

**LOCAL CAPITAL FUNDING AGREEMENT**

**By and Between**

**The District of Columbia**

**And**

**The Washington Metropolitan Area Transit Authority**

## LOCAL CAPITAL FUNDING AGREEMENT

THIS LOCAL CAPITAL FUNDING AGREEMENT (DCLCFA) is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2021, by and between **the Washington Metropolitan Area Transit Authority (WMATA)**, a body corporate and politic created by interstate compact between Maryland, Virginia, and the District of Columbia; **and the District of Columbia**, a municipal corporation (**District of Columbia**).

### RECITALS

1. WMATA and the District of Columbia, the State of Maryland; Arlington County, Virginia; Fairfax County, Virginia; County of Loudoun, Virginia; the City of Alexandria, Virginia; the City of Fairfax, Virginia; and the City of Falls Church, Virginia are parties to that 2022 to 2027 Capital Funding Agreement (CFA).

2. The District of Columbia requires a separate agreement to address certain statutory requirements applicable solely to the District of Columbia.

3. The Parties to this DCLCFA intend that this agreement be read as controlling over any obligations, roles, or responsibilities undertaken by the District of Columbia in the CFA.

NOW, THEREFORE, in consideration of the mutual promises and obligations hereinafter set forth, WMATA and the District of Columbia hereby enter into this Local Capital Funding Agreement, as follows:

#### **I. Incorporation by Reference**

- a. The CFA is hereby incorporated by reference as a binding agreement between the Parties, subject to the terms and conditions contained in this DCLCFA.

#### **II. Definitions**

- a. Unless a specific definition is provided in this DCLCFA all terms used in this agreement shall have the same definition as found in the CFA, unless context demands otherwise.

### **III. Limitations on District of Columbia CFA Obligations**

The Parties to this DCLCFA agree that the obligations undertaken by the District of Columbia in the CFA are subject to the following conditions and requirements:

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

- ii. During the term of this Agreement, the Mayor of the District of Columbia or other appropriate official shall, for each fiscal period, include in the appropriate budget application submitted to the Council of the District of Columbia the amount necessary to fund the District's known potential financial obligations under this Agreement for such fiscal period. In addition, in the event that the District proposes to issue bonds or notes to refund the bonds subject to this Agreement, the Mayor of the District of Columbia or other appropriate official, if any payments under this Agreement have not been made, shall include in a budget application submitted to the Council of the District of Columbia the amount necessary to fund the District's known unpaid amounts. In the event that a request for such appropriations is excluded from the budget approved by the Council for the applicable fiscal year, or if the Congress of the United States appropriates funds for the District for the applicable fiscal year and no appropriation is made by Congress to pay any amount under this Agreement, and in the event appropriated funds for such purposes are not otherwise lawfully available, the District will not be liable to make any payment under this Agreement upon the expiration of any then-existing appropriation.
- iii. Notwithstanding the foregoing, no officer, employee, director, member or other natural person or agent of the District shall have any personal liability in connection with the breach of the provisions of this Section or in the event of a Default by the District under this Agreement.

- iv. This Agreement shall not constitute an indebtedness of the District nor shall it constitute an obligation for which the District is obligated to levy or pledge any form of taxation or for which the District has levied or pledged any form of taxation. No District of Columbia Official or employee is authorized to obligate or expend any amount under this Agreement unless such amount has been lawfully appropriated and is lawfully available.

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

- v. Notwithstanding anything to the contrary herein, the maximum amount of the District of Columbia's financial share of the cost of the six-year Allocated Contribution for WMATA's Fiscal Year 2022 through 2027 Capital Improvement Program (CIP) as initially adopted by the Board of Directors and subsequently modified by the Board of Directors in succeeding years of this Agreement shall not exceed \$631,346,120. The District's Allocated Contribution may not be increased above the aggregate amount of \$631,346,120 except by an amendment to this DCLCFA. Payments for JAC Debt in place as of the date of this agreement, or as maybe issued at the request of the District after the date of this agreement are not included in the cap created by this DCLCFA.

- b. **Use of DC Funding** -- DC funding may be used only for those projects in the CIP which meet the definition of “Capital Project” and/or “Capital Program” contained in the CFA.

#### **IV. RECITALS**

The Recitals set forth in this Agreement are material parts of this Agreement and are binding on the Parties to the same extent as the other terms and conditions hereof.

#### **V. TERM**

- a. **Effective Date.** This DCLCFA shall take effect on July 1, 2021.
- b. The term of this DCLCFA shall begin on the Effective Date and shall terminate on June 30, 2027, unless amended by the Parties in writing. Where there are projects which have been started during the term of this DCLCFA or where bonds or other financial instruments have been issued pursuant to the 2010 CFA for which the District is obliged to make payments, the District agrees to continue to make its Allocated Contribution for those projects or debt service until the conclusion of the projects or the final maturity of the bonds or financial instruments.

#### **VI. NO THIRD-PARTY BENEFICIARIES**

The Parties to this Agreement do not intend any non-signatory to this Agreement or any other third party to be a third-party beneficiary to this Agreement, nor do the Parties intend for any such third party to have any rights or benefits under this Agreement or to have standing to bring an action or claim in any court or other forum to enforce any provision of this Agreement.

#### **VII. AMENDMENTS**

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

## VIII. NOTICES

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

To the District of Columbia:

Director  
District Department of  
Transportation  
250 M St. SE  
Washington, D.C. 20003

To the Washington Metropolitan Area  
Transit Authority:

General Manager and Chief  
Executive Officer  
600 Fifth Street, N.W.,  
Washington, D.C. 20001

With copies to:

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

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

with a copy to:

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

**IX. SUCCESSORS AND ASSIGNS**

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

**X. NO DEBT GUARANTEES**

The District of Columbia does not guarantee the debt or any other obligation of WMATA; the Federal Government; the State of Maryland; Arlington County, Virginia; Fairfax County, Virginia; County of Loudoun, Virginia; the City of Alexandria, Virginia; the City of Fairfax, Virginia; or the City of Falls Church, Virginia.

**XI. REQUIREMENT FOR ANNUAL APPROPRIATIONS**

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

**XII. COUNTERPARTS**

This Agreement may be executed in two (2) identical counterparts, each of which shall constitute an original and all of which shall constitute, collectively, one agreement.



IN WITNESS WHEREOF, WMATA and the District of Columbia have executed this Agreement  
on this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

WASHINGTON METROPOLITAN AREA  
TRANSIT AUTHORITY

Attest:

By:

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Thomas J. Webster, Executive Vice President  
Strategy, Planning and Program Management

DISTRICT OF COLUMBIA

Attest:

*Kimberly Bassett*  
\_\_\_\_\_  
Witness

By: *Philip Bowser*  
\_\_\_\_\_  
Mayor