

COLUMBIA PIKE STREETCAR COORDINATION AGREEMENT

THIS PROJECT COORDINATION AGREEMENT (the “**Agreement**”) is made this _____ day of _____, 2009, by and between the **COUNTY BOARD OF ARLINGTON (“Arlington County” or “Arlington County Board”)**, a body corporate and politic and a subdivision of the Commonwealth of Virginia and the **FAIRFAX COUNTY BOARD OF SUPERVISORS (“Fairfax County”)**, a body corporate and politic and a subdivision of the Commonwealth of Virginia. Arlington County and Fairfax County are referred to herein individually as a “**Party**” and collectively as the “**Parties**”.

RECITALS

WHEREAS, Columbia Pike (Virginia State Highway 244) is a vibrant and busy thoroughfare running east and west through Arlington County from Arlington National Cemetery to Bailey’s Crossroads in Fairfax County; and

WHEREAS, Arlington County has designated Columbia Pike a Revitalization District (Arlington County’s 2002 *Columbia Pike Initiative – A Revitalization Plan*), adopted a Form Based Code (2003) and completed an urban planning study, Street Space Planning Task Force Report (2004) to guide the redevelopment of Columbia Pike, and

WHEREAS, Fairfax County has designated the Bailey’s Crossroads area as a Revitalization District (1998 Fairfax County *Bailey’s Crossroads Revitalization District*), completed various community planning studies, including the Urban Land Institute (ULI) report on Bailey’s Crossroads(2006), and is now conducting an area plan update for the Bailey’s Crossroads area; and

WHEREAS, Columbia Pike serves as a major transit corridor in Northern Virginia and the Washington metropolitan region, carrying in excess of 15,000 passengers each workday on a variety of regional and local bus routes that connect major destinations such as Skyline in Fairfax County and the Pentagon and Pentagon City in Arlington County; and

WHEREAS, the Parties, recognizing the existing and potential demand of the emerging transit market and the need for an enhanced surface transit system, in conjunction with the Washington Metropolitan Area Transit Authority (WMATA), have completed the Columbia Pike Alternatives Analysis (“Pike Transit Initiative”); and

WHEREAS, the Arlington County Board and the Fairfax County Board of Supervisors have adopted as the “Preferred Alternative” for Columbia Pike the “Modified Streetcar Alternative”(“Streetcar Alternative”, “ Streetcar Project” or “Project”), which was recommended by the “Pike Transit Initiative”; and

WHEREAS, the Parties now intend to complete the next phase of planning and design for the Streetcar Alternative, including environmental planning and preliminary engineering (Project Study); and

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WHEREAS, each of the Parties has executed or intends to execute an Agreement with WMATA to conduct Phase 1 planning and preliminary design services for the Columbia Pike Streetcar Project; and

WHEREAS, the Parties have jointly developed a Scope of Work, Schedule and Budget for professional services to complete the environmental planning and preliminary design services for the Columbia Pike Streetcar Project.

NOW THEREFORE, in consideration of the above recitals and the terms and conditions hereinafter set forth the Parties hereby agree to the following:

TERMS

1. PROJECT MANAGEMENT

The Parties agree to coordinate the management and execution of the Project, and to serve jointly as the Project Sponsor for the purposes of the environmental documentation as that term is defined under the National Environmental Policy Act (NEPA). The Parties further agree to pursue completion of the Project in a diligent manner, to coordinate the involvement of “participating local agencies”, to provide information and to make decisions in a timely manner, and to reach decisions on the basis of consensus. Each County shall appoint a project manager and a deputy project manager, who will serve on a Project Management Team with the project manager (and deputy project manager, if any) from WMATA. The Project Management Team will meet regularly as determined necessary by the Parties to advance the Project.

2. POLICY COMMITTEE

The Project Study will be guided on policy issues by a Policy Committee composed of a representative from each County Board. The Policy Committee will meet to approve the overall direction, goals and objectives of the Project, including changes to the Project Scope and Schedule and Project Budget, to review any draft documents before presented to the public, and as otherwise determined necessary by the Parties.

3. TECHNICAL ADVISORY COMMITTEE

The Project Study will be advised on technical issues by a Technical Advisory Committee (TAC), and subcommittees thereof, which will be composed of representatives from appropriate County, State and Federal Agencies, including the lead agency, or joint lead agency, and any participating or cooperating agency as those terms are defined under NEPA. The TAC will serve as a means to coordinate communication and review functions among the Parties, Federal and State participating and cooperating agencies. The TAC will meet regularly as determined necessary by the Parties to advance the Project.

4. PROJECT SCOPE and SCHEDULE

The Parties in conjunction with WMATA and its prime consultant have jointly developed a Scope of Work (Project Scope) and Schedule for the Project, which is attached hereto (Attachment 1) and incorporated herein by reference. The Parties agree that the Scope of Work may only be amended by mutual written agreement signed by the Project Managers for each County and WMATA. No proposed change in the Project Scope that will incur additional costs

beyond the adopted Project Budget may be made without the prior approval of the Arlington County Board and Fairfax County Board of Supervisors.

5. PROJECT BUDGET

The Parties in conjunction with WMATA and its prime consultant have jointly developed a budget (Project Budget) for completion of the Project Scope, which is attached hereto (Attachment 2) and incorporated herein by reference. The Parties agree that the Project Scope includes tasks that are common to completion of the Project in both jurisdictions (Common Tasks), and that some tasks within the Project Scope may primarily serve one Party (Primary Task). As to Common Tasks within the Scope the Parties agree that the costs of the Project Budget are to be divided on the following proportional basis: Arlington County will be responsible for Eighty percent (80%) and Fairfax County will be responsible for Twenty percent (20%). The proportional payment of each Party for Primary Tasks will be set by mutual agreement of the parties on a case by case basis.

The Project Scope includes one Primary Task for the planning and preliminary design of the transit center (park-and-ride) facility near Bailey's Crossroads in Fairfax County, the cost of which will be divided on the following proportional basis: Arlington County will be responsible for Twenty percent (20%) and Fairfax County will be responsible for Eighty percent (80%).

The parties agree that the costs of particular tasks within the Project Budget may be adjusted upon mutual written agreement of the Project Managers, only if such modifications do not increase the cost of the Project Budget beyond the amounts previously approved by each County. Any increase in the Project Budget will require the approval of the Arlington County Board and the Fairfax County Board of Supervisors.

6. GENERAL

- A. Incorporation of the Recitals. The recitals set forth above are incorporated herein by this reference to the same extent and with the same force and effect as if fully hereinafter set forth.
- B. Authority. Each Party to this Agreement represents and warrants to the other Party that it has the full and unrestricted lawful power and authority to enter into and carry out the terms of this Agreement and the execution, delivery and performance of this Agreement.
- C. Applicable Law. This Agreement, and the rights and obligations of the parties under this Agreement, shall be governed by the laws of the Commonwealth of Virginia without regard to principles of conflicts of laws. Any dispute arising under this Agreement may be disposed of by written agreement between the Parties. If such dispute cannot be resolved by the Parties within ten (10) business days of receipt by the non-disputing party of a notice of dispute from the disputing party, then the parties may exercise all available rights.
- D. Amendments; Waivers. Amendments, modifications, or supplements to this Agreement shall be in writing, signed by all Parties. Waivers under this Agreement shall be in writing, signed by the Party to be charged with the waiver. In the absence of a signed

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waiver, no act, or failure to act by any Party shall constitute or be construed as an estoppel or waiver with respect to that Party's rights.

- E. Severability. Each provision of this Agreement is intended to be severable. If any term or provision of this Agreement shall be determined by a court of competent jurisdiction to be illegal or invalid for any reason whatsoever, such provision shall be severed from the Agreement and shall not affect the validity of the remainder of this Agreement, unless to do so would cause this Agreement to fail of its essential purposes.
- F. Relationship of the Parties. This Agreement does not create any partnership, joint venture agency or other similar relationship among the Parties, but is merely a means to perform certain improvements benefitting the Parties and adjoining or neighboring parcels.
- G. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Parties, and their successors and assigns.
- H. No Third Party Beneficiary. Nothing contained in this Agreement shall be deemed to create rights or obligations accruing to the benefit of, or enforceable by, any entity or person not a party to this Agreement, including, without limitation, any contractors, subcontractors or other parties providing labor, services, or materials in connection with the Project.
- I. Reasonable Approval Standard. Except as otherwise specifically provided in this Agreement, where any Party's approval is required under this Agreement, such approval shall be in writing. The Parties agree and understand that the Project Managers are hereby authorized to approve actions within the approved Project Scope and Schedule and Project Budget. Any change to the Project Budget beyond the amounts previously approved by each County will require authorization from the Arlington County Board and the Fairfax County Board of Supervisors.
- J. Entire Agreement; Amendment. This Agreement and its attachments, contain the entire agreement between the Parties with respect to the subject hereof, and all other prior communications and agreements, whether written or oral, are superseded hereby. This Agreement may be amended or modified only by an instrument in writing executed by the Parties.
- K. Dispute Resolution. Any dispute arising under this Agreement may be disposed of by written agreement between the Parties. If such a dispute cannot be resolved by the Parties within ten (10) business days, then the disputing party may, but shall not be required to, request that such dispute be considered and resolved by a mediator(s) mutually agreed upon by the parties. If the Parties agree to resolve the dispute by mediation, then the mediator(s) shall provide a written recommendation to resolve the dispute. The parties agree to make a good faith effort to accept such a recommendation. Nothing herein is intended to limit the rights of either of the Parties to resolve disputes through any other means not described or provided for in this Agreement.

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- L. County Monetary Obligations Limited To Appropriated Encumbered Funds. Notwithstanding any other provision of this Agreement to the contrary, as to either County any monetary obligations arising under this Agreement are further strictly limited and subject to the amount of funds approved and appropriated by the respective County Board; and the Parties shall not otherwise be liable under this Agreement to commit to or to expend or to incur liability for any expenditure of funds or payment of money in excess of the amount so approved and appropriated for this Agreement by the Arlington County Board and Fairfax County Board of Supervisors. Nor shall there be any recourse against either County or the Columbia Pike Streetcar project funds for any such expenditure, commitment to expend funds, or payment thereof, which has not been so approved and appropriated.
- M. Nothing in this Agreement shall be construed as creating any personal liability on the part of any officer, employee, agent of the parties, nor shall it be construed as giving any rights or benefits to anyone other than the parties hereto.
- N. Nothing in this Agreement shall be construed as a waiver of the Parties' sovereign immunity.
- O. This Agreement may be terminated by either party upon 60 days advance written notice. Upon termination, both Parties shall retain ownership of plans, specifications and project materials, as applicable under law, unless otherwise mutually agreed upon in writing.
- P. Headings. Headings are intended only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of this Agreement.
- Q. Notices. Any notice or communication required under this Agreement shall be effective upon receipt and shall be sent by personal delivery or by overnight air courier service with evidence of receipt to the following:

If to Arlington County,
Dennis Leach, Director
Division of Transportation
Department of Environmental Services
2100 Clarendon Blvd., Suite 900
Arlington, VA 22201

With copies to:
Stephen A. MacIsaac, County Attorney
2100 Clarendon Blvd. Ste 403
Arlington, Virginia 22201

If to Fairfax County,
Katharine D. Ichter, Director
Fairfax County Department of Transportation
4050 Legato Road
Suite 400
Fairfax, VA 22033

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With copies to:
Ellen F. M. Posner
Office of the County Attorney
12000 Government Center Parkway
Fairfax, VA 22035

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed under seal as of the date first above written.

**COUNTY BOARD OF
ARLINGTON COUNTY, VIRGINIA**

**FAIRFAX COUNTY
BOARD OF SUPERVISORS, VIRGINIA**

By: _____
Name:
Title:

By: _____
Name:
Title: