

**RECOMMENDATION PAPER TO THE BOARD OF DIRECTORS**  
**APPROVAL OF THE THIRD AMENDMENT TO THE**  
**DULLES TOLL ROAD PERMIT AND OPERATING AGREEMENT**  
**MAY 2012**

**RECOMMENDATION**

That the Board adopt the attached resolution which approves, and authorizes the President and CEO to execute, the Third Amendment to the Dulles Toll Road Permit and Operating Agreement (“Permit Agreement”). This amendment (“Third Amendment”), which has been approved and executed by the Virginia Department of Transportation (“VDOT”), extends from 60 to 150 days the period following completion and delivery of the Phase 2 preliminary engineering materials to Fairfax and Loudoun Counties in which the Airports Authority may extend the substantial completion date of the Dulles Corridor Metrorail Project (“Project”). The Third Amendment is attached to the resolution.

**DISCUSSION**

Section 6.06 of the Permit Agreement states that the Airports Authority will use “its best efforts to achieve substantial completion of the” Project by December 15, 2015, “or as such date may be which to extend the Project’s substantial completion date – the first following execution of the Project’s Phase 1 funding agreement with the Federal Transit Administration (“FTA”), and the second following completion and delivery of the Project’s Phase 2 preliminary engineering materials to Loudoun and Fairfax Counties. In May 2009, following execution of the funding agreement with FTA, the Airports Authority extended the Project’s substantial completion date by a year, to December 31, 2016.

The Agreement to Fund the Capital Cost of Construction of Metrorail in the Dulles Corridor (“Funding Agreement”) by and between Loudoun and Fairfax Counties and the Airports Authority originally provided the counties a 90-day period by 30 additional days. Since the preliminary engineering materials were delivered on March 6 of this year, Loudoun County now has until July 4 to decide whether to financially participate in Phase 2. Fairfax County had already determined to participate in Phase 2.

In the Third Amendment, the Airports Authority and VDOT have agreed to amend Section 6.06 of the Permit Agreement to extend to 150 days the period following completion and delivery of the Phase 2 preliminary engineering materials to the counties in which the Airports Authority may again extend the Project’s substantial completion date. This 150-day period would run through August 3, 2012, approximately 30 days following Loudoun’s expected decision on its Phase 2 participation.

As noted, the Third Amendment to the permit agreement has been approved and executed by VDOT.

**CONCLUSION**

For these reasons, it is recommended that the Board approve the attached resolution which approves, and authorizes execution of, the Third Amendment to the Dulles Toll Road Permit and Operating Agreement.

Prepared by Office of General Counsel

May 2012

Attachment

Proposed Resolution  
Approving the Third Amendment  
to the  
Dulles Toll Road Permit and Operating Agreement

WHEREAS, The Airports Authority and the Virginia Department of Transportation (“VDOT”) have previously entered into the Dulles Toll Road Permit and Operating Agreement, dated as December 29, 2006 (“Permit Agreement”), as amended by the First Amendment to the Dulles Toll Road Permit and Operating Agreement, dated as of July 9, 2007, and the Second Amendment to the Dulles Toll Road Permit and Operating Agreement, dated as of November 1, 2008;

WHEREAS, Section 6.06 of the Permit Agreement provides that the Airports Authority may modify the substantial completion date of the Dulles Corridor Metrorail Project (“Project”) within 60 days of the completion of preliminary engineering for Phase 2 of the Project;

WHEREAS, On March 6, 2012, the preliminary engineering for Phase 2 of the Project was completed and delivered by the Airports Authority to Loudoun County and Fairfax County pursuant to the Agreement to Fund the Capital Cost of Construction of the Metrorail in the Dulles Corridor (“Funding Agreement”) by and between Loudoun County, Fairfax County and the Airports Authority;

WHEREAS, The Funding Agreement provides that Loudoun and Fairfax Counties shall have 90 days following their receipt of the Phase 2 preliminary engineering materials in which to review the materials and notify the Airports Authority whether they will financially participate in Phase 2 of the Project (“Review Period”);

WHEREAS, At the request of Loudoun County, the Funding Agreement has been amended to provide Loudoun and Fairfax Counties an additional 30 days to the Review Period, for a total of 120 days;

WHEREAS, The Airports Authority and VDOT have concluded that, in light of this amendment to the Funding Agreement, the period following completion of the Phase 2 preliminary engineering in which the Airports Authority, under Section 6.06 of the Permit Agreement, may extend the substantial completion date of the Project should be extended from 60 to 150 days, which is 30 days following expiration of the extended Review Period, and

WHEREAS, The Airports Authority and VDOT desire to amend the Permit Agreement to reflect this conclusion and have done so in the Third Amendment to the Permit Agreement which is attached to this resolution; now, therefore, be it

RESOLVED, That the Third Amendment to the Dulles Toll Road Permit and Operating Agreement is hereby approved; and

RESOLVED, That the President and Chief Executive Officer is authorized and directed to execute the Third Amendment to the Dulles Toll Road Permit and Operating Agreement.

Attachment

*For consideration by the Board of Directors on May 16, 2012*

THIRD AMENDMENT TO THE DULLES TOLL ROAD  
PERMIT AND OPERATING AGREEMENT

This Third Amendment to the Dulles Toll Road Permit and Operating Agreement (“Third Amendment”), between the Virginia Department of Transportation (“Department”) and the Metropolitan Washington Airports Authority (“Airports Authority” and, collectively with the Department, the “Parties”) is dated May 16, 2012.

WHEREAS, the Department and the Airports Authority have previously entered into the Dulles Toll Road Permit and Operating Agreement, dated December 29, 2006 (“Permit Agreement”), which was amended by the First Amendment to the Dulles Toll Road Permit and Operating Agreement, dated July 9, 2007 (“First Amendment”), and the Second Amendment to the Dulles Toll Road Permit and Operating Agreement, dated November 1, 2008 (“Second Amendment”);

WHEREAS, Section 6.06 of the Permit Agreement provides that the Airports Authority will confirm or modify the substantial completion date of the Dulles Corridor Metrorail Project (which, as of the date of this Third Amendment, is December 31, 2016) within 60 days of the completion of preliminary engineering for Phase 2 of the Dulles Corridor Metrorail Project (“Project”);

WHEREAS, on March 6, 2012, the preliminary engineering for Phase 2 of the Project was completed and delivered by the Airports Authority to Loudoun County and Fairfax County pursuant to the Agreement to Fund the Capital Cost of Construction of the Metrorail in the Dulles Corridor (“Funding Agreement”) by and between Loudoun County, Fairfax County and the Airports Authority;

WHEREAS, the Funding Agreement provides that Loudoun and Fairfax Counties shall have 90 days following their receipt of the Phase 2 preliminary engineering materials in which to review the materials and notify the Airports Authority whether or not they will financially participate in Phase 2 of the Rail Project;

WHEREAS, Loudoun County has requested a 30-day extension of the 90-day review period set out in the Funding Agreement;

WHEREAS, the parties to the Funding Agreement have agreed to amend the Funding Agreement by extending the period in which Loudoun and Fairfax Counties may review the Phase 2 preliminary engineering materials from 90 to 120 days;

WHEREAS, the parties to the Permit Agreement have concluded that, in light of this amendment to the Funding Agreement, the 60-day period following completion of the Phase 2 preliminary engineering within which the Airports Authority, under Section 6.06 of the Permit Agreement, may extend the substantial completion date of the Dulles Corridor Metrorail Project should be extended to 30 days following the expiration of the extended period provided by the amended Funding Agreement for Loudoun and Fairfax Counties to review the Phase 2

preliminary engineering materials and to notify the Airports Authority whether they will financially participate in Phase 2 of the Rail Project; and

WHEREAS, the parties to the Permit Agreement desire to amend the Permit Agreement further to reflect this conclusion and to incorporate the terms set forth herein;

NOW, THEREFORE, in consideration of the respective representations and agreements contained herein, and pursuant to Section 18.16 of the Permit Agreement, the parties hereto agree to amend the Permit Agreement as follows:

Section 6.06 of the Permit Agreement is hereby amended to delete the phrase “within 60 days of completion of preliminary engineering for Phase 2 of the Dulles Corridor Metrorail Project” in the second sentence of the section, and to replace the deleted phrase with the following: “within 150 days of completion of preliminary engineering for Phase 2 of the Dulles Corridor Metrorail Project”.

Except as specifically amended by this Third Amendment and by the First Amendment and Second Amendment, the Permit Agreement shall continue in full force and effect in accordance with its terms.

This Third Amendment may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

*This space intentionally left blank*

In testimony thereof, the parties have caused this Third Amendment to the Permit and Operating Agreement to be executed by its duly authorized officers. By their signature hereto, each of the parties represents and warrants that it has full legal authority and is empowered to enter into this Third Amendment and has taken all action necessary to authorize the execution and delivery of the Third Amendment.

VIRGINIA DEPARTMENT OF TRANSPORTATION

By: Gregory A. Whirley  
Gregory A. Whirley, Sr.  
Commissioner of Highways

METROPOLITAN WASHINGTON AIRPORTS AUTHORITY

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_