AMENDMENT NO. 1 TO AGREEMENT BETWEEN THE WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY AND THE COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA FOR PHASE TWO (DESIGN) OF THE ROSSLYN STATION ACCESS IMPROVEMENT PROJECT

This FIRST AMENDMENT ("FIRST AMENDMENT") is made, this ____ day of _____, 2009, by and between the Washington Metropolitan Area Transit Authority ("WMATA"), a body corporate and politic created by Interstate Compact, and the COUNTY BOARD of Arlington County, Virginia ("COUNTY" or "COUNTY BOARD"), a political subdivision of the Commonwealth of Virginia, collectively referred to herein as the "PARTIES".

RECITALS

WHEREAS, on August 2, 2000, WMATA and the COUNTY BOARD executed an Agreement ("PHASE ONE AGREEMENT"), which Agreement was amended by WMATA and the COUNTY BOARD on November 11, 2007, that provided for the development of certain public transportation projects initiated by the COUNTY ("PHASE ONE AMENDED AGREEMENT"), including, but not limited to, such activities as conceptual and preliminary project design, project approval, and applicable public hearing(s); and

WHEREAS, on February 23, 2008, the COUNTY BOARD approved one such project, the Rosslyn Station Access Improvement Project ("PROJECT"), for final design and additional related services under a PHASE TWO AGREEMENT, which was executed by the PARTIES on March 21, 2008; and

WHEREAS, the PHASE TWO AGREEMENT defines the respective obligations, responsibilities and duties of the PARTIES regarding the final design development for completion of Phase Two of the PROJECT pursuant to a PROJECT MANAGEMENT PLAN ("PMP"), which sets forth the Project Scope, Schedule and Budget; and

WHEREAS, the "PMP" shall be revised by mutual written agreement between the WMATA Program Manager and the COUNTY Project Officer as necessary and as determined by the PARTIES; provided, however, that the PROJECT Budget may not be revised to require an increase in costs to the COUNTY without prior approval of the COUNTY BOARD; and

WHEREAS, the COUNTY BOARD, at its November 15, 2008 meeting, authorized additional funding, reflecting an increase in costs to the County for the PROJECT Budget to complete the PROJECT revised Scope of Work; and

WHEREAS, the WMATA Board, at its December 18, 2008 meeting, approved the amendment of the PROJECT Budget to complete the PROJECT revised Scope of Work; and

WHEREAS, WMATA has determined a firm fixed price of $720,000 for the completion of the PROJECT revised Scope of Work, which consists of $600,000 for WMATA's consultants and $120,000 for WMATA staff, and

WHEREAS, the purpose of this FIRST AMENDMENT is to memorialize the increase in PROJECT Budget and costs to the County, and to amend the payment terms of the PHASE TWO AGREEMENT.

NOW THEREFORE, in consideration of the understandings and mutually agreeable covenants contained herein, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the PARTIES amend the PHASE TWO AGREEMENT as follows:

1. **Incorporation of Recitals.** Each of the recitals set forth above is hereby incorporated by reference as if set forth fully at this point in this FIRST AMENDMENT.

2. **Defined Terms.** Capitalized terms used in this FIRST AMENDMENT and not defined in the FIRST AMENDMENT shall have the meaning ascribed to them in the original PHASE TWO AGREEMENT.

3. **Scope of Work.** Section 2.01 Scope of Work, Generally, is amended to provide that the PROJECT Scope of Work as set forth in Attachment A to the PHASE TWO AGREEMENT is amended to add thereto the following: the revised Scope of Work, Attachment A.1; WMATA Consultant Costs, Attachment A.2; WMATA Scope of Work, Attachment A.3; and WMATA Costs, Attachment A.4.

4. **Project Funding.** Section 4.02: Project Payments is amended to add thereto new subsections G through L as follows:

G. WMATA is hereby authorized to utilize the remaining funds from Federal Transit Administration Grant Number DC-90-X078, presently approximately $170,000, to resume work to complete the Scope of Work as amended by this FIRST AMENDMENT including all final deliverables acceptable to the County.

H. The COUNTY will make quarterly payments to WMATA toward the remaining balance of the firm fixed price of $720,000. The first such quarterly payment of $400,000 shall be due upon execution of this First Amendment.

I. The second quarterly payment of $150,000 will be paid 90 days following the first payment. The County may make such second quarterly payment if WMATA provides documentation that the previously provided funds have been expended by WMATA consistent with the PMP, and the cost of completing the revised Scope of Work will not exceed the negotiated firm fixed price of $720,000.

J. Upon prior action by the COUNTY adopting a PROJECT Budget and authorizing additional funding for the revised Scope of Work, the County Manager is authorized to amend this First Amendment to reflect any increase in the firm fixed price within the PROJECT Budget previously approved by the COUNTY, and to make any increased or additional quarterly payments to WMATA consistent with this First Amendment.

K. If the COUNTY decides to proceed with an alternative design, which the COUNTY determines to be necessary if the Project is to be constructed before the adjoining private development known as Central Place Phase 1 begins construction, then the County will by further Amendment to the Phase Two Agreement set additional quarterly payments to WMATA to defray the cost of any additional Scope of Work.

L. All funding provided by the County to WMATA for the PROJECT shall be deposited in an interest-earning account by WMATA, subject to withdrawals by WMATA, as authorized by the COUNTY, for direct, indirect and overrun costs for the PROJECT. Interest earned from this account shall be credited to the PROJECT costs and overruns or returned to the County upon final acceptance of the Project by the County.

5. **Ratification of Agreement.** Except as set forth in this FIRST AMENDMENT, all the terms, conditions and provisions contained in the original PHASE TWO AGREEMENT are hereby ratified and shall remain in full force and effect. If conditions and provisions of this FIRST AMENDMENT conflict with any of the terms, conditions, and provisions of the original PHASE TWO AGREEMENT, then and in such event, the terms, conditions and provisions of this FIRST AMENDMENT shall prevail and be controlling.

6. **Counterparts.** This FIRST AMENDMENT may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, WMATA and the COUNTY certify that this FIRST AMENDMENT is executed by their respective authorized signatories and shall be effective as of the date last executed on behalf of a party hereto.

Approved as to form:

By: _____
Carol B. O'Keeffe
General Counsel

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

By: _____
John B. Catoe, Jr.
General Manager

Date: _____

COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA

By: _____
Witness

By: _____
Ron Carlee,
County Manager

Date: _____

Approved as to form:

By: _____
County Attorney