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Supreme Court of Appeals
Richmond, Va.

# Record No. 7214

## PETITION FOR A PEREMPTORY WRIT OF MANDAMUS

In the
Supreme Court of Appeals of Virginia
at Richmond

BOARD OF SUPERVISORS OF FAIRFAX COUNTY

v.

CARLTON C. MASSEY, COUNTY EXECUTIVE OF FAIRFAX COUNTY

RULE 5:12—BRIEFS

§5. Number of Copies. Twenty-five copies of each brief shall be filed with the clerk of this Court and three copies shall be mailed or delivered by counsel to each other counsel as defined in Rule 1:13 on or before the day on which the brief is filed.

§6. Size and Type. Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

HOWARD G. TURNER, Clerk.

Court opens at 9:30 a.m.; Adjourns at 1:00 p.m.

IN THE

# Supreme Court of Appeals of Virginia

AT RICHMOND

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**Record No. 7214**

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VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Tuesday the 29th day of April, 1969.

BOARD OF SUPERVISORS OF FAIRFAX COUNTY,
Petitioner,

*against*

CARLTON C. MASSEY, COUNTY EXECUTIVE OF FAIRFAX COUNTY,
Respondent.

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Upon a Petition for a Peremptory Writ of Mandamus

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On April 25, 1969, came the Board of Supervisors of Fairfax County, a body corporate, by counsel, and presented to the court its petition praying that a peremptory writ of *mandamus* do forthwith issue, to be directed to Carlton C. Massey, County Executive of Fairfax County, requiring and commanding him to enter into a certain agreement as more fully set out in said petition, and for other relief. And the petitioner further prays that the said Carlton C. Massey be made a party respondent to the petition and be required to answer the same.

And it appearing to the court that a copy of the notice of this application and of said petition have been duly served

on the respondent, it is ordered that this cause be docketed and placed on the privileged docket of this court to be argued orally at the June, 1969, session.

Whereupon came the respondent, by counsel, and obtained leave to file his answer, and said answer is accordingly filed.

Also came the Washington Metropolitan Area Transit Authority, by counsel, and upon its motion leave is granted it to file with the clerk twenty-five printed copies of a brief *amicus curiae* on or before May 29, 1969, but its motion for leave to argue orally when the cause is heard on the merits is denied.

And it is further ordered that the record be printed; that the petitioner file with the clerk twenty-five printed copies of its brief on or before May 14, 1969; that the respondent file with the clerk twenty-five printed copies of his brief on or before May 29, 1969; and that the petitioner file with the clerk twenty-five printed copies of his reply brief, if any, on or before June 6, 1969, and the cause is continued.

## RECORD

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page 3 }

* * * * *

Board of Supervisors of Fairfax County,
a Body Corporate

Petitioner,

v.

Carlton C. Massey, County Executive
Fairfax County, Virginia

Respondent.

### NOTICE OF APPLICATION FOR WRIT OF MANDAMUS

*To: The Honorable Carlton C. Massey, County Executive, Fairfax County, Virginia*

Please take notice that on the 25th day of April, 1969, at 9:30 A.M., the undersigned, by counsel, will make application to the Supreme Court of Appeals of Virginia, then sitting at Richmond, Virginia, for a writ of *mandamus* against you, a copy of the Petition for said writ being attached hereto.

Board of Supervisors of Fairfax County

By Donald C. Stevens, County Attorney

Harry Frazier III
Special Counsel for the Board of Supervisors of Fairfax County

Legal and timely service of the foregoing Notice of Application for Writ of *Mandamus,* with copy of Petition for Writ of *Mandamus* attached, is hereby accepted this 18th day of April, 1969.

Carlton C. Massey
County Executive
Fairfax County

Received April 22, 1969, Clerk, Supreme Court of Appeals, Richmond, Virginia.

page 4 }

* * * * *

## PETITION FOR WRIT OF MANDAMUS

Your petitioner, the Board of Supervisors of Fairfax County, a body corporate, brings this action against its County Executive for a writ of *mandamus* to compel him to execute a contract on behalf of Fairfax County and in support thereof respectfully represents to the Court as follows:

I

This petition is filed as an original proceeding pursuant to Section 17-96, Code of Virginia of 1950, as amended. This Court has jurisdiction to hear this matter and to grant the writ of *mandamus* prayed for.

II

By Chapter 2 of the Acts of the General Assembly of 1966, Virginia adopted the Washington Metropolitan Area Transit Authority Compact (Compact), an interstate agreement between Virginia, Maryland and the District of Columbia. The Compact creates the Washington Metropolitan Area Transit Authority (Authority), a body corporate and politic, as an agency and instrumentality of each of the page 5 } signatory parties thereto, to plan, develop, finance and cause to be provided transit facilities and service for the Washington Metropolitan Transit Zone (Zone). Fairfax County is located in the Zone which also embraces the District of Columbia, the Cities of Alexandria, Falls Church and Fairfax and the County of Arlington and the Political Subdivisions of Virginia located within those Counties, and the Counties of Montgomery and Prince George's and the Political Subdivisions of the State of Maryland located in said Counties.

III

In the Transportation District Act of 1964, enacted by Chapter 631 of the Acts of General Assembly of 1964, and codified as Chapter 32 of Title 15.1 of the Code of Virginia

of 1950, as amended, being Sections 15.1-1342 through 15.1-1372, as amended (Act), the General Assembly authorized the creation of transportation districts, embracing two or more counties or cities, or combinations thereof, to facilitate the planning and development of improved transit facilities. In contemplation of the enactment of the Compact, Section 15.1-1357(b) of the Act authorizes transportation districts "located within a metropolitan area, which includes all or a portion of a State or States contiguous to Virginia..." to cooperate and participate in the planning and financing of an interstate regional transit system. In order to take advantage of the Act, the Northern Virginia Transportation District was created by Chapter 630 of the Acts of General Assembly of 1964, encompassing the Cities of Alexandria, Fairfax and Falls Church and the Counties of Arlington and Fairfax, all being located in the zone.

page 6 }

IV

Under Section 15.1-1359 of the Act and Section 18(a) of the Compact your petitioner is authorized to enter into contracts or agreements with the Authority under which the Authority undertakes to provide the transportation facilities and to render the transportation service specified in a duly adopted transportation plan in consideration for the undertaking by the petitioner to make capital contributions toward the construction or acquisition of such facilities and payments for such transportation service.

V

In conformance with the Compact, the Authority has adopted a mass transit plan and a plan for financing the construction of the transit facilities specified therein. Construction, which is estimated to cost $2.494 billion, will be financed by the sale by the Authority of $835 million of its revenue bonds and by capital contributions by the Federal Government in the amount of $1.146 billion and by the Political Subdivisions in the Zone in the aggregate amount of $573 million. In accordance with the provisions of Section 15.1-1357(d) of the Act, the Northern Virginia Transportation Commission has allocated to Fairfax County the sum of $61.9 million as its equitable portion of the $147 million of capital contributions to be made by all of the Northern Virginia Political Subdivisions.

In order to carry out the plan of financing for construction of the proposed transit system, the Authority has negotiated a contract with Fairfax County, designated Capital Contributions Agreement, under which the petitioner undertakes to make capital contributions for the con-
page 7 } struction of the transit system to the Authority over the projected ten-year construction period in the aggregate amount of $61.9 million. The Capital Contributions Agreement, a copy of which is attached hereto as Exhibit A, has been approved by the Board of Supervisors of Fairfax County and has been executed by the respondent on behalf of Fairfax County.

VI

In order to provide for the operation of the proposed transit system, the Authority has negotiated a contract with Fairfax County, designated Transit Service Agreement, a copy of said Agreement being annexed hereto as Exhibit B and made a part hereof, under which the petitioner, together with the other Political Subdivisions in the Zone, agrees to pay the Authority for transit service.

Under Article II of the Transit Service Agreement, the Authority undertakes to provide transit service, including the procedures, schedules and standards therefor in accordance with the mass transit plan and the Compact, to Fairfax County and to each other Political Subdivision at the rates and fares prescribed annually by the Board of Directors, after consultation and review by the representatives of the other subscribing parties. The amount of the Service Payment, if any, to be made by your petitioner is determined annually for the ensuing year under the provisions of Article II of said Agreement.

As set forth in Article III, Section 3.4, of the Transit Service Agreement, the obligation of the petitioner to make Service Payments is conditioned upon transit service being rendered. In the event the Authority fails to provide transit service, your petitioner would not be required to make any payments for service and, in the event only
page 8 } reduced service is rendered (defined in Article I, Section 1.1 of the Transit Service Agreement to mtan less than 85% of the train miles scheduled to be operated within Fairfax County), the obligation to make Service Payments would be correspondingly reduced. Under

the provisions of Article III, Section 3.1, which expressly provides that Service Payments "... shall be applied by the Authority only to the payment of Operating Expenses and temporary borrowing to meet Operating Expenses and shall not be applied to any other purpose", no part of any Service Payment may be applied to the payment of principal or interest on the revenue bonds or other debt of the Authority issued to finance construction.

Service Payments are required to be made only to meet operating deficiency requirements, as that term is defined in Article I, Section 1.1, and no Service Payments are required to be made during any year for which there is no estimated operating deficiency requirement or no unpaid operating deficiency requirements carried over from an earlier year. Article III, Section 3.1 of the Agreement provides that no payments for service shall be required until the transit system is substantially in full revenue service, which is estimated to occur in 1980.

## VII

On April 16, 1969, the Board of Supervisors of Fairfax County duly adopted a resolution approving the Transit Service Agreement and authorizing and directing the respondent as County Executive to execute that Agreement on behalf of Fairfax County. A copy of said resolution is attached as Exhibit C.

The respondent, however, has advised the Board of Supervisors by letter dated April 16, 1969, a copy of page 9 } which is attached as Exhibit D, that he entertains doubts respecting the legality of the Transit Service Agreement and that he will not execute said Agreement until its legality has been adjudicated by this Court. The respondent raises the following questions:

1) Will the County's undertaking under the Transit Service Agreement to make Service Payments in accordance with the terms thereof constitute debt for the purposes of Section 115a of the Constitution of the Commonwealth requiring that the contracting of such debt be put to a vote at a County election?

2) Will such undertaking of the County to make Service Payments constitute a grant or loan of its credit in violation of Section 185 of the Constitution of the Commonwealth?

3) Does the Transit Service Agreement and the terms

and provisions thereof comply with the applicable requirements of the Transportation District Act of 1964, as amended?

VIII

Your petitioner believes, and so avers, that the undertaking by Fairfax County under the Transit Service Agreement does not violate Sections 115a or 185 of the Constitution of the Commonwealth, that such agreement is valid in all respects and complies with the Act and that the duty of the respondent to execute such Agreement is purely ministerial and involves the exercise of no discretion on his part.

Wherefore, your petitioner, the Board of Supervisors of Fairfax County, prays that the respondent, Carlton C. Massey, be made a party to this petition and be required to answer the same; that this matter be advanced on the docket of the Court for consideration at the earliest
page 10 } practicable date; that this Court grant the petitioner an oral argument; that this Court consider and determine all questions raised or to be raised in this proceeding and decree that the Transit Service Agreement is a valid contract not in violation of the Constitution of the Commonwealth; and that a writ of *mandamus* be issued by this Court directed to the respondent requiring him to execute the Transit Service Agreement on behalf of Fairfax County

BOARD OF SUPERVISORS OF
FAIRFAX COUNTY

By Donald C. Stevens
County Attorney

page 11 } AFFIDAVIT OF PETITIONER

State of Virginia )
County of Fairfax ) ss:

This day personally appeared before me, a notary public in and for the County of Fairfax, State of Virginia, Donald C. Stevens, who stated upon oath that he is County Attorney of Fairfax County and that the matters and things stated in the Petition for Writ of Mandamus, annexed hereto, are true to the best of his knowledge, information and belief.

Given under my hand this 18th day of April, 1969.

Sandra M. Baughman
Notary Public

My commission expires:
October 20, 1969

Harry Frazier III
Hunton, Williams, Gay, Powell & Gibson
700 East Main Street
Richmond, Virginia 23212

Special Counsel for Fairfax County
Donald C. Stevens
Courthouse, 4000 Chain Bridge Road
Fairfax, Virginia 22030

County Attorney

page 12 } EXHIBIT B TO PETITION

page 13 } Transit Service Agreement

This agreement made this 13th day of March, 1969 by and between the Washington Metropolitan Area Transit Authority (hereinafter referred to as "Authority"), a body corporate and politic created by interstate compact between Maryland, Virginia and the District of Columbia, the Washington Suburban Transit District, a body corporate and politic created by law in Maryland, the District of Columbia, and Arlington County and Fairfax County, Virginia, and the Cities of Alexandria, Falls Church and Fairfax, Virginia (such Counties and Cities, together with the Washington Suburban Transit District and the District of Columbia, being hereinafter referred to, collectively, as "Political Subdivisions" and, individually, as a "Political Subdivision").

Witnesseth:

Whereas, the Authority has been created by the Washington Metropolitan Area Transit Authority Compact as an instrumentality and agency of Maryland, Virginia and the District of Columbia, to provide a regional transit system and service for the area described in such Compact as the

Washington Metropolitan Area Transit Zone (hereinafter referred to as "Zone");

Whereas, the Authority in accordance with the provisions of Article VI of said Compact on March 1, 1968 adopted a Regional Rapid Rail Transit Plan and Program known as "Adopted Regional System—1968", and on February 7, 1969 adopted certain revisions to, and otherwise refined, the Adopted Regional System—1968 which, among other things, specifies the facilities of such regional transit system to be acquired and constructed (hereinafter referred to as "Adopted Regional System—1968 (Revised)");

Whereas, Article VII of the Compact declares the policy that "... as far as possible, the payment of all costs shall be borne by the persons using or benefiting from the Authority's facilities and services and any remaining costs shall be equitably shared among the federal, District of Columbia and participating local governments in the Zone";

Whereas, each of the Political Subdivisions and the residents thereof will derive substantial benefits from the service to be provided by such regional transit sys-
page 14 } tem;

Whereas, the Authority in accordance with Article VII of said Compact on February 7, 1969 adopted a plan for financing the construction and acquisition of such regional transit system and the operation thereof which proposes among other things, that a capital contributions contract and a service contract be entered into by the Authority with the Political Subdivisions;

Whereas, concurrently herewith the parties are entering into a Capital Contributions Agreement of even date with this Agreement providing for contributions by the Political Subdivisions to the capital required by the Authority for acquisition and construction of such regional transit system (such Capital Contributions Agreement, together with any amendments or revisions thereof hereafter made being hereinafter referred to as the "Capital Contributions Agreement"); and

Whereas, engineering, financial and other technical studies indicate that revenues from operation of such regional transit system will be sufficient to meet expenses and other obligations incurred in such operation and cover a substantial portion of the capital required for construction, it is nevertheless considered that the orderly development of such transit system and the financing thereof on favorable terms require that each of the Political Subdivisions agree to make

any payments required by the terms of this Agreement for the service to be provided by such transit system;

Now, therefore, in consideration of the mutual promises and obligations hereinafter set forth, the parties hereto, intending to be legally bound hereby, agree as follows:

## Article I

### Definitions and Warranties

Section 1.1. The following terms shall for all purposes of this Agreement have the following meanings:

Aggregate Service Payment shall mean, for any Fiscal Year, an amount equal to the sum of (i) the Operating Deficiency Requirement, if any, estimated for such Fiscal Year pursuant to Section 2.4, plus (ii) if no Operating Deficiency Requirement was estimated pursuant to Sec-
page 15 } tion 2.4 for the second Fiscal Year preceding such Fiscal Year, the Operating Deficiency Requirement, if any, for the Second Fiscal Year preceding such Fiscal Year (or, if an Operating Deficiency Requirement for such preceding Fiscal Year was estimated pursuant to Section 2.4, the amount, if any, by which the actual Operating Deficiency Requirement for such preceding Year exceeded such estimate thereof); Less the amount, if any, by which the Operating Deficiency Requirement estimated for such second preceding Fiscal Year exceeded the actual Operating Deficiency Requirement for such Year.

Compact shall mean the Washington Metropolitan Area Transit Authority Compact entered into as an amendment to the Washington Metropolitan Area Transit Regulation Compact between the State of Maryland, the Commonwealth of Virginia and the District of Columbia and constituting Title III of said Washington Metropolitan Area Transit Regulation Compact, together with all amendments and supplements to said Title III which may hereafter be entered into in accordance with law.

Federal Share Bonds shall mean the bonds, notes or other evidences of indebtedness issued by the Authority to finance or refinance the Transit System and payable solely from periodic contributions to be made by the Federal Government under a contract with the Authority and any income from investment of the proceeds thereof.

Fiscal Year shall mean any twelve month period commencing July 1 and ending June 30 of the next calendar year.

Initial Operation Date shall mean the first date on which the Transit System (exclusive of any extensions thereof authorized by amendment, revision or modification of the Regional Rapid Rail Transit Plan and Program of the Authority adopted March 1, 1968, as revised February 7, 1969) is to be substantially in full revenue service, as shall be determined by the Board of Directors of the Authority.

Operating Deficiency Requirement shall mean, for any Fiscal Year, the amount, if any, by which Operating Expenses for such Year exceed the Revenues for such Year remaining after provision is made for the debt service and reserve requirements for such Year with respect to Transit Bonds.

Operating Expenses shall mean all expenses of operation and maintenance of the Transit System, including but not limited to renewals and replacements of the facili-
page 16 } ties of the Transit System and interest on temporary borrowings to meet expenses of operation and maintenance of the Transit System, and payments to reserves for such expenses as may be required by the terms of any contract of the Authority with or for the benefit of the holders of Transit Bonds.

Reduced Service shall mean, for any Fiscal Year and with respect to any Political Subdivision, Transit Service which is reduced below that required by Section 2.1 (i) to such an extent that the total Train Miles within such Political Subdivision during such Fiscal Year are less than 85% of the total Train Miles required during such Year to provide the Transit Service to such Political Subdivision required under Section 2.1, and (ii) in the case of the City of Fairfax and the City of Falls Church, respectively, so long as no trackage of the Transit System shall lie within the boundaries of such Political Subdivision, to such an extent that the number of trains of the Transit System in revenue service stopping during such Year at the Nutley Road Station in the case of the City of Fairfax and the East Falls Church Station in the case of the City of Falls Church or such other station or stations which the Authority shall determine serve such Political Subdivisions, respectively, are less than 85% of the number of such trains required during such Year to provide the Transit Service to such Political Subdivision required under Section 2.1

Revenues shall mean (i) all fees, rents, charges and revenues derived from the operation of the Transit System, (ii)

the proceeds of any business interruption insurance with respect to the Transit System, and (iii) interest received on moneys or securities in funds or accounts held by the Authority in connection with its ownership or operation of the Transit System (other than funds or accounts for the deposit of the proceeds of any bonds or notes issued to finance the acquisition and construction of the Transit System or capital contributions for the acquisition and construction of the Transit System); but Revenues shall not include any Service Payments made under this Agreement.

Service Payment shall mean, for any Fiscal Year and with respect to any Political Subdivision, the portion of the Aggregate Service Payment for such Year allocated to such Political Subdivision pursuant to Section 3.2

Train Miles shall mean, for any period of time and with respect to the Zone or any Political Subdivision,
page 17 } the total number of miles travelled in revenue service by all trains of the Transit System during such period of time within the Zone or within the boundaries of such Political Subdivision, as the case may be.

Transit Bonds shall mean bonds issued by the Authority, other than Federal Share Bonds, to finance or refinance the Transit System.

Transit Plan and Program shall mean the Regional Rapid Rail Transit Plan and Program set forth in the resolution of the Authority adopted on March 1, 1968 as revised and refined by resolution of the Authority adopted on February 7, 1969 and Annexes I, II and III to such resolution, known as "Adopted Regional System—1968 (Revised)", together with all amendments, revisions and modifications of such Plan and Program which may hereafter be adopted by the Authority in accordance with the Compact.

Transit Service shall mean that service provided by the Transit System.

Transit System shall mean the facilities constructed or acquired or to be constructed or acquired by the Authority substantially in accordance with the Transit Plan and Program, including all real and personal property and all rights, interests, property and appurtenances incidental thereto or used or useful in connection therewith.

Section 1.2. The Authority and the Political Subdivisions each hereby represents and warrants that it has full power and authority to enter into and perform this Agreement.

Article II

Transit Service and Service Review Committee

Section 2.1 The Authority shall cause the Transit System to be operated so as to provide, as nearly as practicable, Transit Service to the Political Subdivisions beginning with the first day of the Fiscal Year next succeeding the Initial Operation Date and ending June 30, 2040 at the rates and fares and in accordance with the procedures, schedules and standards of service set forth in the annual determination by the Board of Directors of the Authority pursuant to Section 2.4, as such determination may be modified from time to time in accordance with said Section 2.4 Prior to the Fiscal Year next succeeding the Initial Operation
page 18 } Date the Authority shall cause Transit Service to be provided over those portions of the Transit System which have been completed and put in revenue service, as it shall at any time and from time to time determine to be practicable and feasible.

Section 2.2 In each Fiscal Year, beginning with the Fiscal Year in which the Initial Operation Date shall occur, the Authority shall complete a review of its financial condition, its rate and fare structure, and its procedures, schedules and standards of service with respect to the Transit System. Such review shall include estimates of (i) the number of riders to be carried by the Transit System during the ensuing Fiscal Year, (ii) the service reasonably required to meet estimated patronage of the Transit System during such ensuing Year, (iii) the Revenues remaining after provision is made for the debt service and reserve requirements for such ensuing Year with respect to Transit Bonds, (iv) the Operating Expenses for such ensuing Year, (v) the Operating Deficiency Requirement, if any, for such ensuing Year, (vi) the Aggregate Service Payment, if any, for such ensuing year, (vii) the Service Payment, if any, of each Political Subdivision for such ensuing Year determined pursuant to Section 3.2, and (viii) the allocation of the Service Payment, if any, of the Washington Suburban Transit District for such ensuing Year between Montgomery County and Prince George's County in accordance with Section 3 of the Guaranty Agreement attached to this Agreement.

Section 2.3. A Service Review Committee is hereby established and shall consist of the chief executive officer (or his nominee) of each Political Subdivision, of Prince George's

County and of Montgomery County, Maryland, and of the Authority. The chief executive officer (or his nominee) of the Authority shall submit the results of the Authority's review made in accordance with Section 2.2, including the estimates prepared in connection therewith, to each member of such Committee and shall call one or more meetings of such Committee for the purpose of considering the results of such review and providing an opportunity for the preparation of a report to the Authority of its comments and recommendations with respect thereto. Any such report shall be advisory only and shall be submitted to the Authority within 30 days after receipt of the Authority's review.

Section 2.4. As soon as practicable in each Fiscal Year, beginning with the Fiscal Year in which the Initial
page 19 } Operation Date shall occur, after receipt by the Authority of any report of the Service Review Committee, or upon the expiration of the thirty day period specified in Section 2.3, whichever is earlier, the Board of Directors of the Authority, after consideration of such report shall by resolution determine the following:

(a) the Transit Service to be provided during the ensuing Fiscal Year, including the procedures, schedules and standards therefor, provided that such Transit Service shall be in accord with the Transit Plan and Program and the Compact;

(b) the rate and fare structure for the Transit Service for the ensuing Fiscal Year; provided that such rate and fare structure shall be in accord with the Compact;

(c) the estimated Operating Deficiency Requirement, if any, for the ensuing Fiscal Year;

(d) the Aggregate Service Payment, if any, for the ensuing Fiscal Year;

(e) the Service Payment, if any, for the ensuing Fiscal Year allocated to each Political Subdivision on the basis of the formula set forth in Section 3.2; and

(f) the share of the Service Payment, if any of the Washington Suburban Transit District for the ensuing Fiscal Year allocated to Montgomery County and Prince George's County in accordance with Section 3 of the Guaranty Agreement attached to this Agreement.

Such determinations with respect to Transit Service and the rate and fare structure for the Transit System may be subsequently modified at any time or from time to time by

the Board of Directors of the Authority or pursuant to its authority as may be required to assure efficient and economical operation of the Transit System, provided, however, that any such modification shall be in accord with the Transit Plan and Program and the Compact. The determinations made pursuant to this Section and each modification thereof shall be promptly transmitted by the Authority to each Political Subdivision.

page 20 } Article III

Payments for Service

Section 3.1. In consideration of the Transit Service provided by the Authority pursuant to this Agreement each Political Subdivision shall make Service Payments to the Authority or its order in the amounts, at the times and in the manner set forth in this Article. Service Payments, unless remitted to the Political Subdivisions as provided in this Agreement, shall be applied by the Authority only to the payment of Operating Expenses and temporary borrowings to meet Operating Expenses and shall not be applied to any other purpose. No Service Payment shall be required prior to the Fiscal Year next succeeding the Initial Operation Date.

Section 3.2. The Service Payment, if any, to be made during a Fiscal Year by each Political Subdivision shall be that portion of the Aggregate Service Payment allocated to such Political Subdivision by resolution of the Board of Directors of the Authority adopted prior to the beginning of such Fiscal Year as provided in Section 2.4 (such allocation to be binding for all purposes of this Agreement) on the basis of the following formula:

(a) An amount equal to 50% of the Aggregate Service Payment to be allocated on the ratio of the Transit Service provided each Political Subdivision (as measured by operating costs of the Transit System for such Fiscal Year attributable to (i) the Train Miles within such Political Subdivision for such Fiscal Year, as determined and estimated by the Authority, and (ii) the number of stations of the Transit System within such Political Subdivision including those determined and estimated by the Authority to be in service prior to the end of such Fiscal Year), to total Transit Service provided by the Transit System (as measured by

operating costs of the Transit System for such Fiscal Year attributable to (i) the total Train Miles within the Zone for such Fiscal Year, as determined and estimated by the Authority, and (ii) the number of stations of the entire Transit System including those determined and estimated by the Authority to be in service prior to the end of such Fiscal Year); and

(b) An amount equal to 25% of the Aggregate Service Payment to be allocated on the ratio of the num-
page 21 } ber of residents of each Political Subdivision using the Transit System during its morning peak period in such Fiscal Year, as determined and estimated by the Authority, to the number of residents of all Political Subdivisions using the Transit System during its morning peak period in such Fiscal Year, as determined and estimated by the Authority; and

(c) An amount equal to 25% of the Aggregate Service Payment to be allocated on the ratio of the population in each Political Subdivision to the total population of the Zone, as determined and estimated by the Authority based on the latest available population statistics of the United States Bureau of Census.

Section 3.3. In the event that any Service Payments are to be made during a Fiscal Year, at least nine calendar months prior to the beginning of such Year the Authority shall transmit to each Political Subdivision a notice setting forth the Service Payment required to be made to the Authority by such Political Subdivision during such Fiscal Year. Such notice shall be accompanied by a statement and schedule setting forth in reasonable detail (i) the Aggregate Service Payment to be made during such Fiscal Year, including the calculation thereof, (ii) the calculation under the allocation formula pursuant to Section 3.2 of the amount of the Service Payment of each Political Subdivision, and (iii) the calculation under the allocation formula set forth in Section 3 of the Guaranty Agreement attached to this Agreement of the allocable shares of Montgomery County and Prince George's County of such Service Payment of Washington Suburban Transit District. The Service Payment allocated to each Political Subdivision shall be paid by such Political Subdivision during such Fiscal Year in equal monthly installments, except that such monthly installments shall be decreased as provided in Section 3.4 on account of any Reduced Service. Each such installment shall be due on the tenth day of each calendar month.

Section 3.4. It is understood by the parties hereto that each Political Subdivision shall make Service Payments in consideration of the Transit Service provided by the Transit System in accordance with the terms of this Agreement. Accordingly, in the event of Reduced Service to any Political Subdivision during any Fiscal Year in which a Service Payment is made, the Service Payment installment or installments, if any, to be made by such Political Subdivision during the ensuing Fiscal Year shall be credited with an amount which bears the same proportion to the amount of the Service Payment for such Fiscal Year of Reduced Service as the number of Train Miles operated within the Political Subdivision during such Year (or, in the case of a Political Subdivision which has no trackage of the Transit System within its boundaries, the number of trains of the Transit System in revenue service stopping at the station or stations which the Authority shall determine serve such Political Subdivision) bears to the total number of Train Miles (or the total number of trains stopping at such station or stations) required during such Year to provide the Transit Service to such Political Subdivision required under Section 2.1, and such credit shall be applied so as to decrease such Service Payment installment or installments in the order in which they become due until the entire amount of such credit shall have been so applied; or in the event that there is no Service Payment due for such ensuing Fiscal Year, then an amount equal to such credit shall be remitted by the Authority to such Political Subdivision. Promptly after the end of any Fiscal Year in which a Service Payment is made and during which there is Reduced Service to a Political Subdivision, the Authority shall send a written notice to such Political Subdivision setting forth the extent of such Reduced Service and the amount of such credit against its Service Payment installment or installments next due or the amounts to be remitted to it in accordance with this Section.

page 22

Section 3.5. As soon as practicable after the end of each Fiscal Year, commencing with the first full Fiscal Year next succeeding the Initial Operation Date, the Authority shall submit to each Political Subdivision a detailed statement setting forth for such Fiscal Year (i) the Revenues, (ii) the debt service and reserve requirements with respect to Transit Bonds, (iii) the Operating Expenses, (iv) the Operating Deficiency Requirement, if any, (v) the Service Payment, if any, made by each Political Subdivision during such Year,

and (vi) if an Operating Deficiency Requirement was estimated for such Fiscal Year pursuant to Section 2.4, the difference between such estimate and the Actual Operating Deficiency Requirement, if any, for such Year, and, if such estimated Operating Deficiency Requirement was in excess of the actual Operating Deficiency Requirement for such Fiscal Year, the allocation of such excess (or the entire amount of such estimated Operating Deficiency Requirement if there were no actual Operating Deficiency Requirement) page 23 } among the Political Subdivisions which allocation shall be in the same proportion as the allocation of the Aggregate Service Payment for such Fiscal Year pursuant to Section 3.2. In the event that there is no Aggregate Service Payment due and payable for the ensuing Fiscal Year, there shall be remitted to each Political Subdivision its allocable share of any excess (as shown pursuant to clause (vi) above) of the Operating Deficiency Requirement, if any, estimated for the preceding Fiscal Year pursuant to Section 2.4 over the actual Operating Deficiency Requirement for such Year.

Section 3.6. The Authority shall at all times take all reasonable measures permitted by the Compact or otherwise by law to collect and enforce prompt payment to or for its account of all Service Payments and each installment thereof in accordance with this Agreement. If any Service Payment installment or part thereof due to the Authority from any Political Subdivision shall remain unpaid after its due date, such Political Subdivision shall be charged with and shall pay to the Authority interest on the amount unpaid from its due date until paid at the rate of 6% per annum.

Section 3.7. The liability of the Political Subdivisions to make Service Payments under this Agreement shall be several and not joint and shall be limited to the Service Payments to be made by each Political Subdivision pursuant to this Article.

## Article IV

## Miscellaneous

Section 4.1. It is expressly understood and agreed that the obligations of the parties under this Agreement are conditioned upon and subject to the enactment into law during the 91st Congress of Federal legislation authorizing the District of Columbia to enter into this Agreement and the

Capital Contributions Agreement and authorizing the appropriations for (or appropriating) all the capital contributions to be made by the District of Columbia as set forth in the Capital Contributions Agreement and Federal legislation which either (i) authorizes the appropriations for (or appropriates) all the capital contributions to be made by the Federal Government as set forth in the Capital Receipts Schedule attached to the Capital Contributions Agreement, or (ii) authorizes, as a contractual obligation of the Federal Government, the payment by the Federal Government of periodic contributions to or upon the order of the Authority in amounts sufficient to provide for the payment of debt service and incidental expenses with respect to Federal Share Bonds.

page 24

Section 4.2. This Agreement shall not preclude free transportation or reduced fares for school children or any other class of riders on the Transit System or any other form of subsidized Transit Service, in any Political Subdivision, and it is expressly understood and agreed that any Political Subdivision in which such subsidized transportation is to be provided shall enter into an agreement with the Authority to make fair and equitable payment to the Authority for such subsidized transportation.

Section 4.3. This Agreement shall be in full force and effect and be legally binding upon the Authority and upon all of the Political Subdivisions upon its execution and delivery by the Authority and each Political Subdivision and the execution and delivery of the Guaranty Agreement attached hereto.

Section 4.4. This Agreement shall be executed in twelve counterparts, and all such counterparts executed and delivered, each as an original, shall constitute but one and the same instrument.

In Witness Whereof, the parties hereto have executed this Agreement and affixed their seals hereto as of the date first above written.

Washington Metropolitan Area
Transit Authority

By .....

(Seal)

Attest:

.....

page 25 }

Washington Suburban Transit District

By .....

(Seal)

Attest:

.....

Fairfax County

By .....

(Seal)

Attest:

.....

Arlington County

By .....

(Seal)

Attest:

.....

City of Alexandria

By .....

(Seal)

Attest:

.....

page 26 }

City of Falls Church

By .....

(Seal)

Attest:

.....

City of Fairfax

By .....

(Seal)

Attest:

.....

District of Columbia

By .....

(Seal)

Attest:

.....

page 27 } Guaranty Agreement

This Agreement made this 13th day of March, 1969 by and between Montgomery County, Maryland, and Prince George's County, Maryland, (sometimes hereinafter referred to, collectively, as the "Guarantors" and, individually, as "Guarantor") and Washington Metropolitan Area Transit Authority (hereinafter referred to as "Authority"), a body corporate and politic created by interstate compact between Maryland, Virginia and the District of Columbia;

Witnesseth:

Whereas, the Washington Suburban Transit District (hereinafter referred to as "District") is authorized by the Washington Suburban Transit District Law, constituting Chapter 72 of the Montgomery County Code of 1965 (being Article 16 of the Code of Public Laws of Maryland), as amended, and Chapter 83A of the Code of Public Laws of Prince George's County (1963 Edition, being Article 17 of the Code of Public Laws of Maryland), as amended, to enter into the foregoing Transit Service Agreement of even date herewith (hereinafter referred to as the "Transit Service Agreement");

Whereas, pursuant to said Washington Suburban Transit District Law the obligations imposed upon the District by the Transit Service Agreement shall be guaranteed by Mont-

gomery County and Prince George's County in the proportions herein stated; and

Whereas, the Guarantors are desirous that the Authority enter into the Transit Service Agreement with the District, among others, and are entering into this Agreement as an inducement to the Authority to enter into the Transit Service Agreement.

Now, Therefore, in consideration of the premises and as an inducement to the execution and delivery by the Authority of the Transit Service Agreement, the Guarantors do each hereby agree with the Authority as follows:

Section 1. The Guarantors hereby absolutely and unconditionally in accordance with Section 3 of this Agreement guarantee to the Authority the full and prompt payment by the District, as and when the same shall become due and payable under the terms and provisions of the Transit Service Agreement, of the Service Payments and each installment thereof to be made from time to time by the
page 28 } District under the Transit Service Agreement, and any interest payable by the District on overdue installments of Service Payments pursuant to the Transit Service Agreement. In the event of any failure by the District to make such Service Payments or any installments thereof, as and when the same shall become due and payable, or any interest on overdue installments, the Guarantors shall pay in accordance with Section 3 the amounts thereof which are due under the terms and conditions of the Transit Service Agreement. Each Guarantor assents to the terms, covenants and conditions of the Transit Service Agreement.

Section 2. The guaranty of the Guarantors under this Agreement shall be an absolute, unconditional and continuing guaranty in accordance with Section 3 of this Agreement, shall remain in full force and effect until the District shall have fully and satisfactorily discharged all its obligations under the Transit Service Agreement, and shall not be subject to any setoff, counterclaim, reduction or diminution of an obligation, or any defense of any kind or nature which either or both of the Guarantors has or may have against the Authority or against each other.

Section 3. Anything herein to the contrary notwithstanding, the obligations of the Guarantors under this Agreement shall be several and not joint, and the liability of each Guarantor shall be limited to its allocable share of any Service Payment or installment thereof payable by the Dis-

trict under the Transit Service Agreement, which allocable share of each Guarantor shall be determined on the basis of and in accordance with the following formula:

(a) An amount equal to 50% of the Service Payment of the District for any Fiscal Year to be allocated on the ratio of the Transit Service provided such Guarantor (as measured by operating costs of the Transit System for such Fiscal Year attributable to (i) the Train Miles within the boundaries of such Guarantor for such Fiscal Year, as determined and estimated by the Authority, and (ii) the number of stations of the Transit System within the boundaries of such Guarantor including those determined and estimated by the Authority to be in service prior to the end of such Fiscal Year), to the Transit Service provided in the District by the Transit System (as measured by operating costs of the Transit System for such Fiscal Year attributable to (i) the total Train Miles within the District for such Fiscal Year, as determined and estimated by the Author-
page 29 } ity, and (ii) the number of stations of the Transit System within the District including those determined and estimated by the Authority to be in service prior to the end of such Fiscal Year); and

(b) An amount equal to 25% of such Service Payment to be allocated on the ratio of the number of residents of such Guarantor using the Transit System during it morning peak period in such Fiscal Year, as determined and estimated by the Authority, to the number of residents of the District using the Transit System during its morning peak period in such Fiscal Year, as determined and estimated by the Authority; and

(c) An amount equal to 25% of such Service Payment to be allocated on the ratio of the population of such Guarantor to the total population of the District, as determined and estimated by the Authority based on the latest available population statistics of the United States Bureau of Census.

Any interest payable by the District on overdue installments of Service Payments pursuant to the Transit Service Agreement shall be the obligation of each Guarantor to the extent that such Guarantor shall not have made payment in accordance with its guaranty under this Agreement. For the purposes of this Section 3, the terms "Service Payment," "Transit Service," "Transit System," "Fiscal Year" and "Train Miles" shall have the same meanings, respectively, as set

forth for such terms in Section 1.1 of the Transit Service Agreement, except that "Train Miles" is used in this Section with respect to the District and each Guarantor.

Section 4. The Authority shall promptly furnish each Guarantor with a copy of the statement and schedule referred to in Section 3.3 of the Transit Service Agreement as though each Guarantor were a Political Subdivision thereunder. Such statement and schedule shall be accompanied by a notice setting forth the allocable share calculated in accordance with Section 3 of each Guarantor of the Service Payment to be made by the District. The Authority shall also promptly furnish to each Guarantor a copy of any notice sent to the District pursuant to Section 3.4 of the Transit Service Agreement with respect to Reduced Service (as defined in the Transit Service Agreement) during the preceding Fiscal Year, and the credit or amount to be remitted to the District on account of such Reduced Service shall be allocated between the Guarantors *pro rata* in accordance with the respective amounts of their allocable shares of the Service Payment to the District for such Fiscal Year. No notice with respect to Service Payments to be made by the District under the Transit Service Agreement or the failure of the District to make the same shall be required, other than that provided by this Section 4.

page 30

Section 5. No amendment, change, modification or alteration of the Transit Service Agreement shall be made which would in any way increase the Guarantors' obligations or the obligation of either Guarantor under this Agreement without obtaining the prior written consent of each of the Guarantors.

Section 6. The obligations of each of the Guarantors under this Agreement shall arise when the Transit Service Agreement shall have been executed and delivered by all the parties thereto.

Section 7. The Authority in its sole discretion shall have the right to enforce this Agreement by proceeding first and directly against either one or both of the Guarantors under this Agreement without proceeding against or exhausting its remedies against the District or the other Guarantor.

Section 8. Each Guarantor hereby represents and warrants that it has full power and authority to enter into and perform this Agreement.

Section 9. This Agreement shall be executed in twelve counterparts, and all such counterparts executed and de-

livered each as an original, shall constitute but one and the same instrument.

In Witness Whereof, each of the Guarantors have executed this Agreement and affixed their seals hereto as of the date first above written.

Montgomery County

By.....

(Seal)

Attest:

.....

page 31 } Prince George's County

By.....

(Seal)

Attest:

.....

Accepted this day of , 1969,
Washington Metropolitan Area Transit Authority

By.....

(Seal)

Attest:

.....

page 32 } EXHIBIT C TO PETITION

Excerpt from a Regular Meeting of the Board of Supervisors of Fairfax County, Virginia held in the Board Room of the Fairfax County Courthouse on April 16, 1969, at which meeting all of the members of the Board of Supervisors were present and voting, with the exception of Supervisor Harold O. Miller of Mason District.

Supervisor Harris made the following motion: That the Board approve the capital contributions agreement and

direct the County Executive to execute it. That motion was seconded by Supervisor Majer. The motion carried by a vote of 6 to 1, Supervisor Bowman voting "Nay" and Supervisor Miller being out of the room.

Supervisor Harris then made the following motion: That the board approve the transit service agreement, and direct the County Executive to execute it. That motion was seconded by Supervisor Majer. The motion carried by a vote of 6 to 1, Supervisor Bowman voting "Nay", and Supervisor Miller being out of the room.

The County Executive, Mr. Massey, then pointed out that Section 1.2 of the transit service agreement provides that the political subdivisions each hereby represent and warrant that it has full power and authority to enter into and perform this agreement, and made the following statement: "Recognizing full well the Board's policy decision and your desire to proceed with this agreement, and in view of the discussions already had relative to the fact that it must be confirmed by the higher courts, I would feel that

page 33 } it would be improper for me to execute this agreement on your behalf until that question of authority and power set forth in here has been resolved by the Supreme Court, as I understand will be done under a case to follow this."

Supervisor Alexander then made the following motion: That this Board of Supervisors authorize the County Attorney to institute such litigation as may be necessary to determine the question of the Board's power and authority to enter into and perform the transit service agreement, and to require the County Executive to execute that agreement, pursuant to the Board's approval of it, and further that the County Attorney be authorized to associate such other counsel as to him may appear to be necessary to bring about a successful conclusion to any such litigation. That motion was seconded by Supervisor Pennino, and carried by a vote of 6 to 1, Supervisor Bowman abstaining, and Supervisor Miller being out of the room.

I hereby certify that the foregoing excerpt is an accurate reflection of the proceeding to which they relate.

Edna A. Bicksler, Clerk of the
Board of Supervisors of Fairfax
County, Virginia

page 34 } EXHIBIT D TO PETITION

Commonwealth of Virginia
County of Fairfax
Fairfax, Virginia 22030

April 16, 1969

Board of Supervisors

Frederick A. Babson
Chairman
Joseph Alexander
Donald R. Bowman
Mrs. Harriet F. Bradley
Herbert E. Harris, II
Charles Majer
Harold O. Miller
Mrs. Martha V. Pennino
Thomas B. Wright

Carlton C. Massey
County Executive
John V. Berberich, III
Deputy County Executive

Telephone CR 3-2000

Mr. Chairman and Members of the Board:

By a Resolution adopted on April 16, 1969, the Board of Supervisors of Fairfax County has directed me as County Executive to execute on behalf of the County of Fairfax a Transit Service Agreement to which Washington Metropolitan Area Transit Authority and other public bodies of Virginia, Maryland and the District of Columbia are also parties. This agreement relates to the operation of a proposed rapid transit system for the Washington, D. C. metropolitan area and requires the County of Fairfax to make payments to the Authority from time to time for transit services to be provided during the life of the agreement.

While aware of my responsibility to carry out the directions of the Board, I am also aware of my duties to observe the Constitution and laws of Virginia. After due consideration, I must respectfully decline to execute the agreement because of certain serious legal questions respecting the legality of the agreement. These questions may be summarized as follows:

1) Will the County's undertaking under the Transit Service Agreement to make Service Payments in accordance with the terms thereof *consitute* debt for the purposes of Section 115a of the Constitution of the Commonwealth re-

quiring that the contracting of such debt be put to a vote at a County election?

page 35 } 2) Will such undertaking of the County to make Service Payments constitute a grant or loan of its credit in violation of Section 185 of the Constitution of the Commonwealth?

3) Does the Transit Service Agreement and the terms and provisions thereof comply with the applicable requirements of the Transportation District Act of 1964, as amended?

Until such time as the foregoing questions shall have been favorably resolved by the Supreme Court of Appeals of Virginia, I cannot execute the agreement.

Very truly yours,

Carlton C. Massey
County Executive

page 36 }

* * * * *

## ANSWER

In answer to the Petition of the Board of Supervisors of Fairfax County for a Writ of Mandamus the respondent, Carlton C. Massey, County Executive, Fairfax County, Virginia, respectfully states as follows:

1. Respondent admits the jurisdiction of the Court as alleged in paragraph numbered one of the Petition.

2. Respondent admits the allegations of the Petition as alleged in paragraph numbered two.

3. Respondent admits the allegations of the Petition as alleged in paragraph numbered three.

4. Respondent denies the allegation of the Petition as alleged in paragraph numbered four.

5. Respondent admits the allegations of the Petition as alleged in paragraph five.

6. Respondent admits the negotiation of a contract between Washington Metropolitan Area Transit Authority and the County of Fairfax and it further admits the genuineness of exhibit B as alleged in the first of those paragraphs numbered six of the Petition. The respondent denies the validity of each and every conclusion of law relating to the construc-

tion of the agreement stated in those paragraphs numbered six.

page 37 } 7. Respondent admits the allegations set forth in the second paragraph of those paragraphs numbered six of the Petition.

8. Respondent admits that under Article Three Section 3.4 of the Transit Service Agreement the obligation of the Petitioner to make service payments is conditioned upon transit service being rendered as is alleged in the third paragraph of those paragraphs numbered six. Respondent denies that the provisions of the Agreement makes conditional the service payments or apportions such payments on the basis of transit services rendered to the citizens of Fairfax County. Respondent admits that the Agreement expressly provides that service payments shall not be applied to the payment of principal or interest on revenue bonds or other debts of the Authority issued to finance construction. Your petitioner avers, however, that the cost of anticipated debt service is a factor to be used in determining the operating deficiency requirement and operating expenses upon which the service payment is made.

9. Those allegations of paragraph six which are not specifically denied are admitted.

10. Respondent admits the allegations of the Petition as alleged in paragraph seven.

11. Respondent denies the allegations of the Petition as alleged in paragraph eight.

12. The respondent avers: That the County of Fairfax does not have the authority to enter into the Transit Service Agreement; that the County of Fairfax is prohibited from entering into the Transit Service Agreement by the provisions of Section 185 of the Constitution of Virginia; that the County is prohibited from entering into the Transit Service Agreement until the contracting of such debt is put to a vote at a County election in accordance with Section 115a of the Constitution of Virginia; that the County is prohibited from entering into the contract by the provisions of the Transportation District Act of 1964 (Chapter 32 of Title 15.1, 1950, Code of Virginia,

page 38 } as amended); and to the extent that the Washington Area Transit Authority Compact, Chapter 2 of the Acts of the General Assembly of 1966, and the Transportation District Act purports to authorize the County of Fairfax to enter into the Transit Service Agreement such acts are void. For these reasons the Respondent

has refused to execute the agreement referred to in the petition.

In Consideration Whereof Respondent prays that the petition may be denied and that Respondent may be hence dismissed with his own proper costs in this behalf expended.

Carlton C. Massey
County Executive
Fairfax County, Virginia

Farley, Odin & Feldman

By Dexter S. Odin
10560 Main Street, Suite 213
Fairfax, Virginia
Counsel for Respondent

State of Virginia
County of Fairfax to-wit:

This day personally appeared before the undersigned Notary Public, in and for the State and County aforesaid, Carlton C. Massey, County Executive, Fairfax County, Virginia, who made oath that according to his information and belief the matters stated in the foregoing answer are true and correct.

Given under my hand this 24th day of April, 1969.

J. William Gilliam
Notary Public

My commission expires the 1st day of February, 1970.

I hereby certify that I have this 25th day of April, 1969, served the foregoing answer by delivering a true copy thereof to Harry Frazier III, and Donald C. Stevens, counsel for the Board of Supervisors of Fairfax County, Virginia.

Dexter S. Odin

Clerk Supreme Court of Appeals, Received Apr 25 1969, Richmond, Virginia

page 39 }

* * * * *

## PETITION FOR LEAVE TO INTERVENE *AMICUS CURIAE*

Comes now the Washington Metropolitan Area Transit Authority (Authority) and files this petition for leave to intervene as *amicus curiae* in support of the Application For a Writ of *Mandamus* in the above cause and in support of this petition states as follows:

I

The Authority, a body corporate and politic, was created by the Washington Metropolitan Area Transit Authority Compact, an interstate agreement between Virginia, Maryland and the District of Columbia, enacted in Virginia by Chapter 2 of the Acts of General Assembly of 1966. Said Compact charges the Authority with the duty to provide improved transit facilities in the Washington Metropolitan Area Transit Zone (Zone), which encompasses the District of Columbia and adjoining areas of Virginia and Maryland.

II

In accordance with the Compact, the Authority has duly adopted a mass transit plan specifying the transit facilities which it proposes to provide and a plan for financ-
page 40 } ing the construction and operation of such facilities. The Transit Service Agreement, which the respondent refuses to execute, is an integral part of the plan for financing the operation of the transit facilities. The continued refusal of the respondent to execute said Agreement places in jeopardy the entire plan for providing transit facilities for the Washington Metropolitan Area Transit Zone.

III

Provision of adequate transit facilities for the Washington Metropolitan Area Transit Zone is a matter of great public interest to the Nation's Capitol and to all of Northern Virginia. As the agency charged with the responsibility of

solving the increasingly severe transit problems of the Zone and as a principal party to the Transit Service Agreement the Authority has a vital interest in the outcome of this proceeding.

Wherefore, Washington Metropolitan Area Transit Authority prays that this Honorable Court grant it leave to intervene as *amicus curiae* and to file a brief and present oral argument in support of the Application for a Writ of *Mandamus*.

WASHINGTON METROPOLITAN AREA
TRANSIT AUTHORITY

By s/ Jackson Graham
Jackson Graham, General Manager.

s/ Peter A. Greenburg
Peter A. Greenburg
1400 S. Joyce Street
Arlington, Virginia 22202
298-9191

Counsel for Washington Metropolitan
Area Transit Authority

page 41 } Of Counsel:
John R. Kennedy
950 South Building
L'Enfant Plaza, S.W.
Washington, D.C.

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Bernstein, Alper, Schoene & Friedman
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Washington, D.C. 20006

Robert E. Ferdon
Hawkins, Delafield & Wood
67 Wall Street
New York, N.Y.

* * * * *

Received Apr 25 1969, Clerk, Supreme Court of Appeals, Richmond, Virginia

page 42 }

* * * * *

STIPULATION

The parties hereto, by counsel, stipulate as follows:

1. The Record shall consist of the following:

(a) Notice of Application for Writ of *Mandamus.*

(b) Petition for Writ of *Mandamus,* with attached exhibits.

(c) Answer.

(d) Petition of Washington Metropolitan Area Transit Authority for leave to intervene as *Amicus Curiae.*

(e) Evidence in form of Stipulation.

(f) This Stipulation.

(g) Stipulation as to portion of Record to be printed.

2. This case shall be consolidated with the pending case styled *"City of Falls Church* v. *Harry E. Wells."*

3. The time for filing additional pleadings and briefs shall be as follows:

(a) Evidence in form of stipulation—by April 30, 1969.

(b) Stipulation as to Printing of Record—by April 30, 1969.

page 43 } (c) Petitioners' Opening Brief—by May 14, 1969.

(d) Respondents' Brief—by May 29, 1969.

(e) Petitioners' Reply Brief, if any—by June 6, 1969.

Dated April 25, 1969.

BOARD OF SUPERVISORS OF
FAIRFAX COUNTY, Petitioner

By Donald C. Stevens
Counsel

CARLTON C. MASSEY, Respondent

By Dexter S. Odin
Counsel

* * * * *

Recd 4-25-69, A.L.L.

page 44 }

* * * * *

## STIPULATION AND DESIGNATION OF RECORD

I. The parties hereto, by counsel, stipulate the resolution adopted February 7, 1969, by the Board of Directors of the Washington Metropolitan Area Transit Authority, a copy of which is attached hereto and marked "Exhibit A" and the minutes of the March 1, 1969, meeting of the Washington Metropolitan Area Transit Authority, a copy of which is attached hereto and marked "Exhibit B" constitutes the Mass Transit Plan and Plan for Financing referred to in the Petition for a Writ of *Mandamus,* and that this stipulation, as well as the attached exhibits, shall be a part of the record.

II. The parties, by counsel, jointly designate the following portions of the record for printing:

A. The Notice of Application for Writ of *Mandamus.*

B. The Petition for a Writ of *Mandamus* and the exhibits attached thereto lettered B, C, and D.

C. The Answer to the Petition for a Writ of *Mandamus.*

D. The Petition for Leave to Intervene *Amicus Curiae.*

E. The Stipulation dated April 25, 1969.

F. This Stipulation.

G. The following portions of Exhibit A of this Stipulation:

1. Print "A" to "A", pages 1 to 8 of Annex II, Summary of the Regional Rapid Rail Transit Plan and Program, March 1, 1968, (Revised February 7, 1969).

page 45 } 2. Print "B" to "B", pages 1 to 3 of Annex IV, *Financial Plan.*

3. Print "C" to "C", pages 1 to 4, Exhibit E of Annex IV, *General Statement of Terms and Conditions of Revenue Bond Indentures.*

4. Print Exhibit B of Annex IV, consisting of two pages of numerical tables, dated January 27, 1969.

III. The parties stipulate that, (1) the Exhibit attached to the Petition for Writ of *Mandamus* and lettered B, and (2) those portions of the record designated in Paragraph II-G above need not be printed in both this case and the pending case of *City of Falls Church* v. *Harry E. Wells,* but that it will be sufficient so long as those items are printed

in one of the cases and to that extent that they shall be deemed to be a part of the printed record of both cases.

BOARD OF SUPERVISORS OF
FAIRFAX COUNTY, Petitioner

By Harry Frazier, III
Counsel

CARLTON C. MASSEY, Respondent

By Dexter S. Odin
Counsel

April 30, 1969

* * * * *

page 46 } EXHIBIT A

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

RESOLUTION OF THE BOARD OF DIRECTORS
FEBRUARY 7, 1969

page 47 } Annex II (of Resolution of the Board of Directors of Feb. 7, 1969)

Summary of the Regional Rapid Rail Transit Plan and Program, March 1, 1968 (Revised February 7, 1969)

The system is 97.7 miles long, including 47.2 miles in subway, with 86 stations. The system serves directly the most densely populated urbanized area of the Washington metropolitan region. Stations throughout the system will have convenient means for transfer between rail and bus and many stations will have large parking facilities enabling motorists to save both time and money by riding the trains. The system has been planned to serve the greatest number of people in the Washington metropolitan area while at the same time maintaining a financially feasible system by generating as much revenue as possible per dollar of capital outlay and minimizing cost of construction.

The rapid transit system is composed basically of three through routes which traverse the District of Columbia and then enter Maryland and Virginia. Certain of these routes branch as they reach suburban areas and all are described

separately below. Four two-level stations—Metro Center Station at 12th and G Streets, Northwest; Gallery Place Station at 7th and G Streets, Northwest; L'Enfant Plaza Station at 7th and D Streets, Southwest; and Fort Totten Station at Riggs Road and B&O Railroad—provide for direct and convenient transfers from one line to another. Transfer may also be made between the two Farragut Square Stations by means of a walkway.

## DESIGN OF FACILITIES

Stations, Terminals and Platforms. Of the 86 stations in the System, it is presently estimated that 53 will be constructed in subway, and 33 will be at surface or on aerial structure. Platforms of all stations will be 600 feet long to accommodate eight car trains. Approximately one-half of the stations will have side platforms while the other half will have center platforms. Each subway station will have a mezzanine level providing for fare collection, station supervision and administration. Stations will be attractive and well-lighted for passenger comfort. In keeping with the Washington area, midtown stations will follow a design concept that is in keeping with the dignity of the Nation's Capital. The design of outlying stations will be related to the area in which located.

Parking Facilities. Parking facilities to accommodate a total of 30,000 vehicles will be provided at 37 stations. Of this number, approximately 5,000 are planned in the District of Columbia, 11,000 in Virginia and 14,000 in Maryland.

page 48 } PROVISION OF FACILITIES

All rapid transit facilities to be provided for the system will be constructed under the direction of the Washington Metropolitan Area Transit Authority. Public rights-of-way are utilized for the routes to the maximum practicable extent. Wherever private property is required, such property will be acquired by negotiated purchase or lease, as appropriate, or by condemnation, if necessary.

## TYPE OF EQUIPMENT

Rapid Transit Vehicles. The passenger equipment for the recommended rapid rail transit system is being designed

from the point of view of the passenger and his needs for comfort, convenience, and economy of time. Transit cars will incorporate the latest available high-performance features and the latest engineering advances of equipment recently introduced in Chicago, Cleveland and Toronto and planned for San Francisco. The cars will be 75 feet in length, have an overall width of 10 feet, will seat 81 passengers, and will be capable of rapid acceleration permitting speeds up to 75 miles per hour. They will be air-conditioned, attractively appointed, quiet and comfortable.

Train Control System. Automatic train controls will permit the area's rapid rail transit trains to operate with high precision and efficiency. Each train will be attended by an operator who can override the electronics when necessary. The capability for automatic operation will permit the operator to answer questions and supervise passenger activity. The operator will be able to communicate by radio with the Train Control Supervisor at Central Control.

The automatic train control and communications systems will be comprised of three subsystems: (1) automatic train protection which guarantees the safety of passengers and equipment by regulating train speed and spacing, (2) automatic train operation which starts and stops trains and opens doors, and (3) automatic train supervision which monitors train performance throughout the system.

## TIMETABLE FOR PROVISION OF FACILITIES

It is anticipated that the entire system will be put into operation by 1980 with the initial operation scheduled for the end of 1972. Engineering work on the basic system authorized by Congress is progressing and final design contracts have been let on a number of sections of this system. Exhibit A depicts the schedule of operations for the various segments of the system.

## page 49 } ANTICIPATED CAPITAL COSTS

The estimated capital costs of constructing and equipping the lines and facilities in the Regional Rapid Rail Transit Plan and Program based upon the latest preliminary engineering studies is $2.495 billion, including an assumed escalation factor of 5 percent per annum.

## ESTIMATED OPERATING EXPENSES AND REVENUES

Annual estimates of operating expenses and revenues for each year 1973-2030 are shown in Exhibit B of Annex IV.

## ROUTES AND SCHEDULES OF SERVICE

Service on the system will be provided over a 20-hour period from 5:00 A.M. to 1:00 A.M. Train schedules during typical weekday peak periods will consist of train frequencies at two to four-minute intervals. During the base day, trains will run every six minutes and during the early morning and late evening hours, every 10 minutes.

Saturday schedules will be six minutes during the base day and ten minutes during early morning and late evening hours. Sunday service will approximate the weekday "early morning-late evening" operations.

## PROBABLE FARES

The fare system is expected to be generally comparable with prevailing bus fares. For testing purposes, a zone fare system ranging from 30 cents to 70 cents from downtown to the furthest station has been assumed. It is contemplated that there will be free transfers between bus and rapid rail transit operations.

page 50 } DESCRIPTION OF INDIVIDUAL LINES

### ROUTE A—ROCKVILLE ROUTE

This route begins at the Metro Center Station (12th and G Streets, Northwest) and extends westward in subway under G Street, thence northwestward under Lafayette Park and Farragut Square, continuing under Connecticut Avenue to Yuma Street. From this point the route proceeds westward in subway under Yuma Street to Tenley Circle, thence northward under Wisconsin Avenue to the District of Columbia—Maryland boundary. The route continues northward under Wisconsin Avenue, through Bethesda, to a point south of the Capital Beltway. The route crosses over the Capital Beltway along the east side of Rockville Pike, thence northward in subway along Rockville Pike to a point south of Randolph Road, thence proceeds under private property in subway to the Baltimore and Ohio Rail-

road. The route continues northwestward on the surface along the B&O Railroad to a terminal at Rockville. The following stations are provided: Metro Center, Farragut North, Dupont Circle, Zoological Park, Cleveland Park, Van Ness, Tenley Circle, Friendship Heights, Bethesda, Medical Center, Parkside, Nicholson Lane, Halpine Road, and Rockville. Storage tracks and inspection facilities are provided north of the Rockville terminal. A future extension is planned extending northward to Germantown, alignment to be determined.

ROUTE B—GLENMONT ROUTE

This route begins at the Metro Center Station and extends eastward in subway under G Street to 6th Street, THENCE SOUTHEASTWARD UNDER Judiciary Squar thence southeastward under Judiciary Square, eastward under D Street, and northward under Union Station. The route then proceeds northward on the surface along the B&O Railroad to the District of Columbia—Maryland boundary. The route continues northward through Silver Spring along the B&O Railroad, thence in subway under 16th Street and Georgia Avenue to a terminal at Glenmont. The following stations are provided: Gallery Place, Judiciary Square, Union Station, Rhode Island, Michigan Avenue, Fort Totten, Takoma Park, Silver Spring, Forest Glen, Wheaton and Glenmont. The main maintenance yard is provided south of the Rhode Island Station. Storage and inspection facilities are provided north of the Glenmont Station.

ROUTE C—HUNTINGTON ROUTE

This route begins at the Metro Center Station and proceeds northward in subway under 12th Street, thence westward under Eye Street. The route continues westward in subway under the Potomac River crossing the District of Columbia—Virginia boundary into Rosslyn, page 51 } thence southward under Lynn Street in subway to a point south of Arlington Boulevard. From this point the route continues southward on the surface along the east side of the Jefferson Davis Highway, then curves southwestward, in subway, south of the Pentagon and continues in subway under Hayes Street, thence eastward under 18th Street to the National Airport. The route then turns southward and proceeds through National Airport on an aerial structure, crosses over the George Washington Memorial Parkway and proceeds southward on the

surface along the east side of the Richmond, Fredericksburg and Potomac Railroad. The route continues along the east side of the RF&P Railroad through Alexandria to a point south of Duke Street. The route then proceeds southward over private property, crossing over the Capital Beltway and Huntington Avenue to a terminal at the Huntington Station. The following stations are provided: Metro Center, McPherson Square, Farragut West, Foggy Bottom, Rosslyn, Pentagon, Pentagon City, Crystal City, National Airport, Monroe Avenue, King Street, and Huntington. A future extension is planned southward to Fairfield, alignment to be determined.

ROUTE D—ARDMORE ROUTE

This route begins at the Metro Center Station and proceeds southward in subway under 12th Street to the Southwest Mall area, turning eastward under D Street, S.W., thence to Pennsylvania Avenue. The route continues in subway southeastward under Pennsylvania Avenue, eastward under G Street, S.E., northeastward under Potomac Avenue, northward under 19th Street, and northeast on the surface across the D. C. Stadium parking lot east of Oklahoma Avenue. The route then turns eastward, crossing over Benning Road, the Anacostia River and Kenilworth Avenue north of Benning Road, thence northeastward on surface along the Penn Central Railroad to the District of Columbia—Maryland boundary and continues to a terminal at Ardmore. The following stations are provided: Federal Triangle, Independence Avenue, L'Enfant Plaza, Voice of America, Capitol South, Marine Barracks, Potomac Avenue, Stadium-Armory, Oklahoma Avenue, Kenilworth Avenue, Deane Avenue, Cheverly, Landover, and Ardmore. Storage and inspection facilities are provided immediately east of the Kenilworth Avenue Station. A future extension is planned to Bowie, alignment to be determined.

ROUTE E—GREENBELT ROUTE

This route begins at the Gallery Place Station (7th and G Streets, Northwest) and proceeds northward in subway under 7th Street, thence northwestward under Massachusetts Avenue to 13th Street. The route continues northward in subway under 13th Street to Kansas Avenue, thence northeastward under Kansas Avenue, thence eastward under Farragut Street and Fort Totten, passing under the Glenmont Route in subway at

page 52

the Fort Totten Station. The route then continues eastward on the surface in the median of the proposed Interstate Route 95 to the District of Columbia-Maryland boundary. In Maryland the route continues northeastward along the median of the proposed Interstate 95, thence on the surface, eastward generally parallel to and south of East-West Highway. After crossing under Belcrest Road, the route proceeds eastward in subway passing under East-West Highway. The route continues in subway northeastward under Queens Chapel Road, thence eastward crossing under U.S. Route 1 south of Albion Road. From this point the route continues eastward, south of Albion Road, and crosses over the Baltimore and Ohio Railroad and proceeds northward on the surface along the east side of the Railroad. The route continues northward along the east side of the B&O Railroad to the terminal at Greenbelt Road. The following stations are provided: Gallery Place, Logan Circle, U Street, Columbia Heights, Georgia Avenue, Petworth, Fort Totten, Chillum, Prince Georges Plaza, College Park, and Greenbelt Road. Storage and inspection facilities are provided north of the Greenbelt terminal. A future extension is planned to Laurel, alignment to be determined.

Under study is an alternate routing for the mid-city portion of the Greenbelt Route. This alternate route would proceed northward in subway under 7th Street, thence westward under U Street, thence northward under 14th Street to the vicinity of Park Road, thence northeastward in subway and under Kansas Avenue as with the adopted route. Stations would be provided in the vicinity of 7th and M Streets, 7th and Rhode Island, 12th and U, and 14th and Park Road.

ROUTE F—BRANCH ROUTE

This route begins at the Gallery Place Station and proceeds southward in subway under 7th Street to Maine Avenue, S.W. From Maine Avenue the route proceeds eastward in subway under M Street to the vicinity of 6th Street, S.E., thence southeastward to pass under the Washington Navy Yard and the Anacostia River in subway to Nichols Avenue, thence eastward under Good Hope Road to Fort Stanton Park. The route then proceeds in subway first under a portion of Fort Stanton Park, then under private property to Naylor Road. Continuing southeastward the route proceeds in subway under Naylor Road to a portal south of 30th Street, S.E. The route then continues on the surface along

the east side of Naylor Road, then crosses over Naylor Road to the District of Columbia—Maryland boundary. In Maryland the route continues, crossing over Suitland Parkway and Naylor Road, and proceeds eastward along the south side of Suitland Parkway crossing over Branch Avenue. From this point the route continues eastward on the surface and passes under Suitland Parkway, thence eastward on the surface generally parallel to Suitland Parkway. The route continues southeastward on the surface passing under Silver Hill Road, and then under Suitland Parkway, and proceeds on the surface across private property southward to a terminal at Branch Avenue. The following stations are provided: Pennsylvania Avenue, L'Enfant Plaza, Waterfront, Navy Yard, Anacostia, Alabama Avenue, Suitland Parkway, Federal Center, and Branch Avenue. A future extension is planned to Brandywine, alignment to be determined.

page 53

ROUTE G—ADDISON ROUTE

This route begins at a junction with Route D—Ardmore Route immediately east of the Kenilworth Avenue Station. From the junction the route proceeds eastward parallel to and north of Benning Road, over the Penn Central Railroad, the B&O Railroad and Minnesota Avenue to Fort Mahon Park. The route continues in subway under Fort Mahon Park to 42nd Street, N.E., then proceeds in subway generally under Benning Road and East Capitol Street to Central Avenue, thence southeastward in subway under Central Avenue to the District of Columbia—Maryland boundary. In Maryland the route continues eastward in subway under Central Avenue to a terminal at Addison Road. The following stations are provided: Benning Road, Capitol Heights, and Addison Road. A future extension is planned eastward to Largo, alignment to be determined.

ROUTE H—FRANCONIA ROUTE

This route begins at a junction with Route J—Backlick Route, west of the Van Dorn Station and proceeds southward along the west side of the RF&P Railroad on the surface, passing under the Capital Beltway and continuing to a terminal at Franconia. The following station is provided: Franconia.

ROUTE J—BACKLICK ROUTE

This route begins at a junction with Route C—Hunting-

ton Route south of Duke Street and proceeds westward crossing under the Southern Railway and continues on the surface along the south side of the Southern Railway. The route then crosses over Cameron Run and continues westward on the surface parallel to and north of the Capital Beltway. The route then crosses over the RF&P Railroad and continues westward on the surface, first along the north side of the RF&P Railroad, and then along the north side of the Capital Beltway, thence under the Shirley Highway to a terminal at the Backlick Station located along the south side of the Southern Railway. The following stations are provided: Telegraph Road, Van Dorn and Backlick Road. Storage and inspection facilities are provided west of Telegraph Road serving the Huntington and Franconia Routes in addition to this route. A future extension is planned to Burke, alignment to be determined.

page 54 } ROUTE K—I-66 ROUTE

This route begins at a junction with Route C—Huntington Route south of the Rosslyn Station and proceeds westward in subway under 16th Street and Wilson Boulevard to Fairfax Drive. The route continues in subway under Fairfax Drive to a point west of Glebe Road where it enters the median of the proposed Interstate Route 66. The route continues westward on the surface on the median of Interstate Route 66 to a terminal at Nutley Road. The following stations are provided: Court House, Clarendon, Nelson Street, Glebe Road, East Falls Church, Route 7, Gallows Road, and Nutley Road. Storage and inspection facilities are provided in the median of I-66 east of Route 7. A future extension is planned to Centreville, alignment to be determined.

ROUTE L—L'ENFANT-PENTAGON RIVER CROSSING

This route begins at a junction with Route F—Branch Route, south of the L'Enfant Plaza Station and proceeds in subway under the Washington Channel to East Potomac Park. The route portals along the south side of the Penn Central Railroad and crosses over the Potomac River, on a bridge southeast of and adjacent to the Long Bridge, to the District of Columbia-Virginia boundary. The route then passes under the RF&P Railroad and proceeds in subway to a junction with Route C—Huntington Route northeast of the Pentagon Station. No stations are provided on this route. A future extension is planned southwestward, alignment to be determined.

page 55 } Annex IV (of Resolution of Board of Directors of Feb. 7, 1969)

## FINANCIAL PLAN

The Financial Plan of the Authority in accordance with Article VII, Section 17 (a) of the Washington Metropolitan Area Transit Authority Compact is as follows:

1. Facilities to be Constructed or Acquired. The facilities to be constructed or acquired are described in the preceding Annexes hereto. This Regional Rapid Rail Transit Plan and Program was adopted by the Board of Directors on March 1, 1968, and revised by the Board of Directors on February 7, 1969.

2. Cost of Facilities to be Constructed or Acquired. The cost of all facilities to be constructed or acquired, including all rolling stock and other equipment, and further including anticipated contingency allowances and changes in the value of money, is estimated to be $2,494,600,000, exclusive of interest during construction.

3. Principal Amount of Bonds, Equipment Trust Certificates and Other Evidences of Dept. To finance the facilities to be constructed or acquired pursuant to the aforesaid Plan and Program, the Authority will issue $835,000,000 of tax-exempt, gross Revenue Bonds. The debt service on such Revenue Bonds will be paid from fare box and other revenues generated from operation of the Transit System in accordance with the policy established in Article VII, Section 16 of the Compact that "... as far as possible, the payment of all costs shall be borne by persons using or benefiting from the Authority's facilities and services ..."

Each gross Revenue Bond issued by the Authority will have a maturity not to exceed 50 years from its own date and will be secured by a pledge of the gross revenues of the system. Long-term Transit Service Agreements between the Authority and suburban transit commissions or local units of government will underwrite operating deficiencies, although none are anticipated during the life of the agreements. A copy of the Transit Service Agreement is shown in Exhibit A.

The Authority will also separately issue $1,047,044,000 of "Federal Share Bonds" which are described hereinafter.

No equipment trust certificates or other evidences of debt are included in the financial program.

4. Operating Expenses and Revenues. Anticipated gross

revenues, operating and maintenance expenses, including depreciation, and net revenues after depreciation are shown for each year 1973-2030 in Exhibit B.

page 56 } 5. Allocation among the Federal, District of Columbia, and Participating Local Governments of the Remaining Costs and Deficits. The remaining $1,720,566,000 required to construct and equip the Transit System, over and above the $835,000,000 of Authority gross Revenue Bonds, will be provided by the Federal Government and the local governments within the Washington Metropolitan Area Transit Zone as follows: two-thirds of such remaining costs, or $1,147,044,000, will be provided by the Federal Government, and one-third, or $573,522,000, by the District of Columbia and the other local participating governments. The formula for allocation of the total local share of the net project cost among the District of Columbia, Maryland and Virginia, was adopted by the Board of Directors of WMATA on March 1, 1968, and is shown in Exhibit C. Suballocation formulae for distribution of the Maryland and Virginia shares of local net project costs among their respective local governments, have been adopted by the suburban transit commissions, and are also shown in Exhibit C. The Capital Contributions Agreement, which will commit each local jurisdiction to its allocated share, is shown in Exhibit D.

6. The Federal Contribution. It is anticipated that the Federal Government will provide its two-thirds share of net project costs by appropriating the balance of $100,000,000 presently authorized to be appropriated pursuant to Public Law 89-173, approved September 8, 1965, and by authorizing the issuance of Federal Share Bonds by the Authority in the principal amount of $1,047,044,000. The debt service and incidental expenses with respect to such Federal Share Bonds will be paid by the Federal Government pursuant to a contract between the Authority and the Secretary of Transportation. Such Federal Share Bonds, to be issued during the construction period, will be subject to the following conditions and limitations:

a. Annual amounts of Federal Share Bond proceeds shall not exceed $200,000,000;

b. No such Federal Share Bond shall mature in more than thirty years from its own date; and

c. Notwithstanding the provisions of Section 103 of the Internal Revenue Code of 1954 the interest on such Federal Share Bonds shall be includable in gross income for Federal income tax purposes, but the tax exemption thereunder of

interest on other bonds or evidences of indebtedness issued by the Authority shall not be affected.

d. The faith of the United States will be solemnly pledged to the payment of contributions in amounts sufficient to pay the debt service and incidental expenses on these bonds and there will be authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, the amounts necessary to provide for such payments.

e. The principal amount of Federal Share Bonds issued by the Authority in any given year shall be matched by the local participating governments by payment of the local share of Capital Contributions required for such year in a total amount not less than 50 percent of the principal amount of such Federal Share Bonds issued in that year.

page 57 } 7. Principal Terms and Conditions of Indentures. The principal terms and conditions which will appear in indentures securing the Authority bonds are shown in Exhibit E.

8. Other Information. A table listing the capital requirements by source of funds and the sources and schedule of repayment of the Authority's Revenue Bonds is shown in Exhibit F. The total capital contributions by the Federal, District of Columbia and local governments, together with the proceeds of the Authority's Revenue Bonds, will be sufficient to pay the estimated cost of all facilities to be constructed or acquired pursuant to the Authority's Regional Rapid Rail Transit Plan and Program, March 1, 1968 (revised February 7, 1969), including interest during construction.

The initial commitment proposed for each of the local political jurisdictions under the Capital Contributions Agreement is within its respective legal authorization. The total of such commitments will guarantee 97 percent of the required local share of net project cost as presently estimated. A procedure is provided in the Capital Contributions Agreement for the equitable allocation among the jurisdictions of additional costs, if any, on July 1, 1974, or 5 years after the start of construction, whichever is the later date. At that point in time—midway through the construction period—more accurate estimates of system costs will be available. If these estimates show that increased commitments are required from the local jurisdictions, the Capital Contributions Agreement provides for obtaining such commitments in 1974. The local jurisdictions pledge their faithful cooperation and best efforts in the Agreement to secure

any additional authorization required. Such funds will not be required for obligation purposes until 1977, thus allowing sufficient lead time for obtaining the additional commitments required. If, however, delay is encountered in obtaining commitments for such funds, temporary or short term borrowings based upon reserve fund revenues accruing to the system can be utilized to proceed with the construction schedule.

page 60 } Exhibit E (Of Annex IV of Resolution of Board of Directors of Feb. 7, 1969)

## GENERAL STATEMENT OF TERMS AND CONDITIONS OF REVENUE BOND INDENTURES

The Transit Revenue Bonds of the Authority will be secured by a Bond Indenture entered into by the Authority with a Trustee Bank pursuant to the provisions of the Compact.

The following is a general outline of certain of the principal terms of the Bond Indenture.

PLEDGE OF REVENUES:

The gross revenues derived by the Authority from the operation of the Transit System, including investment income from funds held under the Indenture, are to be pledged to secure the payment of the principal or redemption price and the interest on the Transit Revenue Bonds in accordance with the terms of the Indenture. The pledge created by the Indenture will be for the equal benefit, protection and security of all of the holders of Transit Revenue Bonds, regardless of the time or times of their issue or maturity.

TRANSIT SYSTEM ISSUE:

The Indenture will provide for the issuance of Transit Revenue Bonds in an aggregate principal amount equal to the estimated amount of capital to be provided by the Authority for the Transit System. The Indenture will also provide for the issuance by the Authority, upon compliance with certain financial restrictions, of additional Transit Revenue Bonds, if any, required to complete the Transit System in the event that the final cost thereof should exceed estimates.

ADDITIONAL TRANSIT REVENUE BONDS:

The Indenture will provide for the issuance by the Authority of additional Transit Bonds to finance improvements, additions or renewals or replacements for the Transit System. Such additional bonds are to rank equally and ratably as to the security in payment with the other Transit Revenue Bonds. Such additional Bonds may be issued, however, only upon compliance with certain conditions to be specified on the Indenture, including earnings tests which will be designed to protect against dilution of the security of the holders of outstanding Transit Revenue Bonds.

page 61 } TRANSIT REVENUE REFUNDING BONDS:

The Indenture will provide for the issuance by the Authority of Transit Revenue Refunding Bonds to refund outstanding Transit Revenue Bonds or other outstanding obligations of the Authority issued to finance the Transit System. These Refunding Bonds will rank equally and ratably as to security and payment with other Transit Revenue Bonds. The Indenture will also provide certain financial conditions governing the issuance of such Refunding Bonds so as to protect the holders of outstanding Transit Revenue Bonds against dilution of their security.

RATE COVENANT:

The Indenture will contain a covenant by the Authority to the effect that it will, insofar as practicable and consistent with the provisions of adequate service at reasonable fares, establish rates and collect fares for the service of the Transit System so as to provide for the debt service and the requirements with respect to the Transit Revenue Bonds, to pay operating expenses of the Transit System, to provide for major repair, maintenance and depreciation with respect to the Transit System and to provide funds to meet the requirements of any reserves provided by the Indenture or any other purposes as provided in the Indenture.

APPLICATION OF REVENUES:

The Indenture will establish certain funds for the application of Revenues, including among others, a Revenue Fund, Debt Service and Reserve Fund, an Operating Fund and a Renewal and Replacement Fund.

As will be provided in the Indenture, revenues are to be paid into funds established by the Indenture in the order of priority and in the sum provided by the Indenture. Revenues as collected and deposited in the Revenue Fund will first be used to meet the requirements of the Debt Service and Reserve Fund. Thereafter, revenues will be allocated to meet operating expenses, renewals and replacements and other purposes, as provided in the Indenture.

The Indenture will also provide that those payments received by the Authority under its Transit Service Agreement with the participating political subdivisions will be deposited directly into the operating fund. Excess revenues under the Indenture will be paid to the participating political subdivisions and the Federal Government as provided in the Transit Service Agreement.

page 62 } CONSTRUCTION FUND:

The Indenture will establish a Construction Fund. The proceeds of Transit Revenue Bonds, to the extent not required to be deposited in the Debt Service Fund so as to provide for interest during construction, are to be deposited in the Construction Fund and applied to the cost of the Transit System.

INVESTMENT OF FUNDS:

The Indenture will provide that monies held thereunder may be invested in certain securities, including obligations of the United States of America. Certain restrictions as to the maturities of such securities will be set forth in the Indenture.

INSURANCE:

The Authority will covenant under the Indenture that it will at all times maintain or cause to be maintained, to the extent reasonably obtainable, certain types of insurance with respect to the Transit System. The Indenture will also contain provisions regarding the application of insurance proceeds and other funds to reconstruct and repair the Transit System in the event of damage or destruction.

OTHER BOND COVENANTS:

The Indenture will contain various covenants by the Authority required to protect the interest of bond holders, including among others, those providing for (i) enforcement of Capital Contributions Agreement, the Transit Service Agreement, and the agreement for the operation of the Transit System by a contractor, (ii) restriction with respect to the creation of lien or the sale, lease or other disposition of all or part of the Transit System, (iii) the employment of a consulting engineer, (iv) the maintenance of books and records and the furnishing of periodical reports with respect to the Transit System, and (v) the operation and maintenance of the Transit System. In addition, the Indenture will also require that the Authority adopt an annual budget with regard to the operation and maintenance of the Transit System.

AMENDMENT OF THE INDENTURE:

The Indenture will contain provisions for its amendment by supplemental indentures which may be entered into by the Authority with the Trustee with the consent of the holders of

a specified percentage in principal amount of the Transit Revenue Bonds then outstanding. In addition, the Indenture will provide for certain amendments thereto which will not require the consent of the bond holders.

page 63 } REMEDIES:

The Indenture will define Events of Default thereunder and will state the remedies of the Trustee and the bond holders in the event of an occurrence and continuation of such an Event of Default.

* * * * *

A Copy—Teste:

Howard G. Turner, Clerk.

## INDEX TO RECORD


*Page*

Order—April 29, 1969 ..... 1
Record ..... 3
Notice of Application for Writ of *Mandamus* ..... 3
Petition for Writ of *Mandamus* ..... 4
  Exhibit B ..... 9
  Exhibit C ..... 26
  Exhibit D ..... 28
Answer of Respondent ..... 29
Petition for Leave to Intervene *Amicus Curiae* ..... 32
Stipulation—dated April 25, 1969 ..... 34
Stipulation and Designation of Record—dated April 30, 1969 ..... 35
Exhibit A—Washington Metropolitan Area Transit Authority—Resolution of the Board of Directors, February 7, 1969 ..... 36
  Annex II of Resolution of the Board of Directors, February 7, 1969 ..... 36
  Annex IV of Resolution of the Board of Directors, February 7, 1969—Financial Plan ..... 45
    Exhibit B of Annex IV ..... 49
    Exhibit E of Annex IV ..... 51

EXHIBIT B (Of Annex IV Of Resolution of Board of Directors of February 7, 1969)

Washington Metropolitan Area Transit Authority

Adopted Regional System (ARS-68)

| Year | Gross Revenue | Operating Expenses | Net Revenue Before Depreciation | Depreciation | Net Revenue After Depreciation |
|---|---|---|---|---|---|
| | | (Thousands of Dollars) | | | |
| 1973 | 2,700 | 3,700 | (1,000) | - | (1,000) |
| 74 | 15,100 | 8,800 | 6,300 | 1,132 | 5,168 |
| 75 | 39,700 | 15,300 | 24,400 | 2,978 | 21,422 |
| 76 | 44,400 | 15,300 | 29,100 | 3,330 | 25,770 |
| 77 | 53,000 | 20,500 | 32,500 | 3,975 | 28,525 |
| 78 | 60,800 | 23,600 | 37,200 | 4,560 | 32,640 |
| 79 | 65,400 | 24,600 | 40,800 | 4,905 | 35,895 |
| 1980 | 75,000 | 30,700 | 44,300 | 5,625 | 38,675 |
| 81 | 77,500 | 30,900 | 46,600 | 5,812 | 40,788 |
| 82 | 78,800 | 31,000 | 47,800 | 5,910 | 41,890 |
| 83 | 80,100 | 31,100 | 49,000 | 6,007 | 42,993 |
| 84 | 81,400 | 31,200 | 50,200 | 6,105 | 44,095 |
| 85 | 82,800 | 31,300 | 51,500 | 6,210 | 45,290 |
| 86 | 84,100 | 31,500 | 52,600 | 6,307 | 46,293 |
| 87 | 85,400 | 31,600 | 53,800 | 6,405 | 47,395 |
| 88 | 86,800 | 31,700 | 55,100 | 6,510 | 48,590 |
| 89 | 88,100 | 31,800 | 56,300 | 6,608 | 49,692 |
| 1990 | 89,400 | 32,000 | 57,400 | 6,705 | 50,695 |
| 91 | 90,300 | 32,100 | 58,200 | 6,772 | 51,428 |
| 92 | 91,200 | 32,200 | 59,000 | 6,840 | 52,160 |
| 93 | 92,000 | 32,300 | 59,700 | 6,900 | 52,800 |
| 94 | 92,900 | 32,300 | 60,600 | 6,968 | 53,632 |
| 95 | 93,800 | 32,400 | 61,400 | 7,035 | 54,365 |
| 96 | 94,700 | 32,500 | 62,200 | 7,102 | 55,098 |
| 97 | 95,600 | 32,600 | 63,000 | 7,170 | 55,830 |
| 98 | 96,500 | 32,700 | 63,800 | 7,238 | 56,562 |
| 99 | 97,400 | 32,700 | 64,700 | 7,305 | 57,395 |

| Year | Gross Revenue | Operating Expenses | Net Revenue Before Depreciation | Depreciation | Net Revenue After Depreciation |
|---|---|---|---|---|---|
| | | (Thousands of Dollars) | | | |
| 2000 | 98,300 | 32,800 | 65,500 | 7,372 | 58,128 |
| 1 | 98,800 | 32,800 | 66,000 | 7,410 | 58,590 |
| 2 | 99,200 | 32,900 | 66,300 | 7,440 | 58,860 |
| 3 | 99,600 | 32,900 | 66,700 | 7,470 | 59,230 |
| 4 | 100,100 | 32,900 | 67,200 | 7,508 | 59,692 |
| 5 | 100,500 | 33,000 | 67,500 | 7,538 | 59,962 |
| 6 | 101,000 | 33,000 | 68,000 | 7,575 | 60,425 |
| 7 | 101,400 | 33,100 | 68,300 | 7,605 | 60,695 |
| 8 | 101,900 | 33,100 | 68,800 | 7,642 | 61,158 |
| 9 | 102,300 | 33,100 | 69,200 | 7,672 | 61,528 |
| 2010 | 102,800 | 33,200 | 69,600 | 7,710 | 61,890 |
| 11 | 103,200 | 33,200 | 70,000 | 7,740 | 62,260 |
| 12 | 103,700 | 33,300 | 70,400 | 7,778 | 62,622 |
| 13 | 104,100 | 33,300 | 70,800 | 7,808 | 62,992 |
| 14 | 104,600 | 33,400 | 71,200 | 7,845 | 63,355 |
| 15 | 105,000 | 33,400 | 71,600 | 7,875 | 63,725 |
| 16 | 105,400 | 33,400 | 72,000 | 7,905 | 64,095 |
| 17 | 105,900 | 33,500 | 72,400 | 7,943 | 64,457 |
| 18 | 106,300 | 33,500 | 72,800 | 7,973 | 64,827 |
| 19 | 106,800 | 33,600 | 73,200 | 8,010 | 65,190 |
| 2020 | 107,200 | 33,600 | 73,600 | 8,040 | 65,560 |
| 21 | 107,600 | 33,600 | 74,000 | 8,070 | 65,930 |
| 22 | 108,100 | 33,700 | 74,400 | 8,107 | 66,293 |
| 23 | 108,500 | 33,700 | 74,800 | 8,138 | 66,662 |
| 24 | 109,000 | 33,700 | 75,300 | 8,175 | 67,125 |
| 25 | 109,400 | 33,800 | 75,600 | 8,205 | 67,395 |
| 26 | 109,900 | 33,800 | 76,100 | 8,242 | 67,858 |
| 27 | 110,300 | 33,900 | 76,400 | 8,273 | 68,127 |
| 28 | 110,800 | 33,900 | 76,900 | 8,310 | 68,590 |
| 29 | 111,200 | 33,900 | 77,300 | 8,340 | 68,960 |
| 2030 | 111,700 | 34,000 | 77,700 | 8,378 | 69,322 |
| Total | 5,289,500 | 1,783,400 | 3,506,100 | 396,511 | 3,109,589 |

January 27, 1969