

Attachment: COUN Recommended Revisions to RTC Agreement - Version 4

1. Add definition section. Include:
 - a. "Funding Parties" means the District of Columbia Department of Transportation ("DDOT"), the Maryland Department of Transportation ("MDOT"), and the Virginia Department of Transportation ("VDOT"). Each such department of transportation may also be referred to as "Funding Party." The Washington Metropolitan Area Transit Authority ("WMATA") is not a Funding Party and therefore has no responsibility for any financial obligation arising from or relating to this Agreement.
 - b. "Regional Transportation Coordination Program" and "RTC Program" mean the program to coordinate and to support regional sharing of transportation systems conditions [continue with language from first paragraph of section 3(a)]. The RTC Program previously was provisionally known as the "CapCom Program, for "Capital Region Communications and Coordination Program" [continue with language from Section 3(b)].
 - c. "Regional Transportation Coordination Steering Committee" and "Steering Committee" consist of representatives from DDOT, MDOT, VDOT and WMATA. Each such agency may also be referred to as "Steering Committee Member."
2. Apply definitions consistently throughout, and eliminate similar undefined terms such as "Transportation Agencies" as follows:
 - a. Section 1 - Replace "DDOT, MDOT, and VDOT" with "Funding Parties";
 - b. Section 2 - Replace "TRANSPORTATION AGENCIES comprising the STEERING COMMITTEE" with "Funding Parties";
 - c. Section 3 - Replace "DDOT, MDOT and VDOT" with "the Steering Committee";
 - d. Section 4 - Consider replacing instances of "DDOT, MDOT and VDOT" with "Funding Parties" as latter term is already used in part (e), though in part (e) replace "Each of the agencies providing funding for the RTC Prgram (DDOT, MDOT and VDOT)" with either "DDOT, MDOT and VDOT" or "Funding Parties";
 - e. Section 6(b) - Replace "The TRANSPORTATION AGENCIES comprising the STEERING COMMITTEE" with "Each Steering Committee member";
 - f. Sections 8 & 10 - Replace all references to "the TRANSPORTATION AGENCIES comprising the STEERING COMMITTEE" with "the Funding Parties";
 - g. Section 8(b) - Replace "TRANSPORTATION AGENCIES" with "Funding Parties";
 - h. Section 12 - In both first and second paragraphs replace "COG shall be entitled to receive from the STEERING COMMITTEE, a proportionate share of the just and equitable compensation . . ." with "COG shall be entitled to receive from the Funding Parties a proportional share of the just and equitable compensation . . ." WMATA notes that this section gives it veto power over a termination for cause even though WMATA would not be responsible for funding continued performance.
 - i. Section 16 - Second line, replace "STEERING COMMITTEE" with "Funding Parties";
 - j. Section 23 - Replace "STEERING COMMITTEE" with "Funding Parties";
 - k. Section 24 - Replace "TRANSPORTATION AGENCIES" with "Steering Committee Members";
 - l. Section 25 - Replace "TRANSPORTATION AGENCY" with "Funding Party";
 - m. Section 26(c) - Replace "The TRANSPORTATION AGENCIES comprising the STEERING COMMITTEE" with "Funding Parties";

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3. Following Recital E, revise consideration paragraph: "NOW, THEREFORE, based upon the foregoing recitals and the mutual covenants and promises set forth below, and for other good and valuable consideration, the sufficiency of which is acknowledged by the parties, the parties mutually covenant and agree as follows:"
4. Add at the end of section 4(e): "WMATA is not a Funding Party and therefore has no responsibility for any financial obligation arising from or relating to this Agreement, such as may result from a Funding Party abandoning the RTC Program or withdrawing from financial participation, dissolution of the Steering Committee or discontinuance of the RTC Program."
5. Revise the start of Section 5(b): "The Steering Committee shall support COG in completing the tasks in the approved RTC Work Program. Such support shall not include funding, other than required of the Funding Parties elsewhere in this agreement, and shall include but not be limited to:"
6. Please advise as to the intent of section 11(b). If the intent is to allow Steering Committee members to enter into separate contracts in support of the RTC, WMATA suggests that the provision is unnecessary, as any member can do this in absence of any provision in the RTC Agreement. If the intent is to ensure that such solo contracting by a Steering Committee member does not obligate the other members of the committee, including as to funding, this too seems unnecessary. In the absence of any agreement of mutual support for the actions of any one member, such actions should not obligate the other members. At most the RTC Agreement might state that should any member of the Steering Committee enter into a contract authorizing service work or special technical study, that member is solely responsible for funding that contract unless explicitly agreed to in writing by another member.
7. Section 14 - Add Non-Disclosure provision: Steering Committee members will from time to time share sensitive or confidential information ("Confidential Information") with each other, with COG, and with the PIM and TST. Each Steering Committee Member is responsible for prominently marking all Confidential Information with the following legend, or similar: "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION PROTECTED BY THE NON-DISCLOSURE PROVISION IN THE RTC AGREEMENT DATED [month day, year] BETWEEN DDOT, MDOT, VDOT, WMATA AND MWCOG. DISCLOSURE OF THIS CONFIDENTIAL INFORMATION IS PROHIBITED WITHOUT THE PRIOR WRITTEN CONSENT OF [identify party]." Confidential Information remains the property of the originating Steering Committee member and shall not be disclosed to any third party without the prior written consent of that Steering Committee member. Each party shall protect Confidential Information from disclosure to others using the same degree of care used to protect its own Confidential Information. COG shall ensure that any party receiving Confidential Information as a result of COG's actions under this agreement (e.g. PIM, TST) has a need to know the Confidential Information, uses the Confidential Information only for authorized purposes relating to the RTC Program and is bound to protect the received Confidential Information from unauthorized use and disclosure under the terms of a written confidentiality agreement.