



METROPOLITAN WASHINGTON AIRPORTS AUTHORITY

DULLES CORRIDOR COMMITTEE

Grant Of An Easement To The Washington Metropolitan Area Transit Authority For Phase 1 Silver Line Rail Facilities On Airports Authority Property

July 2013



BACKGROUND

Two segments of Phase 1 of the Silver Line are built on property the Airports Authority leases from the federal government:

- along the Dulles Connector Road (DCR) between Interstate 66 and VA Route 123, where the rail line enters the Tysons Corner area, and
- along the Dulles International Airport Access Highway (DIAAH) between VA Route 7, where the line exits Tysons Corner, and Wiehle Ave.

Phase 1 will be operated by WMATA following the line's "acceptance" by WMATA. One condition of this "acceptance" is that WMATA has been conveyed sufficient property interests in the land on which the Phase 1 rail facilities are located.

To satisfy this condition as to the Phase 1 facilities on Authority property, staff proposes that an easement be granted to WMATA for the facilities located along the DCR and DIAAH. WMATA has agreed to accept an easement, recognizing that the Authority, as lessee, is unable to convey greater interests.

The Commonwealth of Virginia and Fairfax County will also provide easements to WMATA for the Phase 1 facilities within VA Routes 7 and 123 in the Tysons Corner area.



WMATA Easement Areas on DCR Corridor

| WMATA | | AGENCIES | |
|-------|--------------------|----------|---------------|
| | EXISTING SURFACE | | VDOT |
| | AERIAL STRUCTURE | | MWAA / USA |
| | UNDERGROUND TUNNEL | | FARFAX COUNTY |
| | UTILITY | | |
| | DRAINAGE | | |
| | ACCESS | | |

LEGEND





METROPOLITAN WASHINGTON AIRPORTS AUTHORITY

WMATA Easement Areas on DIAAH Corridor





DISCUSSION

Staff has worked with WMATA to develop an easement that gives WMATA the long-term property rights it requires as a condition of accepting the Phase 1 facilities, without impairing the Authority's use of the DCR or DIAAH or the Dulles Toll Road (DTR).

The easement provides WMATA exclusive use of the areas occupied by rail facilities such as tracks, guideways, traction power substations, foundations, footings and columns, and the Wiehle Avenue station.

The easement also includes areas for utilities that serve the rail line and for the pedestrian bridges which cross the DTR at the Wiehle Avenue station and connect it with parking and bus facilities located to the north and south of the road.

The easement provides that WMATA and the Authority will consult with each other to ensure safety when either party does work that might affect the other.

Consistent with long-standing practice, WMATA will not be assessed a charge for the easement.



CONCLUSION

It is requested that the Committee approve and recommend to the Board that it authorize the President and Chief Executive Officer to execute the proposed easement in substantially the form of the document attached to the Committee paper.

**RECOMMENDATION PAPER TO THE
DULLES CORRIDOR COMMITTEE**

**GRANT OF AN EASEMENT TO THE WASHINGTON METROPOLITAN AREA
TRANSIT AUTHORITY FOR PHASE 1 SILVER LINE RAIL FACILITIES
ON AIRPORTS AUTHORITY PROPERTY**

JULY 2013

ACTION REQUESTED

That the Dulles Corridor Committee approve and recommend to the Board of Directors that it authorize the President and Chief Executive Officer to execute an easement along the Dulles International Airport Access Highway (DIAAH) and the Dulles Connector Road (DCR) in favor of the Washington Metropolitan Area Transit Authority (WMATA) that provides WMATA the right to operate and maintain Phase 1 Silver Line facilities within the area encompassed by the easement.

BACKGROUND

The Airports Authority is building the Phase 1 portion of the Silver Line for acceptance by WMATA. Following acceptance, WMATA will be solely responsible for the operation and maintenance of this portion of the Silver Line.

Part of the Phase 1 rail line runs through Tysons Corner where it is located within or adjacent to rights-of-way (Virginia Routes 7 and 123) that are owned by the Commonwealth of Virginia. Outside the Tysons area, the Phase 1 rail line is located within the DCR and the DIAAH. Between Interstate 66 and the Tysons area, the rail line travels at grade in the median of the DCR and, as an aerial structure, over the eastbound lanes of the DCR as it travels into Tysons Corner. Between the Tysons area and the final Phase 1 station at Wiehle Avenue, the rail line travels within the median of the DIAAH or, as an aerial structure, over the DIAAH's eastbound lanes as it leaves Tysons.¹ In addition to the rail line itself, Phase 1 construction has included numerous supporting facilities along the DCR and DIAAH, such as traction power substations, pedestrian bridges, a pedestrian pavilion and utility connections, including underground duct banks carrying power to the rail line.

¹ The Wiehle Avenue station is the only Phase 1 station located on Airports Authority property; the four other stations are located on or adjacent to Routes 7 and 123 in the Tysons Corner area.

As a condition to its acceptance of the Phase 1 Silver Line facilities, WMATA requires that it receive a property interest in the land on, under or above which these facilities are located. Because the Airports Authority only holds a leasehold interest in the DCR and DIAAH under its federal lease, it is unable to convey full title to WMATA to any property within these two roadways on which Silver Line facilities are located. The Authority is able, however, to grant WMATA an easement within the roadways for the balance of its federal lease term, or until June 2067. The Airports Authority and WMATA have accordingly negotiated an easement that grants WMATA the right to operate and maintain the Phase 1 Silver Line facilities in the locations in which they have been constructed within and over the DCR and DIAAH. The easement area is identified on Attachment A.

DISCUSSION

The easement to WMATA has been the topic of discussions between the Airports Authority and WMATA for several months. The principal issues addressed in these discussions have been the extent to which WMATA's rights within the easement area would be exclusive, and the degree to which WMATA could affect Airports Authority activities within the DCR and the DIAAH that are close to WMATA's Silver Line facilities.

The parties have agreed that WMATA will obtain an overall easement that essentially surrounds the Phase 1 Silver Line facilities located within the DCR and DIAAH, and will have the exclusive use of a *subarea* within that overall easement area. That subarea is generally defined as the area actually occupied by Phase 1 Silver Line facilities (e.g., tracks, guideways, stations, traction power stations, columns, foundations, ductbanks). Within that subarea, WMATA will have exclusive control, and any Airports Authority use within the subarea will require WMATA approval.

The Airports Authority will retain all "air rights" within the overall easement area that is outside of this "exclusive use" subarea. This means that the Airports Authority may use this outside space so long as the use does not interfere with the rights granted to WMATA by the easement. Also, the Airports Authority will be free to continue to use the DCR and DIAAH as it sees fit, with one proviso: prior to commencing any construction within these roadways that occurs within five feet of the outer boundary of the WMATA easement, the Authority must consult with WMATA regarding any impacts the construction might have on adjacent Silver Line facilities.

Pursuant to the rail project's intergovernmental funding agreement among the Airports Authority, Fairfax and Loudoun, WMATA will not be assessed any charge for this easement. This is in accord with the Airports Authority's longstanding practice of providing easements on Airports Authority property to governmental entities at no cost.

CONCLUSION

Staff requests that the Dulles Corridor Committee approve and recommend to the Board that it authorize the President and Chief Executive Officer to execute and deliver to WMATA an easement relating to Phase 1 Silver Line facilities in substantially the form as is attached to this paper.

Prepared by:

Office of General Counsel
July 2013

Attachment A

Tax Map Parcel Nos.

DCR/DIAAH

This instrument was prepared by
Jo Anne S. Bitner, Esquire
Odin, Feldman & Pittleman, P.C.
1775 Wiehle Avenue, Suite 400
Reston, Virginia 20190
VSB #35773

After recordation return to Grantee's Address:
Washington Metropolitan Area Transit Authority
600 Fifth Street, NW
Washington, DC 20001
ATTN: Anabela Talaia, Contracting Officer

**Exempted from Grantor taxes under Section 58.1-811(C)(4) and
from Grantee taxes and fees pursuant to Section 78 of the WMATA
Compact Va. Code Sections 56-529 and 56-530 and as set forth in full in the
2009 Acts of Assembly of Virginia Chapter 771**

DEED OF EASEMENT

THIS DEED OF EASEMENT ("Deed") is made this _____ day of _____,
2013, by and between **METROPOLITAN WASHINGTON AIRPORTS AUTHORITY**, a
body corporate and politic created by interstate compact between the Commonwealth of Virginia
and the District of Columbia under Chapter 598 of the 1985 Acts of the Virginia Assembly, as
amended, and codified at Va. Code Ann. Sections 5.1-152 *et seq.* (2001), and by the District of
Columbia Regional Airports Authority Act of 1985, as amended, and codified at D.C. Code Ann.
Sections 9-901 *et seq.* (2001) (the "**Airports Authority**") (Grantor); the **UNITED STATES OF
AMERICA** (Grantor for indexing purposes only) ; and **WASHINGTON METROPOLITAN
AREA TRANSIT AUTHORITY**, a body corporate and politic, organized and existing under
the Interstate Compact by and between the State of Maryland, the District of Columbia and the
Commonwealth of Virginia, Public Law 89-774, for the purpose of providing a public transit

system to serve the Washington Metropolitan Area including but not limited to Fairfax County, Virginia (“**WMATA**”) (Grantee).

W I T N E S S E T H:

WHEREAS, the Airports Authority occupies, operates and controls certain real property (the “Property”) located in Fairfax County, Virginia and in Loudoun County, Virginia, pursuant to the terms of that certain Agreement and Deed of Lease, dated March 2, 1987 by and between the Airports Authority and the United States of America, acting by and through the Secretary of Transportation, as amended from time to time (the “USA Lease”); and

WHEREAS, Article 22 of the USA Lease provides that the Airports Authority shall be entitled from time to time and in its discretion to create easements through the Property for purposes consistent with, and subject to the provisions of, the USA Lease; and

WHEREAS, the Airports Authority has facilitated the construction and installation of various structures, improvements, facilities, utilities and equipment on the Property as part of the Dulles Corridor Metrorail Project, Extension to Wiehle Avenue (the “Project”), in accordance with the terms of that certain Cooperative Agreement, dated September 14, 2007, by and between the Airports Authority and WMATA, as amended from time to time (the “Cooperative Agreement”); and

WHEREAS, in furtherance of Article 6, Condition 4 of the Cooperative Agreement, the Airports Authority desires to grant and convey to WMATA certain easements through those portions of the Property containing Transit Related Facilities (as defined in the Cooperative Agreement) that are intended to be transferred to WMATA pursuant to the terms of the Cooperative Agreement; and

WHEREAS, the Airports Authority has determined that it is not inconsistent with the needs of aviation to grant unto WMATA certain easements through those portions of the Property containing Transit Related Facilities that are intended to be transferred to WMATA pursuant to the terms of the Cooperative Agreement.

NOW, THEREFORE, in consideration of the sum of Ten Dollars, (\$10.00), and other good and valuable consideration, the receipt of which is hereby acknowledged, and pursuant to Article 22 of the USA Lease, the Airports Authority does hereby grant and convey unto WMATA, its successors and assigns, the following described easement rights for the purposes set forth below:

Surface Easements, Aerial Easements, Underground Easements, Pedestrian Bridge Easements and Traction Power Easements and rights-of-way (collectively, the “**Rail Facilities Easements**”), all of said Rail Facilities Easements being located in, upon, over, under and across the Property to construct, operate, maintain, repair, replace, modify, relocate, reconstruct and remove a rail transit system and related transit facilities and appurtenances, including without limitation, passenger stations, passenger pavilions, pedestrian bridges, parking areas, structures, columns, piers, footings, foundations, structural members, trackage, signals, cable, safety fences, tiebreaker stations, utility lines and all other components associated with rail transit facilities and equipment constructed or installed within the Rail Facilities Easements (collectively, the “**Rail Facilities**”).

The locations of the Rail Facilities Easements shall be as shown on the plat attached hereto as **Exhibits A and B** entitled “_____,” prepared by Dewberry Consultants LLC, and more particularly described herein. In the event of any discrepancy between the Rail Facilities Easement boundaries described below and those shown on Exhibits A and B, the Rail Facilities Easement boundaries described below shall control.

“**Surface Easements**” refer to those portions of the Rail Facilities Easements containing Rail Facilities constructed at grade level or partially below grade level (such as foundations, supporting structures and utility lines). The lateral boundaries (i.e., width) of the Surface Easements shall be the (i) outside surface of the retaining walls (including integrated traffic

barriers) encompassing the trackway or the (ii) outside surface of the wall of any structure (such as a passenger station) encompassing the trackway, as the case may be, all as shown on Exhibit A. The upper boundary of the Surface Easements shall be that point (at any given place along the trackway except beneath bridges) which is located eighteen (18) feet above the top of rail, or five (5) feet above the uppermost surface of any structures (such as passenger stations or passenger pavilions) comprising Rail Facilities within the Surface Easements, as the case may be. The upper boundary of the Surface Easements beneath bridges shall be thirteen (13) feet above top of rail. WMATA shall have the exclusive right to use: (a) all Rail Facilities located within the Surface Easements, including the track way, pavilions and passenger stations, and (b) the air space above the Rail Facilities to a point (at any given place along the trackway) which is thirteen (13) feet above the top of rail. The Airports Authority shall not have the right to enter the foregoing exclusive use area for any purpose without WMATA's express written consent.

“Aerial Easements” refer to those portions of the Rail Facilities Easements containing Rail Facilities located above grade, including, without limitation, the aerial guideway, passenger stations and passenger pavilions. The location of the Aerial Easements shall consist of and be limited to an “aerial envelope” defined by reference to lateral boundaries and upper and lower horizontal boundaries of the Aerial Easements as follows: The lateral boundaries (i.e., width) of the Aerial Easements shall be Twenty-five (25) feet measured from the centerline of the inbound track and Twenty-five (25) feet measured from the centerline of the outbound track, all as shown on Exhibit A. The upper boundary shall be that point (at any given place along the trackway) which is located eighteen (18) feet above the top of rail or five (5) feet above the uppermost surface of any structures (such as passenger stations and passenger pavilions) comprising the Rail Facilities within the Aerial Easements, as the case may be. The lower boundary shall be that point (at any given place along the trackway) which is located four (4) feet below the bottom surface of the aerial guideway structure, column or pier (whichever is lower), as the case may be, even if such lower boundary is below grade. Aerial Easements shall include support rights for the columns, footings and piers located within the Aerial Easements. WMATA shall have the exclusive right to use: (i) all Rail Facilities located within the Aerial Easements, including the trackway, guideway structure, columns, piers and (ii) the air space above the Rail Facilities to a point (at any given place along the trackway) which is thirteen (13) feet above the top of rail.

The Airports Authority shall not have the right to enter the foregoing exclusive use area for any purpose without WMATA's express written consent.

“Pedestrian Bridge Easements” refer to those portions of the Rail Facilities Easements containing Rail Facilities consisting of pedestrian bridges providing access to or otherwise serving the passenger stations and pavilions. The lateral boundaries (i.e., width) of the Pedestrian Bridge Easements shall be the outer face of the lateral walls of the bridge structure. The upper boundary shall be that point (at any given place along the bridge structure) located five (5) feet above the uppermost surface of the roof structure of the bridge. The lower boundary shall be that point (at any given place along the bridge structure) located one (1) foot below the exterior, bottom most surface of the bridge structure. WMATA shall have the exclusive right to use all Rail Facilities located within the Pedestrian Bridge Easements. The Airports Authority shall not have the right to enter the foregoing exclusive use area for any purpose without WMATA's express written consent.

“Underground Easements” refer to those portions of the Rail Facilities Easements containing Rail Facilities located entirely below grade and consisting of the underground tunnel constructed within the Dulles Connector Road median and leading to the West Falls Church Railyard. The lateral boundaries (i.e., width) of the Underground Easements shall be fifteen (15) feet measured from the centerline of the inbound track and fifteen (15) feet measured from the centerline of the outbound track, as shown on Exhibit A. The upper boundary of the Underground Easements shall be that point (at any given place along the tunnel) which is located twenty-five (25) feet above the top of rail. The lower boundary of Underground Easements shall be fifteen (15) feet below the top of rail. WMATA shall have the exclusive right to use: (i) all Rail Facilities located within the Underground Easements (including the tunnel structure), and (ii) the air space within the tunnel structure. The Airports Authority shall not have the right to enter the foregoing exclusive use area for any purpose without WMATA's express written consent.

“Traction Power Easements” refer to those portions of the Rail Facilities Easements containing utility facilities, to include: electrical systems for transmitting and distributing electric power by one or more circuits, consisting of traction power substations, tiebreaker stations, duct banks, wires, conduits, poles, cables, transformers, transformer enclosures, concrete pads, manholes, hand holes, connection boxes, accessories and appurtenances. The

locations and boundaries of the Traction Power Easements shall be as shown on the plat attached hereto as **Exhibit B** entitled “ _____,” prepared by Dewberry Consultants LLC, and more particularly described herein. WMATA shall have the exclusive right to use all Rail Facilities located within the Traction Power Easements.

The Rail Facilities Easements are referred to collectively as the “Easements” and shall be subject to the following conditions:

1. All Rail Facilities which are constructed or installed within the Easements shall be and remain the property of WMATA, its successors and assigns. WMATA and its agents shall have full and free use of the Easements for the purposes named, including those areas designated for WMATA’s exclusive use, and shall have all rights and privileges reasonably necessary to the exercise of the Easements, including the right of access thereto as more particularly described in the Maintenance Agreement (hereinafter defined).

2. WMATA shall also have the right to install, operate, maintain and replace communications systems, equipment and facilities, including, without limitation, fiber optic cabling, within the Easements as may be required for WMATA to comply with applicable state or federal regulations, ordinances or statutes mandating the provision of such systems, equipment and facilities within the Rail Facilities.

3. The Airports Authority reserves the absolute right, in its sole discretion, to make any use of the Easements (excluding those portions of the Easements designated for WMATA’s exclusive use as described above) which is not inconsistent with the rights herein conveyed and does not interfere with the use of said Easements by WMATA for the purposes named. The foregoing rights reserved to the Airports Authority shall include, without limitation, the right to construct or install structures or improvements in the Easements (excluding those portions of the Easements designated for WMATA’s exclusive use); provided, however, that any such construction is performed in full consultation with WMATA in order to permit WMATA to review and respond to the proposed use by the Airports Authority as to possible interference with WMATA's use. In addition to the foregoing restriction applicable within the Easement area prior to any construction by the Airports Authority outside, but in areas immediately adjacent (as more specifically described in the Maintenance Agreement described below) to the Easement area, the

Airports Authority shall consult with WMATA regarding any reasonable concern of WMATA as to possible interference with WMATA's use of the Easement.

4. The Airports Authority, WMATA and the Commonwealth of Virginia (acting through the Commissioner of Highways) are parties to a separate Maintenance Agreement governing the operation and maintenance of the Rail Facilities and other improvements and facilities located on the Property.

5. WMATA shall have the right to assign the Easements to a successor entity or agency to WMATA as the owner and operator of the Rail Facilities. Any partial assignment and any proposed assignment to any other entity or agency shall require the prior written consent of the Airports Authority.

6. This Deed shall be construed in accordance with the laws, regulations and judicial precedents in effect in the Commonwealth of Virginia, which includes, but is not limited to the WMATA Compact, codified in Va. Code Ann Sections 56-529 and 56-530 and the Virginia Administrative Code, as applicable.

7. The Easements granted herein shall remain in full force and effect during the term of the USA Lease, (including any extension pursuant to the applicable provisions of the USA Lease), and shall terminate automatically upon the expiration or termination of the USA Lease. As of the date hereof, Section 10.A of the USA Lease provides that it will expire as of June 7, 2067. The Easement rights conveyed herein are expressly subject to the terms and provisions of the USA Lease. No rights which are not authorized under the USA Lease are intended to be conveyed hereby.

The easement rights conveyed herein are subject to any right, privilege, easement, condition or restriction encumbering the Property of record, whether located above, upon, or under the surface.

The Easements granted to and covenants received from WMATA shall run with the land and shall be binding on the parties hereto, and their successors and assigns.

(SIGNATURES APPEAR ON THE FOLLOWING PAGES)

IN WITNESS WHEREOF, the parties hereto have caused this Deed to be executed, in its name pursuant to due and property authority as of the date set forth on Page 1 of this Deed.

METROPOLITAN WASHINGTON AIRPORTS
AUTHORITY

BY _____ (SEAL)
Name: _____
Title: _____

DISTRICT OF COLUMBIA

to-wit:

The foregoing instrument was acknowledged before me this ____ day of _____, 2013, by _____, as _____ on behalf of the Airports Authority.

Notary Public

My Commission Expires: _____

Notary Registration Number: _____

WASHINGTON METROPOLITAN AREA TRANSIT
AUTHORITY

BY _____(SEAL)
Name: _____
Title: _____

DISTRICT OF COLUMBIA

to-wit:

The foregoing instrument was acknowledged before me this ___ day of
_____, 2013, by _____, as
_____ on behalf of the Authority.

Notary Public

My Commission Expires: _____

Notary Registration Number: _____

EXHIBITS A and B
PLATS SHOWING EASEMENT AREAS

Proposed Resolution

Approving Grant of Easement to the Washington Metropolitan Area Transit Authority for Phase 1 Silver Line Rail Facilities on Airports Authority Property

WHEREAS, The Airports Authority is constructing the Phase 1 portion of the Metrorail Silver Line for acceptance by the Washington Metropolitan Area Transit Authority (WMATA);

WHEREAS, Following its acceptance of Phase 1, WMATA will be the sole party responsible for the operation and maintenance of this portion of the Silver Line;

WHEREAS, As a condition to its acceptance of Phase 1 of the Silver Line, WMATA requires that it receives an appropriate property interest in the land on, under or above which these facilities are located;

WHEREAS, A portion of the Phase 1 facilities are located within Airport Authority land that is leased from the federal government, primarily in the median of the Dulles Connector Road between Interstate 66 and the Tysons Corner area, and in the median of the Dulles international Airport Access Highway between the Tysons Corner area and the western terminus of Phase 1 at Wiehle Avenue in Reston;

WHEREAS, In addition to the Phase 1 rail line, the Phase 1 facilities that are located within Airports Authority land include, without limitation, guideways, traction power substations, tiebreaker switches, pedestrian bridges, and utilities, including conduits and cable located in underground duct banks;

WHEREAS, The Airports Authority and WMATA have negotiated an easement that grants WMATA the right to operate and maintain, along with related rights, Phase 1 Silver Line facilities in the locations on Airports Authority land in which they have been constructed;

WHEREAS, This easement was presented to the Dulles Corridor Committee at its July 2013 meeting and, following its review, the Committee approved and recommended the easement's approval to the Board of Directors; now, therefore, be it RESOLVED, That the President and Chief Executive Officer is directed and authorized to execute, on behalf of the Airports Authority, the easement granting to WMATA the right to operate and maintain, along with related rights, the Phase 1 Silver Line facilities located on Airports Authority land

as depicted in the easement, in substantially in the form as presented to the Dulles Corridor Committee at its July 2013 meeting.

For consideration by the Dulles Corridor Committee and the Board of Directors on July 17, 2013