Loudoun County, Virginia
www.loudoun.gov
Office of the County Administrator
1 Harrison Street, S.E., 5th Floor, P.O. Box 7000, Leesburg, VA 20177-7000
Telephone (703) 777-0200 • Fax (703) 777-0325

At a business meeting of the Board of Supervisors of Loudoun County, Virginia, held in the County Government Center, Board of Supervisors' Meeting Room, 1 Harrison St., S.E., Leesburg, Virginia, on Tuesday, November 15, 2011 at 6:00 p.m.

IN RE: DULLES CORRIDOR METRORAIL PHASE 2: MEMORANDUM OF AGREEMENT (MOA)

Mr. York moved that the Board of Supervisors authorize the Chairman or his designee to sign the Memorandum of Agreement, which describes the terms and conditions agreed to by each of the funding partners for financing Phase 2 of the Dulles Corridor Metrorail Project, to be sent to the United States Department of Transportation on behalf of the Board.

Seconded by Mrs. Buckley.

Voting on the Motion: Supervisors Buckley, Burk, Kurtz, McGimsey, Miller, Waters and York – Yes; Supervisors Burton and Delgaudio – No.

A COPY TESTE:

DEPUTY CLERK FOR THE LOUDOUN
COUNTY BOARD OF SUPERVISORS

(2- DULLES CORRIDOR METRORAIL PHASE 2: MEMORANDUM OF AGREEMENT (MOA)

MEMORANDUM OF AGREEMENT AMONG UNITED STATES DEPARTMENT OF TRANSPORTATION, COMMONWEALTH OF VIRGINIA, FAIRFAX COUNTY, LOUDOUN COUNTY, THE WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY, AND THE METROPOLITAN WASHINGTON AIRPORTS AUTHORITY

1.0 Introduction

On this _____ day of _____, 2011, the United States Department of Transportation (US DOT), the Commonwealth of Virginia (Virginia), Fairfax County (Fairfax), Loudoun County (Loudoun), the Washington Metropolitan Area Transit Authority (WMATA), and the Metropolitan Washington Airports Authority (MWAA) (collectively, the Parties) hereby enter into this MEMORANDUM OF AGREEMENT (MOA) to set forth their mutual understandings, expectations, and commitments concerning the completion of the Dulles Corridor Metrorail Project (Project), and in particular Phase 2 of the Project (hereinafter defined).

2.0 Recitals

WHEREAS, US DOT, Virginia, Fairfax, Loudoun, WMATA and MWAA seek to enhance transportation service by bringing Metrorail service to Tysons Corner, Dulles International Airport, and along the Dulles Corridor into Loudoun County; and

WHEREAS, on December 29, 2006, the Virginia Department of Transportation and MWAA entered into a Master Transfer Agreement and a Dulles Toll Road Permit and Operating Agreement (Permit and Operating Agreement) that permits MWAA to operate the Dulles Toll Road and collect toll revenues to assist in funding the Dulles Corridor Metrorail Project; and

WHEREAS, on June 28, 2007, the Virginia Department of Rail and Public Transportation (DRPT) and MWAA entered into an Assignment and Assumption Agreement (Assignment and Assumption Agreement) that enables MWAA to carry out construction of the Project; and

WHEREAS, on July 19, 2007, Fairfax, Loudoun, and MWAA entered into an Agreement to Fund the Capital Cost of Construction of Metrorail in the Dulles Corridor (Funding Agreement); and

WHEREAS, the Funding Agreement provides, among other things, that Fairfax and Loudoun shall notify MWAA whether each respective county will proceed with its financial participation in Phase 2 of the Project within 90 days following receipt from MWAA of documents comprising 100% preliminary engineering for Phase 2, documents supporting the amount of the cost estimate for Phase 2 at 100% preliminary engineering, and documents demonstrating how that cost estimate was developed and computed; and

WHEREAS, the Funding Agreement also provides that if Fairfax and Loudoun elect to participate in funding Phase 2, then Fairfax, Loudoun, and MWAA would be responsible for funding 16.1%, 4.8%, and 4.1%, respectively, of the total capital cost to construct the entire Project; and

WHEREAS, upon the petition of affected taxpayers as required by Virginia law, Fairfax has created two transportation improvement districts to fund up to $400 million and $330 million of Fairfax's share of the capital cost to construct Phase 1 (hereinafter defined) and Phase 2, respectively, of the Project, with both petitions including provisions that Fairfax's share of the total capital cost to construct the Project should remain at approximately 16.1%; and

WHEREAS, pursuant to the Permit and Operating Agreement, MWAA is constructing a project consisting of an extension of Metrorail from the existing Orange Line near the West Falls Church Station, through Tysons Corner, along the Dulles Corridor from Tysons Corner to the boundary of Fairfax, into Dulles International Airport, and terminating at Route 772 in Loudoun (the Project); and

WHEREAS, for purposes of obtaining one or more Federal grants, construction of the Project has been divided into two phases, with Phase 1 of the Project described generally as that portion of the Project from the Metrorail Orange Line near the West Falls Church Station to and including the Wiehle Avenue Station (Phase 1), and Phase 2 of the Project described generally as that portion of the Project west of the Wiehle Avenue Station to the terminus of the Project at the Route 772 Station in Loudoun County (Phase 2); and

WHEREAS, on March 10, 2009, US DOT, through the Federal Transit Administration (FTA), entered into a Full Funding Grant Agreement (FFGA) with

MWAA to support the construction of Phase 1 at an estimated cost of $3.14 billion (including finance charges); and

WHEREAS, the estimated capital cost of Phase 2 is now $3.825 billion, up from an estimate of $2.5 billion as reported in the Funding Agreement; and

WHEREAS, the Parties recognize the need to modify the scope, design and finance plan for Phase 2 to reduce costs to a level closer to the original $2.5 billion cost estimate and recognize the need and opportunity to work cooperatively to accomplish that goal; and

WHEREAS, the Parties also recognize that in order to effect a further significant reduction in the amount of funds that will need to be derived from the operation of the Dulles Toll Road (DTR Funds) to pay for Phase 2, there is a need to secure funding for the design and construction of Phase 2 from sources other than funds of the parties to the Funding Agreement and DTR Funds (Additional Funding Sources), which Additional Funding Sources may include, but are not limited to, land use proffers, public-private partnerships, grants and loans from governmental entities other than the parties to the Funding Agreement, payments in lieu of taxes, and fees that may be imposed on the public for the use of Phase 2 parking facilities; and

WHEREAS, MWAA, Fairfax, and Loudoun believe that credit assistance from the Transportation Infrastructure Finance and Innovation Act (TIFIA) program based on an amount of budget authority in the amount of $30 million in the aggregate is vitally necessary for the success of the Project and the Project financing envisioned in this MOA, and accordingly, MWAA, Fairfax, and Loudoun intend to apply for TIFIA credit assistance as described herein, while recognizing that US DOT cannot and does not make any representation in this MOA regarding any TIFIA credit assistance other than as set forth below in Section 3.5; and

WHEREAS, on June 1, 2011, Secretary of Transportation Ray LaHood convened the first of several meetings among the Parties for the purpose of establishing a common, agreed-upon scope, design, and finance plan for Phase 2, and with the goal of completing the Project at a significantly reduced cost so as to lessen the financial burden on the Parties, local taxpayers, and the users of the Dulles Toll Road; and

WHEREAS, during meetings conducted since that date, the Parties discussed and debated the merits of scope reductions and design changes that offer

significant cost savings, maintain a cost effective approach to Phase 2 project construction and performance goals, sustain expected ridership, and minimize delays in implementing the project; and

WHEREAS, the Parties wish to set out, in general terms, the agreements they have reached regarding cost saving changes to the scope, design and finance plan for Phase 2, their expectations regarding further potential cost savings measures, and other matters.

3.0 Agreement

NOW THEREFORE, in consideration of the mutual promises and agreements, $1 consideration, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, US DOT, Virginia, Fairfax, Loudoun, WMATA, and MWAA agree as follows:

3.1 Adjustments to Phase 2 Project Alignment and Design

a. Subject to the receipt of any required environmental and other regulatory approvals, the Phase 2 Station at Dulles International Airport shall be an aerial station adjacent to the North Garage. The station shall be designed and constructed to provide passengers with climate controlled waiting areas at the station lobby level, with a protective windscreen along the platform level. "Climate controlled" means an enclosed area, protected from weather elements, with a controlled temperature.

b. The Metrorail yard and shop facilities at the "Y-15" site at Dulles International Airport shall be reduced in size and scope to the level that is necessary to support the service provided by Phase 2. There will be at least 21 Yard Storage tracks provided for a minimum of eight car trains. The Dulles Yard will be sized for 184 cars. These and other yard and shop requirements are consistent with formal letters to the FTA dated June 10, 2011, and June 28, 2011. WMATA may build additional or more extensive facilities at this site to support the service provided by other parts of the WMATA Metrorail network, but the costs of such expansion shall not be part of the Project costs and shall be the responsibility of WMATA.

c. The size of station canopies at Phase 2 stations shall be reduced to be generally consistent with Phase 1 project requirements and the finishes designed and installed at such stations shall be based on value engineering recommendations as approved by WMATA.

d. Where possible, cost savings will be implemented through the use of steel structures, in lieu of concrete, in accordance with WMATA standards.

3.2 Best Efforts to Seek Additional Funding Sources for Particular Project Phase 2 Facilities

a. Fairfax shall use its best efforts, consistent with the legislative powers, duties, and responsibilities of its Board of Supervisors, to secure Additional Funding Sources that will be sufficient to fund the cost of the design and construction of the parking facility at the Herndon-Monroe Station, the parking facility at the Route 28 Station and the Route 28 Station itself.

b. Loudoun shall use its best efforts, consistent with the legislative powers, duties, and responsibilities of its Board of Supervisors, to secure Additional Funding Sources that will be sufficient to fund the cost of the design and construction of the parking facility at the Route 606 Station and the two parking facilities at the Route 772 Station.

c. To the extent that Additional Funding Sources are used to pay any portion of the cost to design and construct any of the Phase 2 facilities described in Sections 3.2(a) or 3.2(b), then solely for purposes of computing the capital contribution percentages of the parties to the Funding Agreement, the amount paid by any such Additional Funding Sources shall not be credited as provided by the last sentence of Section 2.2(b)(3)(e) of the Funding Agreement, but instead shall be credited 16.1% against the Phase 2 funding obligation of Fairfax, 4.8% against the Phase 2 funding obligation of Loudoun, 4.1% against the Phase 2 funding obligation of MWAA from non-DTR Funds, and 75% against the obligation of MWAA to fund a portion of Phase 2 from DTR Funds, as those terms are used in the Funding Agreement.

d. To the extent that either Fairfax or Loudoun, despite their best efforts as described above, is unable to secure sufficient Additional Funding

Sources to fund the full cost to design and construct any of the Phase 2 facilities described in Sections 3.2(a) or 3.2(b) (any such insufficiency, individually or cumulatively, referred to hereinafter as a Funding Shortfall), then the amount of the Funding Shortfall shall be considered to be part of the total Dulles Rail Project Cost as that term is used in the Funding Agreement and as such will be funded as provided in the Funding Agreement.

e. All of the facilities described in this Section 3.2 shall continue to be regarded as included in Phase 2 of the Project for all other purposes.

f. All of the Parties will cooperate in the efforts to find Additional Funding Sources to help pay for the design and construction of the Phase 2 facilities described in this Section 3.2 as well as other Project facilities as opportunities to do so may arise.

g. Parking at the parking facilities described in this Section 3.2 shall be available concurrently with the opening of Phase 2 for revenue operations.

3.3 Flexibility and Cooperation

a. If and to the extent that Fairfax or Loudoun deem it appropriate to utilize fees for parking at any of the parking facilities described in Section 3.2 as an Additional Funding Source for such parking facility, then parking rates at any such parking facilities shall be determined solely by the responsible county as set forth in Section 3.2, and the revenues thus obtained from each such parking facility shall be retained by that county and applied as an Additional Funding Source for the design, construction and/or operation, as appropriate, of that parking facility. In order to facilitate the ability of Fairfax to do so, WMATA shall, at the request of Fairfax, agree to negotiate an amendment of the Surcharge Implementation Agreement dated June 11, 1999 by and between Fairfax and WMATA to make the Phase 2 facilities described in Section 3.2(a) part of the system covered by that Agreement, so as to allow all surcharge revenues to be used to support the debt remaining on the Vienna Metrorail Station and parking facilities and the debt incurred for the Phase 2 parking facilities described in Section 3.2(a). Fairfax and WMATA may also negotiate

additional agreements, as needed, to further facilitate the construction and future operations of these parking facilities.

b. The parking facilities described in Section 3.2 shall be constructed with at least the same number of parking spaces for Metrorail users as is called for in the final Phase 2 Preliminary Engineering plans, consistent with the Record of Decision governing the Project.

c. MWAA shall, to the extent permitted by law, provide to Loudoun, at no cost, such real property rights to land that is leased by MWAA from the federal government as are reasonably necessary for the construction, location, and operation of, and vehicular access to and from, the parking facility that is to be constructed to serve the Route 606 Station.

d. For purposes of this Section 3.3(a) and avoidance of doubt, the Fairfax parking facilities shall include the parking structures described in Section 3.2(a) and related equipment and facilities as well as improvements, including bridges, that provide access for WMATA customers to and from the entrance plazas, bus drop off areas, park and ride areas, and connecting sidewalks related to the associated Phase 2 transit stations.

e. WMATA and Fairfax shall cooperate in making such amendments, consistent with WMATA's Compact and WMATA's Gross Revenue Transit Bonds (WMATA Board Resolution numbers 2003-52, 2003-53 and 2009-39), as shall be necessary to implement the provisions of Section 3.3(a).

3.4 Further Phase 2 Cost Savings Opportunities

Over the course of the next few months, further cost reduction measures shall be considered by the Coordinating Committee created under Section 3.7 of this MOA with the goal of further reducing the current Phase 2 cost estimate, depending on the outcome of the analysis of additional potential scope reductions and cost saving measures. These further scope reduction and cost savings measures include, but are not limited to:

a. Savings resulting from the value engineering efforts conducted by MWAA and approved by the Coordinating Committee described below;

b. The donation of property to the Project by the Parties in lieu of right-of-way purchases;

c. In accordance with WMATA-approved simulations, a potential reduction in the number of Traction Power Substations (TPSS) and the associated re-estimating of TPSS costs; and

d. In accordance with WMATA's updated Rail Fleet Management Plan of July 2011, a potential reduction in the number of railcars purchased for the purpose of the Phase 2 project.

3.5 Credit Assistance

Through its Transportation Infrastructure Finance and Innovation Act (TIFIA) program, US DOT will provide credit assistance, in the form of Federal credit instruments, to Fairfax, MWAA, Loudoun and/or their partners for Project components that meet TIFIA's statutory and regulatory requirements. US DOT expects that the amount of budget authority available to the US DOT to support any such credit assistance will not exceed $30 million in the aggregate. The form of TIFIA credit assistance is to encompass several Project components, which may include the costs associated with the assumption of the Phase 2 parking facilities and Route 28 Station. Fairfax, MWAA, and Loudoun have agreed, as among themselves, that TIFIA credit assistance should be applied for as shown on Exhibit One attached hereto. In the event Fairfax, MWAA, and/or Loudoun applies for TIFIA credit assistance, each of Fairfax, MWAA, and Loudoun will provide to US DOT a written acknowledgement that all of those three entities agree to the financing structure proposed in each TIFIA application submitted.

Nothing in this MOA is intended to or shall preclude MWAA, Fairfax, or Loudoun from applying for additional TIFIA credit assistance for the Project, including under a future notice of funding availability, or preclude US DOT from considering any such application.

3.6 Financial Assistance

a. Virginia shall contribute an additional amount of $150 million toward the Project, provided that the funds are appropriated by the General Assembly and allocated by the Commonwealth Transportation Board

(CTB). Such funding shall be requested in the 2012 session of the Virginia General Assembly, shall be governed by the terms of a funding agreement between Virginia and MWAA, and shall not be provided until such funding agreement is executed. This assistance is intended to be used to pay interest on MWAA's Dulles Toll Road Revenue Bonds. The funds shall be held by the bond trustee and drawn to support the debt service payments in the first five years following their issuance. This assistance may be used or structured in a different manner with written approval from Virginia if another use or structure is determined to provide a greater benefit and further minimize the tolls paid by users of the Dulles Toll Road for construction of Phase 2.

b. In addition, Virginia and MWAA shall consider extending the term of the Permit and Operating Agreement to further extend the period over which Phase 2 can be financed if it is determined that doing so is in the best interest of the Commonwealth and will further mitigate toll increases to be imposed on Dulles Toll Road users for construction of Phase 2.

3.7 Coordinating Committee

Virginia, Fairfax, Loudoun, WMATA and MWAA agree to establish a Dulles Metrorail Project Coordinating Committee (Coordinating Committee).

The purpose of the Coordinating Committee will be (i) to implement the terms of this MOA and (ii) to regularly monitor the progress of planning, design, and construction of Phase 2 to ensure that the project is successfully deployed in a manner satisfactory to all of the Parties. Any cost reductions will not affect the delivery of a Project that is safe, reliable, and does not result in higher operations and maintenance costs later in the life of the Project.

The Coordinating Committee shall be comprised of the MWAA President/Chief Executive Officer, Virginia Secretary of Transportation, Fairfax County Executive, Loudoun County Administrator, and WMATA General Manager/Chief Executive Officer, or their designees. The Coordinating Committee shall be chaired by the MWAA President/Chief Executive Officer in his continuing role as the chief executive of the party

responsible under the Permit and Operating Agreement for the design, construction, and financing of Phase 2.

The Coordinating Committee shall function in a manner similar to the Principals Meetings that were held to coordinate certain activities of Phase 1.

The Coordinating Committee shall meet regularly upon the call of its Chairman but no less frequently than once per month, unless the members of the Coordinating Committee unanimously agree in advance that there is no need for a meeting in any particular month. Meetings shall continue until the Coordinating Committee determines that they are no longer needed.

In implementing the terms of this MOA, the Coordinating Committee shall operate on a consensus basis, with no member of the committee having the ability to "veto" an issue or matter that is under consideration by the committee.

It is understood by the Parties that WMATA, as the ultimate owner and operator of Phase 2 once it is open for revenue operations, will approve the design and construction plans for Phase 2, and any subsequent changes thereto for purposes of ensuring that Phase 2 is constructed in a manner that will allow its acceptance into the regional Metrorail system.

3.8 Toll Schedule

Consistent with (i) its obligations and rights under the Permit and Operating Agreement, including its obligation to design and construct the Project, its right to utilize Toll Road revenues to satisfy that obligation, and its right to utilize Toll Road revenues and reserves to redeem and defease Dulles Toll Road bonds, (ii) its obligations and rights under indentures of trust securing Dulles Toll Road Revenue Bonds, including the toll rate covenants in the indentures, and other agreements and MWAA policies relating to loans and other financings secured by Dulles Toll Road revenues, and (iii) its intention to maintain the ratings assigned by rating agencies to Dulles Toll Road Revenue Bonds, MWAA will use its best efforts to limit the size of future toll rate increases on the Dulles Toll Road.

MWAA will periodically publish projections of future Dulles Toll Road toll rates. The Parties acknowledge that these projections will change over time as factors affecting the setting of toll rates change. According to MWAA, as of the effective date of this MOA, Table 6-3 in the Wilbur Smith and Associates report for the Dulles Toll Road, entitled "Comprehensive Traffic and Revenue Study" and dated July 2009, contains a reasonable approximation of the current projection of future toll rates on the Dulles Toll Road.

Nothing in this MOA is intended to affect the exclusive right of MWAA, under the Permit and Operating Agreement, to set toll rates on the Dulles Toll Road.

3.9 Project Labor Agreements

Virginia and MWAA have reached a separate agreement on the matter of Project Labor Agreements for Phase 2. Any Project Labor Agreement contemplated for the Project shall be consistent with applicable Federal statutory and regulatory requirements and Virginia law.

4.0 Miscellaneous Provisions

4.1 Effective Date

This MOA is effective as of the date set forth in Section 1.0, and may be executed in counterparts.

4.2 Construction and Enforcement of this MOA

The meaning of this MOA is to be ascertained from the entire instrument. This MOA is intended to be enforceable, to the extent provided by applicable law. This MOA shall, in all respects, be governed by Federal law and/or the laws of the Commonwealth of Virginia, as may be applicable. The Parties may enforce this MOA as provided under applicable Federal law and Virginia law.

4.3 Permit and Operating Agreement

Virginia and MWAA agree that, in the event they mutually determine there to be a conflict between the terms of the MOA and those of the Permit and

Operating Agreement, the terms of the MOA will prevail and they will execute an appropriate amendment to the Permit and Operating Agreement that addresses the conflict.

4.4 Conditions of Approval

The Parties acknowledge that their approval of this MOA is conditioned upon the satisfaction of all legal requirements, including any requirements applicable only to their own Parties' jurisdictions. For example, WMATA's approval of the proposed changes to the location of the station at Dulles International Airport is subject to the public hearing requirements of the WMATA Compact and the approval of the WMATA Board of Directors, and WMATA agrees to use its best efforts to meet these requirements and present these proposed changes to the WMATA Board of Directors for approval within 75 days after the WMATA Compact Public Hearing has been held.

4.5 Role and Participation of WMATA

WMATA's role and participation in the Project shall continue to be in accordance with agreements executed with MWAA as they may be amended from time to time by mutual agreement between WMATA and MWAA.

4.6 Continuing Effect of Funding Agreement

All provisions of the Funding Agreement not specifically modified by this MOA, including, but not limited to, the provisions of Section 2.3 of the Funding Agreement, remain in full force and effect and are not superseded by the execution of this MOA. Nothing in this MOA requires Fairfax to pay or will result in Fairfax paying more than 16.1% of the total Dulles Rail Project Cost as such term is used in the Funding Agreement.

4.7 Federal Oversight

FTA will continue to oversee the Project using its project management oversight contractor resources. For Phase 2, the scope of FTA oversight will include project cost and schedule, and MWAA's implementation of its project management responsibilities.

IN WITNESS WHEREOF, the Parties have executed this Memorandum of Agreement as of the date set forth in Section 1.0.

FOR THE UNITED STATES DEPARTMENT OF TRANSPORTATION

_____

Name:
Title:
DATE: _____

FOR THE COMMONWEALTH OF VIRGINIA

_____

Name:
Title:
DATE: _____

FOR THE COUNTY OF FAIRFAX

_____

Name:
Title:
DATE: _____

FOR THE COUNTY OF LOUDOUN

_____

Name:
Title:
DATE: _____

FOR THE WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

_____
Name:
Title:
DATE: _____

FOR THE METROPOLITAN WASHINGTON AIRPORTS AUTHORITY

_____
Name:
Title:
DATE: _____

Exhibit One

This Exhibit One to the MOA reflects the agreement among Fairfax, Loudoun, and MWAA concerning the joint application or individual application(s) that Fairfax, Loudoun, and/or MWAA anticipate submitting to US DOT for consideration under its TIFIA program.

1. Fairfax, Loudoun and MWAA expect to apply to US DOT for TIFIA loans based on a credit subsidy in the amount of $30 million in the aggregate.
2. Fairfax and Loudoun may and likely will apply to US DOT for the maximum amount of TIFIA credit assistance for which they each qualify, based on their respective funding commitments for the Project (as defined in the Funding Agreement). However, in no event will Fairfax request TIFIA loan proceeds in excess of $315 million, or a TIFIA loan requiring a credit subsidy in excess of $8.5 million. MWAA expects to apply for a TIFIA loan in an amount supported by the credit subsidy not needed to support loans to Fairfax and Loudoun.
3. If Fairfax is not able to secure Additional Funding Sources for the entire cost of the Phase 2 Project facilities described in Section 3.2(a) of this MOA (the "Fairfax Facilities"), then the portion of the cost of the Fairfax Facilities not funded by an Additional Funding Source would be funded as provided in the Funding Agreement as set forth in Section 3.2(d) of this MOA. Further, Fairfax's application for TIFIA credit assistance will include a request to allow Fairfax to transfer to MWAA, by separate agreement between Fairfax and MWAA satisfactory to US DOT, a portion of the proceeds of a potential TIFIA loan to Fairfax equal to the lesser of the amount of such costs not funded by an Additional Funding Source or $62.5 million. MWAA would agree to repay, from Dulles Toll Road revenues, Fairfax in full for any such transfer, including any related interest and costs.
4. In the event that the portion of the cost of the Fairfax Facilities not funded by an Additional Funding Source exceeds $62.5 million, the Fairfax application will not include that portion of the cost of the Fairfax Facilities. The term "cost of the Fairfax Facilities," as used in this paragraph four, means the lesser of the actual cost of the Fairfax Facilities or $187 million. Notwithstanding the above provisions of paragraphs three and four of this Exhibit One, in no event shall Fairfax be prevented from applying for credit assistance that would result in total proceeds to be utilized by Fairfax to be less than $100 million.
5. Loudoun is expected to submit an application that will take into account the portion of the overall credit subsidy that is required to support a TIFIA loan sufficient to fund the cost of the Loudoun parking garages described in Section 3.2(b) of the MOA (the "Loudoun Facilities"). If Loudoun is not able to secure Additional Funding Sources for the entire cost of the Loudoun Facilities, then the portion of the cost of the Loudoun Facilities not funded by Additional Funding Sources will be funded as provided in the Funding Agreement, as set forth in Section 3.2(d) of this MOA. In that event, Fairfax, Loudoun and MWAA will request that US DOT consider an application from MWAA that would utilize that

portion of any unused credit subsidy that would have supported that portion of the cost of the Loudoun Facilities.

6. Provision will be made in any application by Loudoun, individually or jointly, for possible revisions of the application, prior to any loan distribution to Loudoun. Under these possible revisions, after securing Additional Funding Sources that would be pledged to support a TIFIA loan to fund all or a portion of the cost of the Loudoun Facilities (such as parking revenues and potentially other pledged revenues), Loudoun, were it to decide to do so, may bring some form of credit enhancement to that TIFIA application. The application will provide that US DOT should consider such a revision to the application only if it can be demonstrated that the creditworthiness of the Loudoun TIFIA loan is improved by the Loudoun enhancement. Any such credit enhancement would be at Loudoun's discretion, and any action on such a revision to the joint application would be at US DOT's discretion. Were such a credit enhancement to be approved by US DOT and to cause a reduction in the amount of credit subsidy that would be used by Loudoun, then Fairfax, Loudoun and MWAA will request that US DOT consider an application from MWAA that would utilize the portion of any unused credit subsidy.