

**FIRST ADDENDUM TO AGREEMENT
BETWEEN THE
WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
AND
THE COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA
FOR THE DESIGN AND APPROVAL (PHASE ONE) OF CERTAIN
PUBLIC TRANSPORTATION PROJECTS, AS AMENDED**

This FIRST ADDENDUM ("FIRST ADDENDUM") 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"), that provided for the development of certain public transportation projects initiated by the COUNTY, including, but not limited to, such activities as conceptual and preliminary project design, project approval, and applicable public hearing(s); and

WHEREAS, the PHASE ONE AGREEMENT was amended by WMATA and the COUNTY BOARD on November 11, 2007, ("FIRST AMENDMENT") in pertinent part, to include certain new projects, including the Columbia Pike Streetcar project ("Columbia Pike Streetcar" or "PROJECT"), and

WHEREAS, the Columbia Pike Streetcar is a joint project of the COUNTY and the FAIRFAX COUNTY BOARD OF SUPERVISORS ("FAIRFAX COUNTY" and collectively the "COUNTIES"), and the COUNTIES have agreed to a Columbia Pike Project Coordination Agreement (COORDINATION AGREEMENT), and

WHEREAS, in the COORDINATION AGREEMENT, the COUNTIES generally agree to advance the PROJECT through environmental planning and preliminary engineering with the technical assistance of WMATA; set forth their respective roles and responsibilities for the completion of the PROJECT Scope of Work; and their proportional share of the PROJECT Budget; and

WHEREAS, the PARTIES have agreed upon the provisions of this FIRST ADDENDUM to set forth the terms and conditions specific to the implementation of Phase One of the Columbia Pike Streetcar Project.

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 agree to this FIRST ADDENDUM to the PHASE ONE AGREEMENT, as amended, 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 ADDENDUM.
2. **Defined Terms.** Capitalized terms used in this FIRST ADDENDUM and not defined in FIRST ADDENDUM shall have the meaning ascribed to them in the PHASE ONE AGREEMENT or the FIRST AMENDMENT.
3. **Scope of Work.** The Columbia Pike Streetcar Scope of Work attached hereto and incorporated herein by reference as Attachment A, generally includes the environmental planning and preliminary engineering, and any necessary public meetings for the Columbia Pike Streetcar project. The particular tasks and details of the PROJECT Scope of Work which may be modified by mutual written agreement of WMATA and the COUNTIES. The PROGRAM MANAGER for WMATA with the concurrence of the PROJECT OFFICER for the COUNTY and the PROJECT OFFICER for FAIRFAX COUNTY may, by written agreement, make adjustments in the Scope of Work that do not result in an increase in costs beyond the PROJECT Budget previously authorized by the COUNTY. All modifications to the Scope of Work that may result in additional costs will require prior approval and funding authorization by the COUNTY BOARD.
4. **Budget.** The Columbia Pike Streetcar Budget is set forth and included herein by reference in Attachment B, which may be modified by mutual written agreement of WMATA and the COUNTIES. The PROGRAM MANAGER for WMATA with the concurrence of the PROJECT OFFICER for the COUNTY and the PROJECT OFFICER for FAIRFAX COUNTY may, by written agreement, make adjustments within the PROJECT budget that do not result in an increase in costs beyond the PROJECT Budget previously approved by the COUNTY. All modifications to the PROJECT Budget that may result in additional costs will require prior approval and funding authorization by the COUNTY BOARD. In the event of a modification to the PROJECT Budget which results in additional cost for the Project, the COUNTY shall consult with FAIRFAX COUNTY to determine the proportional share of any additional costs to the COUNTY, and the COUNTY shall pay such additional amount to WMATA in accordance with the terms of this FIRST ADDENDUM.

The total cost to complete the PROJECT Scope of Work as set forth in the PROJECT Budget is \$4,060,000. The COUNTY'S proportional share of the PROJECT Budget is \$3,148,000.

5. **Funding.** ARTICLE 3, FUNDING OF PROJECTS, in the PHASE ONE AGREEMENT, as amended, shall govern funding of the PROJECT except as specified below:
- a. Upon execution of this FIRST ADDENDUM, WMATA is hereby authorized to use \$148,000 from the current balance and future year allocations of Arlington County's share of WMATA's Project Development Program funds to defray the COUNTY'S proportional share of the PROJECT Budget.
 - b. The COUNTY'S remaining balance of \$3,000,000 will be paid in equal quarterly installments of \$500,000 beginning within thirty (30) days after the execution of this FIRST ADDENDUM, and thereafter upon invoice as part of the quarterly billing to the COUNTY.
 - c. 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, 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.
6. **Insurance.** The insurance requirements for this project are set forth in Attachment C.
7. **Ratification of Agreement.** Except as set forth in this FIRST ADDENDUM, all the terms, conditions and provisions contained in the original PHASE ONE AGREEMENT AND THE FIRST AMENDMENT are hereby ratified and shall remain in full force and effect. If conditions and provisions of this FIRST ADDENDUM conflict with any of the terms, conditions, and provisions of the original PHASE ONE AGREEMENT or the FIRST AMENDMENT then and in such event, the terms, conditions and provisions of this FIRST ADDENDUM shall prevail and be controlling.
8. **Counterparts.** This FIRST ADDENDUM 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 ADDENDUM 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:

WASHINGTON METROPOLITAN
AREA TRANSIT AUTHORITY

By: _____

Carol B. O'Keefe
General Counsel

By: _____

John B. Catoe, Jr.
General Manager

Date:

COUNTY BOARD OF ARLINGTON
COUNTY, VIRGINIA

By: _____
Ron Carlee, County Manager

Date: _____

Approved as to form:

By: _____
County Attorney