maryland Department of Transportation (MDOT), and the District Department of Transportation (DDOT) for the construction of improvements to the Metrorail Station at Union Station, including improvements to the 1st Street Entrance to that Station.

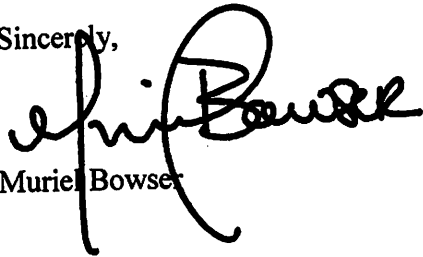
The new 1st Street Entrance location across from the train concourse escalators will greatly reduce existing conflicts between customers exiting and entering the train station and customers entering and exiting the Metrorail system. In addition the project will increase capacity at the Metrorail station mezzanine and improve the flow of passengers up to the train concourse level of Union Station.

DDOT and MDOT have committed a total of five million dollars (\$5,000,000) for this project. DDOT has committed four million three hundred thousand dollars (\$4,300,000) and MDOT has committed seven hundred thousand dollars (\$700,000). Both Maryland and the District's funding for this project will come from funds already on account at WMATA. Regarding the District, funding for this agreement will primarily come from the District of Columbia's Transit Infrastructure Investment Funds on account at WMATA. The remaining funding will come from unused capital reimbursable project funds and unused project development funds on account at WMATA.

As always, I am available to discuss any questions you may have regarding the proposed funding agreement. In order to facilitate a response to any questions you may have regarding this

proposed agreement, please have your staff contact Lauren Stephens, Public Information Officer & Procurement Liaison, at 202-724-4982. I look forward to a favorable consideration of this funding agreement.

Sincerely,

A handwritten signature in black ink, appearing to read "Muriel Bowser". The signature is written in a cursive style with a large, prominent initial "M".

Muriel Bowser

Government of the District of Columbia
Department of Transportation



Pursuant to sections 451 (a) and (b) of the District of Columbia Self-Government and Governmental Reorganization Act (87 Stat. 803, D.C. Official Code §§ 1-204.51(a) and (b)), the following Agreement summary is provided:

COUNCIL FUNDING AGREEMENT SUMMARY
(Over \$1 million and Multi-Year)

(A) The proposed Funding Agreement (Agreement) amount, unit and method of compensation, Agreement term, and type of agreement::

Proposed Contractor: Washington Metropolitan Area Transit Authority (WMATA)

Total Contract Amount: **\$5,000,000.00**
\$4,300,000.00 from District Department of Transportation
\$700,000.00 from Maryland Department of Transportation

Term of Agreement: The Agreement terminates on December 31, 2022. The work is expected to take from four to five years to complete from commencement of construction.

Type of Agreement: Fixed-Price Contract

(B) The goods or services to be provided, the methods of delivering goods or services, and any significant program changes reflected in the Agreement:

The District Department of Transportation (DDOT) will enter into an Agreement with WMATA and the State of Maryland Department of Transportation (MDOT) for the construction of improvements to the Metrorail Station at Union Station, specifically improvements to the 1st Street Entrance to that Station.

(C) The selection process, including the number of offerors, the evaluation criteria, and the evaluation results, including the price and technical components:

This Agreement is for WMATA to perform work adjacent to the Metrorail Station at Union Station. This agreement is with WMATA because WMATA has the authority to perform this work and DDOT has the authority to enter into this Agreement with WMATA under DC Official Code § 1-301.01(j-1), notwithstanding the requirements of the Procurement Practices Reform Act of 2010, effective April 8, 2011 (D.C. Law 18-371; D.C. Official Code §§ 2-351.01 et seq.).

(D) The background and qualifications of WMATA, including its organization, financial stability, personnel, and prior performance on contracts with the District government:

WMATA has successfully provided the District's transportation needs since 1976 and continues to provide the District with all necessary public transportation services. WMATA has the financial resources and the ability to perform the Agreement, along with having the ability to comply with the required delivery schedule, taking into consideration their existing business commitments. DDOT have experienced favorable performance with WMATA over the past several years. WMATA has the necessary organization, experience, accounting and operational controls and technical skills based upon recent and past history.

(E) Performance standards and the expected outcome of the proposed contract:

The Performance Standard and expectation of the Agreement is to provide the design of improvements to the Metrorail Station at Union Station, including improvements to the 1st Street Entrance to that Station and vertical access to the train station concourse.

(F) A certification that the proposed Agreement is within the appropriated budget authority for the agency for the fiscal year and is consistent with the financial plan and budget adopted in accordance with D.C. Official Code §§ 47-392.01 and 47-392.02:

A funding certification from David Clark, the Director of the Capital Budget/Capital Improvements Program for the Office of the Chief Financial Officer, is attached. \$2.415 million of DDOT's funding for this agreement will come from the District of Columbia's Transit Infrastructure Investment Funds on account at WMATA and the remaining funding will come from unused capital reimbursable project funds and unused project development funds on account at WMATA.

(G) A certification that the proposed Agreement is legally sufficient:

A certification of Legal Sufficiency from the Office of the Attorney General is attached.

(H) A certification that the proposed contractor is current with its District and federal taxes or has worked out and is current with a payment schedule approved by the District or federal government:

Not applicable

- (I) **The status of the WMATA as a certified local, small, or disadvantaged business enterprise as defined in the Small, Local, and Disadvantaged Business Enterprise Development and Assistance Act of 2005, effective October 20, 2005 (D.C. Law 16-33; D.C. Official Code § 2-218.01 *et seq.*):**

Not applicable

- (J) **Other aspects of the proposed contract that the Director considers significant:**

Any party can terminate the Agreement with a six month notice. WMATA will have 30 days to provide any outstanding invoices for work done at the time of termination.

- (K) **A statement indicating whether WMATA is currently debarred from providing services or goods to the District or federal government, the dates of the debarment, and the reasons for debarment:**

Not applicable.

- (L) **Where the Agreement, if executed, will be made available online:**

<https://comp.ddot.dc.gov/SitePages/Home.aspx#M>

**FIRST STREET ENTRANCE FUNDING
AGREEMENT BETWEEN
THE WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY,
THE DISTRICT OF COLUMBIA
AND
THE STATE OF MARYLAND**

This Agreement (“Agreement”) effective as of the _____ day of _____ 2018 (“Effective Date”) is made by and among the Washington Metropolitan Area Transit Authority (“WMATA”), an interstate compact agency with its principal offices located at 600 5th Street, N.W., Washington, D.C. 20001 and the District of Columbia acting by and through the District Department of Transportation with its principal offices located at 55 M Street, S.E., Washington, D.C. 20003 (“DDOT”), and the State of Maryland acting by and through the Maryland Department of Transportation with its principal offices located at 7201 Corporate Center Drive, Hanover, MD 21076 (“MDOT”) (each individually a “Party” and collectively the “Parties”) is entered into as of the date last signed below.

RECITALS

WHEREAS, WMATA is engaged in the design of improvements to the Metrorail Station at Union Station, including improvements to the 1st Street Entrance to that Station, (the “Transit Project”);

WHEREAS, the Parties desire to identify and authorize the use of certain funding for the Transit Project to be provided by DDOT and MDOT and to be used by WMATA; and

NOW, THEREFORE, in consideration of the promises herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. General. The foregoing Recitals are hereby incorporated in the body of this Agreement as if the same were set forth in full below.

2. Scope of Work. A more complete description of elements of the Transit Project and the anticipated costs is set forth in Exhibits A and B, respectively, attached hereto and incorporated herein by this reference.

3. Roles and Responsibilities. The Parties agree to undertake the following roles and responsibilities:

A. DDOT and MDOT shall provide quarterly in advance, funding to WMATA for all costs anticipated to be incurred in connection with the Transit Project.

(i) DDOT has identified and authorized the use of up to Four Million Three Hundred Thousand Dollars (\$4,300,000) of funding for the Transit Project in funds currently on account at WMATA; and

(ii) MDOT identified and authorized the use of up to Seven Hundred Thousand Dollars (\$700,000) of funding for the Transit Project in funds currently on account at WMATA;

(iii) Through this Agreement MDOT and DDOT have only authorized the use of funds currently on account at WMATA for the Transit Project and anticipate that the uses will be as shown on Exhibit B, provided, however, WMATA may reallocate funding across categories identified in Exhibit B as may be necessary to support the Transit Project.

B. WMATA shall fund the Transit Project from funds provided by DDOT and MDOT, and shall reduce the scope of the Transit Project, in accordance with sections 4.C and 11 of this Agreement or cancel the Transit Project and terminate this Agreement should WMATA identify a lack of funding on account at WMATA.

4. Funding Obligation.

A. DDOT and MDOT agree to fund the estimated costs of the Transit Project quarterly, on a calendar year basis, in advance as required by WMATA to continue the Transit Project for the next quarter\.

B. WMATA shall use the funding provided by DDOT and MDOT to meet the obligations undertaken by WMATA to complete the Transit Project and each payment made by WMATA will be allocated between DDOT and MDOT based on the proportionate share of the funding provided by each entity.

C. Should the Transit Project total cost exceed five million dollars (\$5,000,000), WMATA, DDOT and MDOT will consider reducing the scope of the project.

D. Notwithstanding the above, DDOT agrees to pay no more than four million, three hundred thousand dollars (\$4,300,000) and MDOT agrees to pay no more than Seven Hundred Thousand Dollars (\$700,000) to WMATA to carry out the terms of this Agreement.

5. Audit and Inspection. Each Party acknowledges and agrees that each Party may inspect, copy and/or audit all data and records (in hard copy and/or electronic format) belonging to the other Party related in any way to this Agreement that are not privileged or confidential under law. Each Party agrees to maintain all such data and records throughout the term of this Agreement and for three (3) years thereafter.

6. Term. This Agreement shall be effective on the date the last signature is affixed hereto, and shall continue in effect until December 31, 2022.

7. Notices. All notices and other communications under this Agreement shall be in writing and shall be deemed duly given when:

- (i) personally delivered; or

(ii) sent by a commercial overnight courier both of which methods shall require a signed receipt upon delivery:

If to DDOT: District Department of Transportation
55 M Street, S.E.
Washington, DC 20003
Attention: Steve Strauss
Email: Steve.Strauss@dc.gov

With copy to: District Department of Transportation
55 M Street, S.E., 5th Floor
Washington, DC 20003
Attention: Cleve Cleveland, Associate Director
Transit Delivery Division, DDOT
Email: Cleve.Cleveland@dc.gov

If to MDOT: Maryland Department of Transportation
7201 Corporate Center
Hanover, MD 21076
Attention: Charles C. Glass, Ph.D. P.E, Assistant Secretary
Transportation Policy Analysis and Planning
Email: cglass@mdot.state.md.us

If to WMATA: WMATA, Office of Design and Construction
600 Fifth Street, NW
Washington, DC 20001
Attn: Union Station 1st Street Entrance

With copy to: WMATA, Office of General Counsel
600 Fifth Street, NW
Washington, DC 20001
Attn: Union Station Reimbursable Agreement

8. General Terms.

A. This Agreement contains the entire agreement between the Parties regarding the subject matter of this Agreement. There are no promises, agreements, conditions, undertakings, warranties or representations, oral or written, express or implied, between them, relating to this subject matter, other than as herein set forth. This Agreement is intended by the Parties to be an integration of all prior or contemporaneous promises, agreements, conditions, negotiations and undertakings between them relating to this subject matter. This Agreement may not be modified orally or in any other manner than by an agreement in writing signed by the Parties or their respective successors in interest.

B. All questions with respect to the construction of this Agreement and the rights and liabilities of the parties shall be determined in accordance with the laws of the District of Columbia, excluding, however, choice of laws rules.

C. All the obligations contained in this Agreement shall be binding upon and inure to the benefit of the respective legal representatives, successors and assigns of each Party, provided that no Party may assign this Agreement without the consent in writing of the other Party hereto. This Agreement may be executed in one or more counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument. The Parties agree that if the signature of either Party to this Agreement is not an original but is a digital, mechanical, or electronic reproduction (such as, but not limited to, a photocopy, fax, email, PDF, Adobe image, jpeg, telegram, telex or telecopy), then such digital, mechanical or electronic reproduction shall be as enforceable, valid and binding as, and the legal equivalent to, an authentic and traditional in-on-paper original wet signature penned manually by its signatory.

D. If any term, covenant or condition of this Agreement or its application to any person or circumstances shall be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected, and each term shall be valid and enforceable to the fullest extent permitted by law.

E. Nothing contained in this Agreement shall be construed in any way to create a partnership, joint venture or other relationship between the Parties, it being understood that each Party shall be and remain a separate and independent entity for all purposes hereof.

F. Exhibits A and B attached hereto shall each constitute an integral part hereof and are hereby incorporated herein by this reference, in the same manner as if they were set forth in full in the body of this Agreement.

G. The Parties and their signatories warrant that they have the full right, power and authority to execute, acknowledge and deliver this Agreement and to perform the transactions contemplated by this Agreement. The execution, acknowledgement and delivery of this Agreement by the Parties and the performance by the Parties has been duly and validly authorized by all necessary legislative and corporate action.

H. The Parties acknowledge and agree that nothing in this Agreement creates a financial obligation in anticipation of an appropriation and that all provisions of this Agreement are and shall remain subject to the provisions of (i) the federal Anti-Deficiency Act, 31 U.S.C. §§ 1341, 1342, 1349, 1351, (ii) the District of Columbia Anti-deficiency Act, D.C. Official Code §§ 47-355.01-355.08, (iii) D.C. Official Code § 47-105, and (iv) D.C. Official Code § 1-204.46, as the foregoing statutes may be amended from time to time, regardless of whether a particular obligation has been expressly so conditioned. Further, nothing in this Agreement shall be construed as binding on the State of Maryland to expend in any one fiscal year, any sum in excess of the appropriations of the General Assembly of Maryland.

9. Disputes Resolution.

A. Negotiation. The Parties will attempt in good faith to resolve any dispute, claim or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity of this Agreement, including this dispute resolution provision (a "Dispute") promptly by negotiation.

B. Litigation of All Other Disputes. Any Dispute not resolved by Negotiation shall be subject to judicial resolution unless the Parties agree to refer the Dispute to arbitration or mediation. Any claims against the District of Columbia shall be brought in the federal courts located in the District of Columbia; provided, however, in the event that the federal courts in the District of Columbia are unable or unwilling to adjudicate any such proceedings, then the parties, agree to submit to the exclusive jurisdiction of the local courts located in the District of Columbia for such proceedings.

10. Termination.

A. Any Party may terminate this MOU in whole or in part prior to the end of the term specified in section 6 of this Agreement by giving sixty (60) calendar days advance written notice to the other Parties.

B. In the event of termination of the MOU, WMATA shall, within thirty days provide an invoice for outstanding incurred expenses. In the event that this invoice shows a remaining balance of DDOT and MDOT funding, DDOT and MDOT shall each provide instruction to WMATA regarding the disposition of its share of the remaining balance.

C. WMATA shall, not later than the October 31st (occurring after termination) issue a check payable to the District of Columbia Treasurer and a check payable to the Maryland Department of Transportation for the remaining balance, allocated between District of Columbia and State of Maryland based on the proportionate share of the funding provided by each entity. Any account reconciliation performed by WMATA shall be shared with DDOT and MDOT. To the extent that DDOT has allocated Joint Development Proceeds (sometimes referred to as Transit Infrastructure Investment Funding) to this Project, the provisions of this paragraph 10.C. shall not apply to those funds and those funds shall remain at WMATA to be used on another project at the discretion of the District.

11. Modifications. This MOU may be amended or modified only upon prior written agreement of the Parties. Amendments or modifications shall be dated and signed by the authorized representatives of the Parties. The exercise of an amendment or modification is subject to the availability of funds at the time of the amendment or modification.

[Signatures appear on following page.]

IN WITNESS THEREOF, the Parties hereto have caused this **FIRST STREET ENTRANCE FUNDING AGREEMENT** to be executed by their duly authorized officials.

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

By: _____ Date: _____
Name
Title

Approved as to legal sufficiency by:

Office of General Counsel
Washington Metropolitan Area Transit Authority

DISTRICT OF COLUMBIA

By: _____ Date: _____
Jeffrey M. Marootian
Director

Approved as to legal sufficiency by:

Assistant General Counsel

STATE OF MARYLAND

By: _____ Date: _____
Name
Title

Approved as to legal sufficiency by:

Assistant Attorney General

Appendix A
Scope of Work
Union Station First Street Entrance and North Mezzanine Project

The transit project will (1) relocate the First Street NE entrance to align with the escalator bank connecting to the Amtrak train concourse above, (2) add stairs adjacent to the escalator bank, and (3) add three faregates to the existing array and relocate existing fare card vendors.

The 100% plans and specifications were completed in 2014, and WMATA received approval of them from DDOT in February 2017. Below is a summary of the scope of work.

1. Relocation of First Street Entrance – work involves:
 - a. Remove existing ramp, fill to grade and install new paver tiles
 - b. Remove existing interior glass wall
 - c. Remove portion of existing sidewalk
 - d. Remove portion of existing exterior wall for new entrance opening
 - e. Remove portion of existing exterior wall for new glass openings
 - f. Build new stair and ramp on a portion of the 1 Street NE sidewalk
 - g. Build new steel and glass canopy over the stair and ramp
 - h. Install new glass partitions in former entrance opening and two other openings
 - i. Install glass partitions including framing structures
 - j. Installing new security gate at new entrance opening
 - k. New CCTV
 - l. Associated electrical requirements

2. New Mezzanine-to-Concourse Stair – work involves:
 - a. Remove and repair existing slab to receive new stair structure at the concourse level
 - b. Install new security gate and fence at the concourse level
 - c. Remove a portion of the existing parapet wall at the concourse level
 - d. Relocate existing fare card vendors at the mezzanine level
 - e. Build new stair including structural support columns

3. Additional Faregates and Relocation of Fare Card Vendors – work involves:
 - a. Remove portions of existing station wall
 - b. Relocate mechanical equipment
 - c. Construct new concrete partition walls
 - d. Install new paver tiles
 - e. Install new duct for power and communication for three new WMATA-provided faregates
 - f. Associated mechanical and electrical requirements

4. Construction Management Costs.

Appendix B
Budget Estimate
Union Station First Street Entrance and North Mezzanine Project

General Contractor/Construction Costs	\$4,400,000
Construction Management Costs	250,000
WMATA Costs	350,000
Total Estimate	5,000,000

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the Chief Financial Officer



2018 MAR 16 PM 12:26

Office of Budget and Planning

OFFICE OF THE
SECRETARY

March 9, 2018

This memorandum provides funding certification for \$4.3 million in funding for the District's portion of a \$5 million contract for construction improvements to the Union Station Metrorail entrance on 1st Street.

The funding provided will consist of \$2.415 million from the District of Columbia's Transit Infrastructure Investment Funds, which is on account at WMATA, and \$1.885 million from unused project development funds, which are also on account at WMATA. WMATA will draw the available \$4.3 million of funds from the two specified District accounts as needed for expenditures.

The required \$4.3 million of budget is hereby certified and available for use as presented through the proposed contract.

A handwritten signature in black ink, appearing to read 'David A. Clark', with several loops and flourishes.

David A. Clark
Director, Capital Budget/Capital Improvements Program
Office of the Chief Financial Officer – Office of Budget and Planning
Washington DC 20004

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE ATTORNEY GENERAL



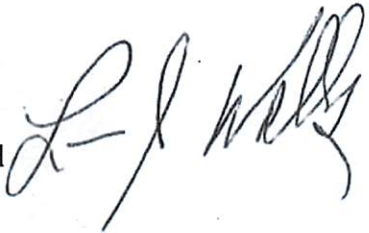
ATTORNEY GENERAL
KARL A. RACINE

Commercial Division

MEMORANDUM

TO: Janet Robins
Deputy Attorney General
Legal Counsel Division

THROUGH: David Fisher
Deputy Attorney General
Commercial Division

FROM: Lawrence Wolk
Assistant Attorney General
Commercial Division 

DATE: January 26, 2018

SUBJECT: First Street Entrance Funding Agreement (“Funding Agreement”) among the District of Columbia (“District”) acting by and through the District Department of Transportation (“DDOT”), the State of Maryland acting by and through the Maryland Department of Transportation (“Maryland”), and the Washington Metropolitan Area Transit Authority (“WMATA”)

This is to Certify that the Commercial Division of the Office of the Attorney General has examined the following documents provided by DDOT (“Transaction Documents”) in connection with the submission of the captioned agreement to Council for approval under D.C. Official Code Sec. 1-204.51(a) and (b) and Sec. 1-301.01(j-l):

1. Unsigned Funding Agreement among the District, Maryland, and WMATA; and
2. Unsigned Council Funding Agreement Summary

After a detailed examination of the Transaction Documents, we conclude that they do not contravene or violate any known legal requirements, obligations or commitments of the District government. Accordingly, in their present form as provided to us, we discern no reason to determine that the Transaction Documents are not legally sufficient, and the Transaction Documents are therefore approved for legal sufficiency.

This Office has not reviewed any transactional documentation other than the above Transaction Documents, and provides no legal opinion about any transactional documentation other than the above Transaction Documents.

If you have any questions, please do not hesitate to call me at 202-724-5094.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE ATTORNEY GENERAL

ATTORNEY GENERAL
KARL A. RACINE



Legal Counsel Division

MEMORANDUM

TO: Alana Intreiri
Executive Director
Office of Policy and Legislative Affairs


FROM: Janet M. Robins
Deputy Attorney General
Legal Counsel Division

DATE: February 2, 2018

SUBJECT: Washington Metropolitan Area Transit Authority Union Station Funding
Agreement Approval Resolution of 2018
(AE-18-048)

This is to Certify that this Office has reviewed the Resolution entitled the "Washington Metropolitan Area Transit Authority Union Station Funding Agreement Approval Resolution of 2018" and the accompanying unsigned transactional documentation (Documents) and determined that the Resolution and the Documents are legally unobjectionable.

If you have any questions, please do not hesitate to call me at 724-5524.


Janet M. Robins