

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (MOU) made and entered into this 13th day of September, 2010, by and between the VIRGINIA DEPARTMENT OF RAIL AND PUBLIC TRANSPORTATION, the MARYLAND DEPARTMENT OF TRANSPORTATION, and the DISTRICT OF COLUMBIA DEPARTMENT OF TRANSPORTATION, hereinafter collectively referred to as the “Parties”.

WITNESSETH THAT:

WHEREAS, Section 3028 of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) requires that the Federal Transit Administration (FTA) implement the requirements of 45 U.S.C. 5330 known as 49 C.F.R. Part 659 Regulation (as revised on April 29, 2005), requiring states to designate an agency to oversee the safety of rail fixed guideway systems operating in the State; and

WHEREAS, in the interest of public safety and security the Parties hereto have agreed to accept the responsibility to perform the designated oversight requirements and have agreed to participate collectively and for the common good to implement the requirements of 49 C.F.R. Part 659; and

WHEREAS, the Secretary of Transportation of the Commonwealth of Virginia has designated the Virginia Department of Rail and Public Transportation, and the Secretary of Transportation of the State of Maryland has designated the Maryland Department of Transportation, and the Director of the District of Columbia Department of Transportation has designated the Progressive Transportation Services Administration [under authority of D.C. Official Code §§ 9-1109.01 – 9-1109.07 (D.C. Law 11-261); Mayor’s Order 97-13 (January 24, 1997); and D.C. Official Code §§ 50-921.02(b) and 50-921.05 (D.C. Law 14-137)] - each as the agency responsible for the safety oversight required by 49 C.F.R. Part 659; and

WHEREAS, the Washington Metropolitan Area Transit Authority (WMATA) operates the Metrorail system, a rail fixed guideway system that operates within and between the Commonwealth of Virginia, the State of Maryland and the District of Columbia, whose collective action created WMATA by means of the WMATA compact; and

WHEREAS, it is mutually agreed by the Parties hereto to create a single oversight entity known as the TRI-STATE OVERSIGHT COMMITTEE (TOC) that is composed of representatives of the three designated agencies and able to effectively carry out its oversight duties transparently, independently, and with adequate authority; and

WHEREAS, under 49 C.F.R. Part 659, and the information noted above, TOC has the right and duty to perform safety and security oversight over WMATA; and

WHEREAS, an original Memorandum of Understanding between the same parties was entered into on March 7, 1997, and amended in December, 2008, the TOC has been in continuous operation performing safety and security oversight of the WMATA Metrorail system since that date, and certain changes to the MOU are required. As such, this MOU replaces the MOU of March 7, 1997.

NOW, THEREFORE, the Parties hereto, each in consideration of the promises and undertakings of the others as herein provided, do hereby covenant and agree, each with the other, as follows:

- §1. The TOC shall serve under the guidance and direction of the TOC Executive Committee. The TOC Executive Committee shall be composed of the Secretary of Transportation of the Commonwealth of Virginia, the Secretary of Transportation of the State of Maryland, and the Director of the District of Columbia Department of Transportation. These members of the Executive Committee shall have the right to appoint and utilize alternates as they deem appropriate in carrying out TOC Executive Committee responsibilities. The TOC Executive Committee shall meet to review TOC safety and security oversight issues on a schedule as it directs, and generally on a quarterly basis. The TOC Executive Committee may develop an agenda for its meetings and take those actions necessary to provide executive leadership to the TOC during the meetings. The TOC Chair shall be the primary point of contact between the TOC Executive Committee and the appointed TOC members.
- §2. The TOC shall be composed of and guided by six members, consisting of two representatives from each of the Parties. Each of the Parties shall have sole jurisdiction and discretion to appoint their respective members to serve on the TOC. One appointed member from each of the Parties shall serve as a full-time TOC representative, while the other may serve as a full-time or part-time TOC representative. Each of the parties may also, at their sole discretion, appoint up to two alternate representative members to serve on the TOC. When serving as the substitute for a TOC member, these members will function in the same role as the TOC member and may serve at the discretion of the respective jurisdiction.
- §3. Three members of the TOC, one from each designated agency, shall constitute a quorum. The affirmative vote of a majority of the TOC shall be necessary to take any official action. A majority shall include at least one member appointed by each Party. Scheduled meeting dates shall be established prior to the beginning of each calendar year to allow for formal meetings approximately quarterly with additional meetings and teleconferences scheduled, as required and agreed to by the TOC. All meeting dates may be revised by the TOC as needed.
- §4. The nominee for TOC Chair shall be approved by the TOC membership by a majority vote of the TOC. The TOC Chair shall serve for a two-year period beginning with the second quarterly meeting of the year, and the nominee for TOC Chair shall rotate among the Parties as follows: 2010-VA, 2012-MD, 2014-DC, and so on. The TOC Chair shall be responsible for specific duties and responsibilities determined by and agreed to by the TOC. In the event of an absence by the TOC Chair, the TOC Vice-Chair shall serve as the TOC Chair during such absence. The TOC Chair shall be required to serve in a full-time capacity in order to perform the critical duties of the TOC Chair.
- §5. The TOC Chair shall have the executive authority to: (a) elevate critical unresolved WMATA safety concerns to the TOC Executive Committee and communicate TOC Executive Committee decisions and requests on their behalf to WMATA; (b) draft and

approve correspondence relating to official TOC communications with WMATA; (c) request WMATA to initiate investigations of accidents and hazardous conditions on behalf of the TOC; (d) address immediate and time-sensitive safety situations or incidents at WMATA which fall under TOC jurisdiction; (e) meet with appropriate WMATA personnel in order address Findings, Corrective Action Plans, and other key issues; and (f) take temporary actions on behalf of the TOC, including closing out Corrective Action Plans, until such time as a quorum of the TOC can take official actions.

- §6. The nominee for TOC Vice-Chair shall be one of the two members serving as members from the jurisdiction which is scheduled to next provide the Chair for the TOC, in order to ease the transition of the TOC Chair from year to year. The schedule for which of the three jurisdictions is to provide the TOC Chair is noted in § 4 above. The TOC Vice-Chair shall be approved by a majority vote of the TOC at the same meeting at which the nominee for TOC Chair is approved, also as noted in § 4 above. The nominee for TOC Vice-Chair shall rotate among the parties as follows: 2010-MD, 2012-DC, 2014-VA, and so on.
- §7. Each Party to the TOC shall have the authority to temporarily assign TOC-related responsibilities and authority to a non-TOC member from that jurisdiction, in the event of a vacancy by a member from that jurisdiction. This authority may be assigned by the respective Party's remaining TOC member. Such authority shall include, but not be limited to, the right to be included as a quorum for meeting purposes and to vote on TOC issues. In this paragraph, "temporary" and "temporarily" shall be defined as the period of time necessary for that jurisdiction to formally fill the vacant TOC member position, as described in §2.
- §8. When there is the need for a jurisdiction to fill a vacant TOC member position, each jurisdiction shall attempt to do so in as expeditious a manner as possible so as not to adversely affect the operation of the TOC.
- §9. The TOC shall have the authority to hire a consultant to perform specified work that will allow the TOC to make informed determinations, findings, decisions and recommendations. All actual costs associated with contracting for consultant services shall be the responsibility of the TOC, and allocation of costs shall be on an equal one-third appointment to each of the Parties. Each Party's own internal administrative costs shall not be included in the costs allocated to the TOC. Each Party shall be responsible for obtaining its share of funds to defray the costs of the TOC through each Party's normal budget approval process.
- §10. The TOC shall be responsible for the preparation and adoption of a System Safety and Security Program Standards and Procedures (PS&P) manual, Internal Operations manuals, and other such guidance documents that comply with the minimum requirements of 49 C.F.R. Part 659, as amended, and which it deems appropriate for carrying out its safety and security oversight mission.
- §11. The TOC shall require WMATA, as the transit agency, to create a System Safety Program Plan and a separate Security and Emergency Preparedness Plan that comply with the

TOC's PS&P. These Plans shall be reviewed by WMATA annually and, if any changes are made, submitted to TOC for review and approval, within a time frame specified by the TOC.

- §12. The TOC shall monitor the implementation of the System Safety Program Plan and Security and Emergency Preparedness Plan and require updates or modifications as deemed necessary, within a time frame specified by the TOC.
- §13. The TOC shall require WMATA to conduct internal safety and security audits in accordance with TOC PS&P, and submit annual safety and security audit reports to the TOC, within a time frame specified by the TOC.
- §14. The TOC shall require WMATA to report to the TOC the occurrence of accidents, incidents, and hazards as defined in TOC's PS&P, within a time frame specified by the TOC. The TOC shall require WMATA to establish procedures for investigating accidents, incidents, and hazards, and those procedures shall be subject to review and approval by the TOC. The TOC shall conduct, or cause to be conducted, investigations of accidents, incidents, and hazards and shall have full access to all information and evidence collected by WMATA and/or its agents.
- §15. The TOC shall require WMATA to develop Corrective Action Plans for TOC review and approval that minimize, control, correct or eliminate deficiencies identified in accident or incident investigations, internal audits or reviews, external audits or reviews including the TOC's Triennial Safety and Security Review, the WMATA hazard management program, and other sources identifying deficiencies needing corrective action, in a time frame specified by the TOC.
- §16. To the greatest extent possible, and in conformance with the governing applicable laws of its three member jurisdictions, the TOC shall keep all accident, incident, and hazard investigation reports and Security Plans confidential. This applies to all investigation reports and Security Plans regardless if they are developed directly by the TOC and/or its authorized agents, or developed at the direction of the TOC by WMATA (and its agents), in accordance with TOC's PS&P.
- §17. If a request for information related to documents which are defined as confidential by the TOC in § 16 above is made, the following provision shall govern. The TOC shall treat all investigation reports and Security Plans as confidential and shall not release such documents, without compelling necessity, as defined by the TOC, or if required by law. If an action in law is instituted within one of the three TOC jurisdictions against the TOC for the release of such confidential information, the prevailing and applicable laws of the jurisdiction (DC, MD, or VA) in which the action is instituted shall govern. If legal actions are instituted in more than one jurisdiction, then the TOC, in consultation with the TOC Executive Committee and legal counsel, shall determine an appropriate course of action for the potential defense of such action.
- §18. If a TOC member, while serving as a duly authorized representative of the TOC and acting in good faith, is individually named in a legal proceeding, then their appointing

jurisdiction shall be responsible for their legal defense. This assumption of liability by the appointing jurisdiction shall be equivalent to any legal defense which the representative would be entitled to as an employee and/or agent of their appointing jurisdiction, and in accordance with any appropriate statutes governing the employer/employee relationship. If the TOC as an oversight organization is named in a legal proceeding, then each jurisdiction shall provide counsel to represent its interests in such proceeding. Each jurisdiction shall be responsible for its own costs associated with defending the TOC in a proceeding. The three TOC jurisdictions, at their discretion and by mutual agreement, may also appoint one jurisdiction to represent the interests of the TOC or retain special counsel, as the jurisdictions deem appropriate. The costs for any such joint representation shall be borne equally by the three jurisdictions, except for the salaries of government employees of the member jurisdictions, unless the TOC Executive Committee approves an alternative arrangement.

- §19. Nothing in this Memorandum of Understanding shall require TOC to provide, or prohibit TOC from providing oversight of a rail fixed guideway system (subject to 49 C.F.R. Part 659) other than WMATA. TOC shall also have the flexibility to apportion costs, including any consultant costs, on some basis other than equal shares for rail systems other than WMATA. If a member of the TOC were to request that the TOC conduct oversight of a non-WMATA rail system, after the member obtains any necessary legislative authority (if applicable), then the TOC may require a separate agreement and/or MOU to govern the relationship between the TOC and the jurisdiction(s) in which that rail system is located.
- §20. This Memorandum of Understanding may be amended in writing, as conditions warrant, if agreed to by each of the participating Parties.
- §21. Participation in the TOC may be terminated by any Party upon 60 days written notice to all other Parties, provided that any Party withdrawing from participation according to the terms of this section shall be responsible for its prorata share of any costs actually incurred up until the effective date of the termination, absent the approval of an alternative financial arrangement. If participation by any Party is terminated, FTA shall be promptly notified in writing by the remaining Parties to the TOC.
- §22. A TOC representative may terminate their role and participation in the TOC upon written notice to the TOC member's respective appointing authority, and to all other remaining TOC members. The respective appointing authority shall be responsible for appointing a replacement member in a timely fashion.
- §23. TOC and/or the TOC Executive Committee shall hold formal meetings with the WMATA General Manager on at least a quarterly basis to review significant safety and security events, and to assess the effectiveness of WMATA's safety and security policies, programs, and performance.
- §24. TOC and/or the TOC Executive Committee shall attend a formal presentation by WMATA on safety issues and performance to the WMATA Board of Directors on an annual basis.

- §25. TOC shall develop and provide updates on its safety and security oversight efforts of WMATA to the WMATA Board of Directors on at least an annual basis. TOC, at its discretion, may provide such updates at the WMATA Board of Directors' regularly scheduled monthly meetings.
- §26. TOC shall hold formal and informal meetings with WMATA in accordance with this MOU and with TOC's PS&P. Meeting minutes shall be action-based, with recorded votes, clear deliverables and assignments of responsibility. TOC shall strive for a transparent oversight role that is accessible to the public. TOC may hold public informational meetings as the TOC deems necessary.
- §27. Because a blend of knowledge, skills and experience among the entire TOC membership is essential to a credible oversight program and role, the TOC Executive Committee shall establish appropriate qualifications and requirements for TOC membership, including programmatic and management oversight experience; safety program experience; and industry-specific experience. The TOC Executive Committee shall require that all TOC members, as well as all consultants, complete any training and/or certification programs required by program policy, and/or federal and state requirements.
- §28. The TOC shall designate a single individual responsible for TOC and TOC Executive Committee meeting minutes.
- §29. The TOC shall develop and maintain a publicly available website that provides access to oversight program background information, relevant program documentation, and the ability to contact the TOC.
- §30. The TOC, and its duly authorized agents, shall be granted access to the WMATA operating system, rights-of-way, and facilities in a manner agreed upon in advance by TOC and WMATA.
- §31. The TOC shall work directly with the WMATA Chief Safety Officer and Chief of Metro Transit Police in implementing its safety and security oversight role. If at any point in carrying out its defined mission the TOC believes that WMATA is not meeting its requirements under law, regulation or this MOU, or is not acting in good faith, the TOC Executive Committee, in consultation with the TOC, may communicate its concerns to the WMATA General Manager and Board of Directors in a manner deemed necessary to resolve such outstanding issues. In the event that attempts to resolve any issues between the TOC and WMATA have not been effective, the TOC Executive Committee reserves the right to take any action that is permitted by law, including, but not limited to, the delay, suspension or cancelling of capital funding to WMATA.
- §32. At the discretion of the TOC Executive Committee, the TOC shall have the authority to make use of an office located near a Metro Rail line that is provided by one of the three jurisdictions in an existing facility. The jurisdiction providing such space, equipment, and supplies may determine the cost of providing these materials, which may be duly shared with the other two jurisdictions.

§33. The TOC shall meet with the TOC Executive Committee on a schedule as established by the Executive Committee, to review monthly reports that may identify current activities, outstanding safety issues, unresolved deficient conditions at WMATA, status of accident and incident investigations, and updates on the implementation of Corrective Action Plans.

This area intentionally left blank

IN WITNESS WHEREOF, this Memorandum of Understanding replaces the previous 1997 MOU and has been executed the day and year heretofore set out on the part of the Virginia Department of Rail and Public Transportation, the Maryland Department of Transportation and the District of Columbia Department of Transportation by authority duly given.

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF RAIL AND
PUBLIC TRANSPORTATION

BY: Shelma Drake
DIRECTOR

ATTEST:
[Signature]

STATE OF MARYLAND
DEPARTMENT OF TRANSPORTATION

BY: [Signature]
SECRETARY OF TRANSPORTATION

ATTEST:
[Signature]

DISTRICT OF COLUMBIA
DEPARTMENT OF TRANSPORTATION

BY: [Signature]
DIRECTOR

ATTEST:
Steve Strauss

IN WITNESS WHEREOF, this Memorandum of Understanding replaces the previous 1997 MOU and has been executed the day and year heretofore set out on the part of the Virginia Department of Rail and Public Transportation, the Maryland Department of Transportation and the District of Columbia Department of Transportation by authority duly given.

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF RAIL AND
PUBLIC TRANSPORTATION

BY: *Thelma Drake*
DIRECTOR

ATTEST: *[Signature]*

STATE OF MARYLAND
DEPARTMENT OF TRANSPORTATION

BY: *[Signature]*
SECRETARY OF TRANSPORTATION

ATTEST: *[Signature]*

DISTRICT OF COLUMBIA
DEPARTMENT OF TRANSPORTATION

BY: *[Signature]*
DIRECTOR

ATTEST: *Steve Strauss*

IN WITNESS WHEREOF, this Memorandum of Understanding replaces the previous 1997 MOU and has been executed the day and year heretofore set out on the part of the Virginia Department of Rail and Public Transportation, the Maryland Department of Transportation and the District of Columbia Department of Transportation by authority duly given.

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF RAIL AND
PUBLIC TRANSPORTATION

BY: Thelma Drake
DIRECTOR

ATTEST:

[Signature]

STATE OF MARYLAND
DEPARTMENT OF TRANSPORTATION

BY: [Signature]
SECRETARY OF TRANSPORTATION

ATTEST:

[Signature]

DISTRICT OF COLUMBIA
DEPARTMENT OF TRANSPORTATION

BY: [Signature]
DIRECTOR

ATTEST:

Steve Strawn