



Finance & Administration Committee

Action Item III-A

October 9, 2014

**Approval of Revisions to Fairfax County Parking
Surcharge Agreement**

Washington Metropolitan Area Transit Authority
Board Action/Information Summary

Action Information

MEAD Number:
201047

Resolution:
 Yes No

TITLE:

Revisions to Fairfax Parking Surcharge Agreement

PRESENTATION SUMMARY:

Present (a) summary of current surcharge parking program and (b) summary of proposed revisions to Fairfax County parking surcharge agreement, as contemplated in 2011 Memorandum of Agreement for Silver Line Phase 2. Request authorization for GM/CEO to negotiate and execute proposed revisions.

PURPOSE:

Request Board authorization for the GM/CEO to execute the proposed revisions to the parking surcharge agreement with Fairfax County, as agreed to in the 2011 Memorandum of Agreement (MOA) for Silver Line Phase 2.

DESCRIPTION:

Key Highlights:

- The parking surcharge program was created by Board in 1988 to provide additional funding for parking facilities at Metrorail stations. Separate agreements and reserve accounts are in place for Prince George's, Montgomery, and Fairfax Counties.
- WMATA and Fairfax County entered into an MOA (along with USDOT, Virginia, Loudoun County, and MWAA) in 2011 for the implementation of Silver Line Phase 2. The MOA states that WMATA will agree to negotiate revisions to Fairfax County's surcharge agreement to facilitate the funding of new parking facilities at Herndon and Innovation Center Stations.
- Fairfax County has now requested the revisions in order to proceed with bond validation and construction of the parking facilities.

Background and History:

The parking surcharge program (separate from the base parking fee) was created by the Board in 1988 to provide an additional funding source for the expansion of parking facilities at Metrorail stations. The surcharge fees accrue in separate reserve operating accounts and are used to support the debt service associated with the construction of specific WMATA parking facilities in each jurisdiction. Surcharge agreements are currently in place for Prince George's, Montgomery, and Fairfax Counties.

In December 2011, an MOA was executed between US DOT, the Commonwealth of Virginia, Fairfax County, Loudoun County, WMATA and MWAAs regarding Phase 2 of Dulles Metrorail Extension Project. One of the elements of the funding structure in the MOA included provisions for Fairfax and Loudoun Counties to use their best efforts to secure additional funding for parking facilities at the stations in their respective jurisdictions. The number of parking spaces to be provided would at least be the same number as included in the approved Record of Decision (ROD) for the project. The MOA requires that the Phase 2 parking facilities shall be available concurrent with the opening of Phase 2 for revenue operations.

Towards facilitating such alternate financing, the MOA included a provision that WMATA and Fairfax County would negotiate appropriate amendments to the existing WMATA-Fairfax parking surcharge agreement first entered into in 1989 and subsequently amended in 1999 to facilitate construction of additional parking structures at Metrorail stations in the County. Pursuant to this agreement, parking surcharges have been established at all parking facilities in Fairfax County and at the Van Dorn and East Falls Church Metrorail station parking lots. The revenue from these surcharges has been used by Fairfax County to finance the bonds used for various parking expansions. As of August 31, 2014, Fairfax County's outstanding principal balance on the Series 2005 bonds is \$11 million. The Series 2005 bonds were issued to refund a portion of the Series 1999 Bonds issued to fund the Vienna II Metrorail Station Project (Vienna II).

Discussion:

In order to implement and facilitate the aforementioned provisions of the executed MOA, WMATA and Fairfax County have initiated discussions on a revised parking surcharge agreement. The key elements of the revised agreement are:

- WMATA will continue to set the base parking fees at WMATA-owned parking facilities.
- Fairfax County will set the parking fees at the Fairfax County owned stations in Phase 2, including the parking at the Phase 1 station at Wiehle-Reston East.
- WMATA will neither own nor have any maintenance or operating responsibility for the Phase 2 parking facilities. WMATA can, if requested by Fairfax County, execute an agreement similar to what was executed for the Wiehle-Reston East station, for collection and return to the County of parking fees through the SmarTrip® system, for which the County will reimburse WMATA for associated administrative costs.
- The existing surcharge account balance (approximately \$23 million as of August 31, 2014), less a \$2.1 million reserve for one year's basic rent and additional rent (annual reservation amount) under the Facility Lease agreement related to the Vienna II project, will be transferred to the County.
- Thereafter, beginning every September 1st WMATA will retain, prior to transferring monthly accrued surcharge revenues, an amount equivalent to the annual reservation amount due in the succeeding 12 month period.
- Once the Series 2005 bonds mature, all surcharge revenues will be accrued and transferred to the County monthly with no reservation by WMATA.
- Fairfax County will be authorized to use the surcharge revenues for financing expansion of parking at WMATA-owned facilities and at Fairfax County-owned

parking facilities that are provided exclusively for Metro riders.

To ensure that the Phase 2 parking facilities are provided in a timely manner, Fairfax County is requesting approval/execution of this agreement which will allow the County to proceed with its bond validation and other necessary actions.

FUNDING IMPACT:

Surcharge account funds are reserved and held separately from operating and capital funds. The proposed changes to the disposition of Fairfax County's surcharge funds will have no direct impact on the FY2015 operating or capital budgets.	
Project Manager:	Stan Wall
Project Department/Office:	CFO/LAND

TIMELINE:

Previous Actions	N/A
Anticipated actions after presentation	WMATA and Fairfax County will execute revised parking surcharge agreement.

RECOMMENDATION:

Recommend approval of authorization for the GM/CEO to execute the proposed revisions to the Fairfax County parking surcharge agreement.



Washington Metropolitan Area Transit Authority

Revisions to Fairfax County Parking Surcharge Agreement

Finance & Administration Committee
October 9, 2014



Purpose

Authorize GM/CEO to execute revisions to Fairfax County's parking surcharge agreement, as agreed to in 2011 Silver Line Phase 2 Memorandum of Agreement (MOA)



Parking Surcharge Program

- Surcharge fees created by Board in 1988 to support parking facility expansion
- Separate agreements and reserve accounts for Prince George's, Montgomery, and Fairfax





Current Status by County

	Prince George's	Montgomery	Fairfax
Surcharge			
Fee	\$0.75-\$1.25	\$1.50	\$0.50-\$1.25
Balance	\$16 million	\$8 million	\$23 million
Debt			
Issuer	MTA	Mont. County	FCEDA
Maturity	2028	2031	2020
Balance	\$29 million	\$29 million	\$11 million
Parking Facilities Financed	College Park, Largo, New Carrollton	Glenmont, Shady Grove, Grosvenor	Vienna II



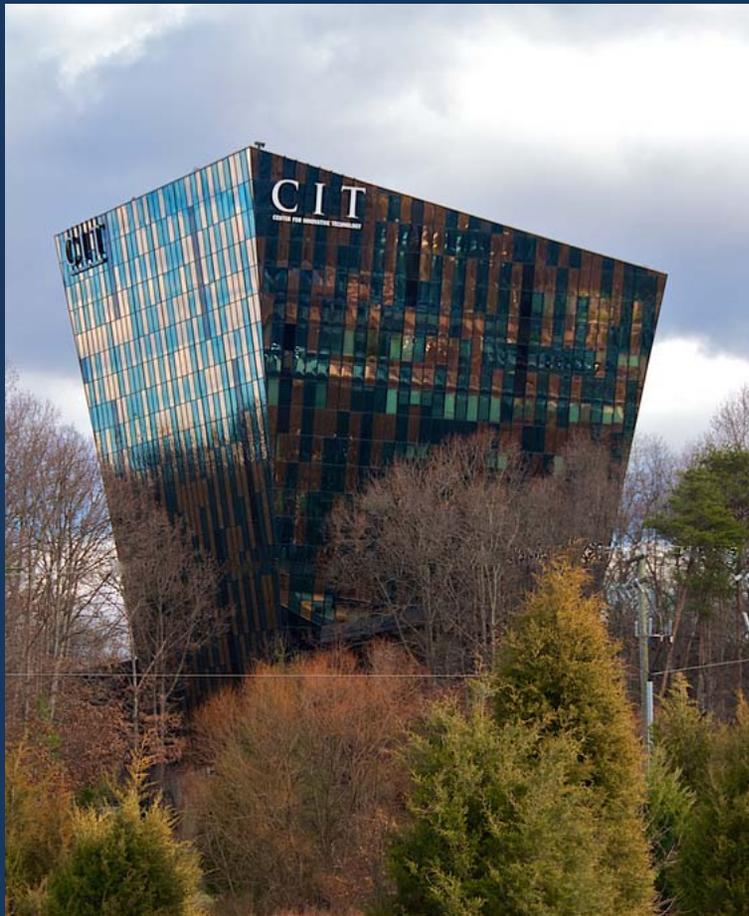
Silver Line Phase 1: Wiehle-Reston East

- Wiehle garage owned and operated by Fairfax County
- WMATA only responsible for revenue collection, real-time customer service info, reserved parking program





Silver Line Phase 2: December 2011 MOA



- MOA between WMATA, USDOT, Virginia, Fairfax, Loudoun, and MWAA
- WMATA agreed to negotiate changes to Fairfax surcharge agreement to provide additional funding source for Phase 2 parking facilities



Key Elements of Revised Agreement

- WMATA continues to set base fee at WMATA-owned facilities; Fairfax sets parking fees at Fairfax-owned Silver Line facilities
- WMATA has no operating/maintenance responsibilities, except revenue collection if requested (as at Wiehle)
- All surcharge revenues not required to support existing debt will transfer to Fairfax for financing parking expansion



Recommendation

- Fairfax has requested revisions in order to move ahead with bond validation and construction
- Recommend approval for GM/CEO to execute revisions to Fairfax County parking surcharge agreement

SUBJECT: APPROVAL OF THE REVISED FAIRFAX COUNTY SURCHARGE IMPLEMENTATION AGREEMENT

RESOLUTION
OF THE
BOARD OF DIRECTORS
OF THE
WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

WHEREAS, The Board of Directors approved Resolution 88-67 establishing a framework for a parking base fee and surcharge fee under the revised parking fee structure and setting forth conditions governing the use of the parking surcharge revenues; and

WHEREAS, Resolution 88-68 established a reserve operating account for Board-approved parking projects in Fairfax County in accordance with the terms of Resolution 88-67; and

WHEREAS, Resolution 88-68 required that the Board of Directors approve an implementation agreement prior to expenditure of funds in the Fairfax County operating reserve account, which occurred when the Board approved Resolution 89-09 for the Fairfax County Surcharge Implementation Agreement; and

WHEREAS, In 2011, the Washington Metropolitan Area Transit Authority (WMATA), Fairfax County, the Washington Metropolitan Airports Authority, the Commonwealth of Virginia, Loudoun County, and the United States Department of Transportation entered into a Memorandum of Agreement (MOA) for the construction of Phase 2 of the Dulles Metrorail Extension Project; and

WHEREAS, One of the terms of that MOA was that, upon the request of Fairfax County, WMATA and Fairfax County would negotiate revisions to the existing Surcharge Implementation Agreement; and

WHEREAS, Having received such a request from Fairfax County, WMATA and Fairfax County have negotiated revisions to their roles and responsibilities under the Fairfax County Surcharge Implementation Agreement, a copy of which is attached to this resolution; now, therefore be it

RESOLVED, That the Board of Directors approves the provisions of the revised Fairfax County Surcharge Implementation Agreement; and be it further

RESOLVED, That the General Manager/Chief Executive Officer is authorized to agree to such changes to those provisions as he may find appropriate that are not materially adverse to the interests of WMATA, and may execute the revised Fairfax County Surcharge Implementation Agreement; and be it finally

RESOLVED, That this Resolution shall be effective immediately.

Reviewed as to form and legal sufficiency,



Kathryn H.S. Pett
General Counsel

WMATA File Structure Nos.
12.8.4 Parking Facility Surcharges

PROPOSED

**SECOND AMENDED AND RESTATED
SURCHARGE IMPLEMENTATION AGREEMENT**

This **SECOND AMENDED AND RESTATED SURCHARGE IMPLEMENTATION AGREEMENT** (“**Agreement**”) dated and effective as of _____, 201_ (“**Effective Date**”), between the **WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY** (“**WMATA**”) and the **COUNTY OF FAIRFAX, Virginia** (the “**County**” or “**Fairfax**”), supersedes and replaces the Amended and Restated Surcharge Implementation Agreement, dated June 11, 1999 (the “**1999 Surcharge Agreement**”) between WMATA and the County.

WITNESSETH:

WHEREAS, beginning in 1988, the WMATA Board of Directors (the “**WMATA Board**”) adopted resolutions to permit a revised parking fee program in any jurisdiction to generate additional funds by an increase in parking fees associated with Metrorail-related parking expansion projects which are approved by the WMATA Board; and

WHEREAS, WMATA and the County first entered into a Surcharge Implementation Agreement dated May 19, 1989 (the “**1989 Surcharge Agreement**”), under which the parties agreed to the establishment, collection and payout of parking surcharges on parking spaces that WMATA owns, operates, manages or otherwise controls at Metrorail Stations within Fairfax County and at the Van Dorn and East Falls Church Metrorail Stations (collectively, “**WMATA Controlled Parking Spaces**”) and established the Fairfax County Surcharge Reserve Account (the “**Surcharge Reserve Account**”); and

WHEREAS, the creation and application of the Surcharge Reserve Account was initially subject to WMATA’s Transit Bond Resolution, adopted August 3, 1972 (the “**1972 Transit Bond Resolution**”), which was satisfied and discharged in connection with the adoption on

November 18, 1993 by the WMATA Board of the Gross Revenue Transit Bond Resolution (the “**1993 Gross Revenue Bond Resolution**”) which provided for the refinancing of a portion of the bonds issued under the 1972 Transit Bond Resolution; and

WHEREAS, WMATA and the County entered into the 1999 Surcharge Agreement to facilitate the implementation of plans for additional parking structures; and

WHEREAS, WMATA and the County in cooperation with the Fairfax County Economic Development Authority (“**EDA**”) have developed parking structures at the Vienna and Huntington Metrorail Stations (the “**Vienna and Huntington Metrorail Parking Structures**”), supported by the Surcharge Reserve Account and pursuant to agreements that were subject to the constraints of first the 1972 Transit Bond Resolution and then the 1993 Gross Revenue Bond Resolution; and

WHEREAS, WMATA’s 1993 Gross Revenue Bond Resolution was satisfied and discharged in connection with the adoption on September 25, 2003 by the WMATA Board of the Gross Revenue Bond Resolution (the “**2003 Gross Revenue Bond Resolution**”), which provided for the refinancing of a portion of the bonds issued under the 1993 Gross Revenue Bond Resolution and the issuance of new bonds; and

WHEREAS, the 2003 Gross Revenue Bond Resolution excludes from the definition of “Transit System” (the gross revenues of which are pledged to bonds issued under the 2003 Gross Revenue Bond Resolution) (i) the Vienna and Huntington Metrorail Parking Structures and (ii) “Parking Facilities” (as therein defined) that WMATA has notified the trustee (the “**WMATA Trustee**”) under such resolution in writing shall not be part of the Transit System; and

WHEREAS, WMATA has given or will give written notice to the WMATA Trustee that all WMATA Controlled Parking Spaces are “Parking Facilities” within the meaning of the 2003 Gross Revenue Bond Resolution; and

WHEREAS, Fairfax has planned, developed, financed with the assistance of EDA, constructed and owns a parking structure at the Wiehle-Reston East Metrorail Station, and the County and WMATA in cooperation with EDA wish to plan, develop, finance, construct and operate additional parking structures and surface lots, including those at the planned Herndon and Innovation Center Metrorail Stations, and related facilities and improvements such as pedestrian bridges that provide access for WMATA patrons/customers to and from the entrance plazas, bus drop off areas, park and ride areas, and connecting sidewalks related to the associated additional parking structures (all such parking facilities called collectively “**Fairfax County Controlled Parking Projects**”) using the revenues thereof and funds in and revenues accruing to the Surcharge Reserve Account; and

WHEREAS, construction of Fairfax County Controlled Parking Projects may be financed through the issuance of bonds by the County or EDA; and

WHEREAS, development and implementation by the County of the plan of finance for the Fairfax County Controlled Parking Projects at the planned Herndon and Innovation Center Metrorail Stations require replacing the 1999 Surcharge Agreement with this Agreement; and

WHEREAS, all obligations for financing the Huntington Metrorail Station parking structure and the first Vienna Metrorail Station parking structure have been paid, and the only obligations contemplated by the 1999 Surcharge Agreement that remain outstanding on the Effective Date are bonds issued by EDA relating to the second parking structure at the Vienna Metrorail Station (the “**Vienna II Project**”); and

WHEREAS, the agreements relating to the financing, construction, operation and maintenance of the Vienna II Project do not prohibit or restrict WMATA and the County from entering into this Agreement superseding and replacing the 1999 Surcharge Agreement; and

WHEREAS, the Fairfax Board of Supervisors of Fairfax County (the “Fairfax Board”) has created or will create a system of parking facilities, including (A) those owned and financed by Fairfax or EDA at the Wiehle-Reston East, Herndon and the Innovation Center Metrorail Stations, (B) those existing parking spaces controlled by Fairfax and serving or intended to serve Metrorail patrons and designated to be part of such parking system, and (C) all other new additional parking spaces developed by or on behalf of Fairfax intended to provide parking spaces for Metrorail patrons and designated to be part of such parking system (the parking spaces described in clause (A) and those referred in the clauses (B) and (C) and designated to be part of such parking system, collectively, the “**Fairfax County Metrorail Parking Spaces**”),

NOW THEREFORE, in consideration of the mutual promises and covenants set forth herein, the 1999 Surcharge Agreement is superseded and replaced in full as of the Effective Date to read as follows:

1. **Operation and maintenance of parking facilities.**

(a) WMATA shall operate and maintain all WMATA Controlled Parking Spaces on WMATA property in Fairfax County and at the East Falls Church and Van Dorn Metrorail Stations, including any additional parking facilities constructed thereon hereunder. For purposes of this Agreement, “facilities” shall include parking structures and surface lots. WMATA shall be responsible for the operating, maintenance and insurance costs of all such facilities on WMATA property in Fairfax County and at the East Falls Church and Van Dorn Metrorail Stations.

(b) Fairfax has planned, developed, financed with EDA and owns the Fairfax County Controlled Parking Project at the Wiehle-Reston East Metrorail Station and intends to plan, develop, finance and own the Fairfax County Controlled Parking Projects at the Herndon and the Innovation Center Metrorail Stations. WMATA and Fairfax may provide in agreements between them, or including EDA, for the operation and maintenance thereof and for the planning, development, financing, construction and ownership of other Fairfax County Controlled Parking Projects.

2. **Parking fees.**

(a) The fees for all WMATA Controlled Parking Spaces (including temporary parking facilities in use for Metrorail patrons/customers pending construction, improvement, maintenance and repairs of spaces at the Metrorail Stations) will consist of a base amount (the “**base fee**”) set by or pursuant to a resolution adopted by the WMATA Board and a surcharge amount (the “**surcharge**”) set by or pursuant to a resolution adopted by the WMATA Board. All such parking fees, *i.e.*, the base fee and the surcharge, shall be collected by or on behalf of WMATA as part of its operation of the WMATA Controlled Parking Spaces. For purposes of this Agreement, “all spaces” or where applicable “each space” relating to WMATA Controlled Parking Spaces shall refer to all existing and future WMATA Controlled Parking Spaces in Fairfax County, at the East Falls Church Metrorail Station and, as applicable, at the Van Dorn Metrorail Station.

(b) The base fee is intended, and shall be fixed by the WMATA Board, to provide WMATA with funds to defray the costs of operation, maintenance and insurance of the WMATA Controlled Parking Spaces. WMATA shall own and retain control of all such parking revenues derived from such base fee.

(c) Beginning in 1988, the WMATA Board established a surcharge on all WMATA Controlled Parking Spaces in the County, the level of which was based upon consideration of a recommendation provided by the County. From and after the Effective Date of this Agreement, the surcharge then currently in effect shall remain in effect at the WMATA Controlled Parking Spaces, and the WMATA Board shall continue to impose, fix and collect a surcharge on the WMATA Controlled Parking Spaces (which surcharge amount may, but need not be, uniform for all such parking spaces), the level of which is to be based upon consideration of a recommendation provided by the County.

(d) The County shall set the amount of the fees for the Fairfax County Metrorail Parking Spaces, which parking fees may, but need not be, uniform for all such parking spaces. The parking fees set by the County for the Fairfax County Metrorail Parking Spaces shall not be subject to the approval of the WMATA Board.

(e) WMATA acknowledges that none of the fees set for Fairfax County Metrorail Parking Spaces is a surcharge within the meaning of this Agreement and that such fees may be used, at Fairfax's option, for one or more of the planning, development, financing (including, but not limited to, the payment of debt service), construction, operation, maintenance, insurance, improvement and expansion of Fairfax County Controlled Parking Projects and other parking facilities in the County that provide remote parking spaces for Metrorail patrons. WMATA and the County further acknowledge that such fees may be used, at Fairfax's option, for one or more of the planning, development, financing (including but not limited to, the payment of debt service), construction, operation, maintenance, insurance, improvement and expansion of the WMATA Controlled Parking Spaces upon written agreement by WMATA and Fairfax as to the scope of the project to be undertaken on WMATA property.

(f) From and after the Effective Date, WMATA shall collect all surcharge revenues collected for the use of the WMATA Controlled Parking Spaces, and WMATA shall accrue them daily to the Surcharge Reserve Account. The Surcharge Reserve Account shall be maintained separate and apart from all other accounts of WMATA, and the parking fees derived from the surcharge in the Surcharge Reserve Account shall never be commingled with the parking revenues derived from the base fee or other revenues of WMATA. WMATA shall apply amounts in the Surcharge Reserve Account in accordance with the provisions of Section 3(a).

(g) The surcharge revenues collected from WMATA patrons/customers at WMATA Controlled Parking Spaces, whether collected by WMATA or an agent, shall not be “Revenues” as defined by the 2003 Gross Revenue Bond Resolution.

(h) Fairfax and WMATA may agree that WMATA shall operate, manage, provide fare collection systems for or maintain all or certain of the Fairfax County Controlled Parking Projects, but any such agreements will be separate and apart from this Agreement.

3. **Application of Amounts in the Surcharge Reserve Account and the New Surcharge Reserve Account.**

(a) **Surcharge Reserve Account.**

(i) On the Effective Date or within one business day thereafter, but subject to the reservation of \$ _____¹, the entire balance of the Surcharge Reserve Account, whether in the

¹ Interest on the Vienna II bonds is payable semi-annually on each March 1 and September 1. Principal is payable on each September 1. The transfer by WMATA of Surcharge Revenues to the Trustee is due 3 business days before each interest and principal payment date. The amount retained will be equal to the sum of (A)(i) 12 months interest if the transfer is to be made after September 1 of one year and before March 1 of the following calendar year or (ii) 6 months interest if the transfer is to be made after March 1 and before September 1 in the same calendar year and (ii) and in either case ((A)(i) or (ii)) the next principal payment due on September 1. An amount sufficient to pay the Trustee’s expenses will also be retained. This footnote will be removed when the Effective Date is set and the amount of the retention is determined applying the principles in this footnote.

form of cash or investments, shall be transferred by WMATA to the County for credit to the “**New Surcharge Account**” described in Section 4(b).

(ii) Beginning with the first day of each 12-month period commencing September 1, 201₂ and thereafter, WMATA shall retain in the Surcharge Reserve Account, prior to making the transfers to Fairfax provided for in clause (iii) below, an amount of Surcharge Revenues and investment income thereon sufficient to pay the “**Basic Rent**” and “**Additional Rent**” due in such 12-month period (the “**Annual Reservation Amount**”) under the facility lease agreement related to the Vienna II Project (the “**Vienna II Project Facility Lease Agreement**”).

(iii) All Surcharge Revenues collected by WMATA

(1) after the Effective Date and prior to the next September 1, and

(2) thereafter, in each 12-month period after the collection and retention in the Surcharge Reserve Account of the Annual Reservation Amount,

shall be transferred monthly to the New Surcharge Account.

(iv) At such time as all Basic Rent and Additional Rent payable under the Vienna II Project Facility Lease Agreement shall have been paid and such lease agreement terminated, all amounts thereafter collected by WMATA at WMATA Controlled Parking Spaces that are allocable to the surcharge and accrued daily by WMATA to the Surcharge Reserve Account pursuant to Section 2(f) shall be transferred to the County monthly for credit to the New Surcharge Account as provided in Section 4(a)(i) and (b)(i).

² The first full 12-month period following the Effective Date.

(b) New Surcharge Account.

(i) Fairfax represents and warrants that the surcharge and any other amounts in the New Surcharge Account shall be used solely for one or more, at Fairfax's option, of the planning, development, financing (including, but not limited to, the payment of debt service), construction, operation, maintenance, insurance, improvement and expansion of the WMATA Controlled Parking Spaces and Fairfax County Controlled Parking Projects. Fairfax may pledge (or otherwise grant a security interest in) the surcharge and amounts in the New Surcharge Account to or for the benefit of lenders, credit enhancers, derivatives counterparties and bondholders and their respective representatives.

(ii) Fairfax may, from time to time, advance general fund or other money to or for the credit of the New Surcharge Account and shall be entitled to reimbursement, without interest, from the New Surcharge Account. Fairfax may subordinate its right to reimbursement to pledges or other commitments it makes of funds credited to the New Surcharge Account. Any general fund or other money that Fairfax may pay pursuant to agreements relating to the Vienna II Project or similar agreements to replenish debt service reserves shall be eligible for such reimbursement.

(iii) The application of amounts in the New Surcharge Account to any purpose not described in this Section 3 requires the further written assent of both parties.

4. Accounting.

(a) Surcharge Reserve Account.

(i) From and after the Effective Date, the Surcharge Reserve Account will continue to be a reserve for Fairfax County established and held by WMATA in trust for the

purposes herein provided, which reserve represents the accumulated balance of the amounts equivalent to surcharge revenues described herein plus all earned interest, the amount of which reserve is subject to application and transfer as provided herein. WMATA shall credit to the Surcharge Reserve Account that portion of the daily parking revenues at all WMATA Controlled Parking Spaces that is determined to be allocable to the surcharge. The parties shall mutually agree to the mechanism by which total surcharge revenues collected at the WMATA Controlled Parking Spaces will be calculated. The daily parking surcharge revenues or the equivalent thereof shall be recorded in the Surcharge Reserve Account, and, in accordance with but subject to the provisions of Section 3(a), shall be transferred to the County for credit to the New Surcharge Account. Interest earnings on the balance to the credit of the Surcharge Reserve Account will be treated as surcharge receipts of the Surcharge Reserve Account when realized or received.

(ii) The accumulated balance in the Surcharge Reserve Account shall bear interest as described herein pursuant to the WMATA Interest Policy in effect from time to time. Such interest shall be recorded and applied to the accumulated balance monthly on a day convenient to WMATA, but in no case more than 35 days since the previous recordation of interest.

(iii) WMATA shall report to the County, not later than 30 days after the end of each calendar quarter, in a format agreeable to both parties, the monthly activity in the Surcharge Reserve Account during such quarter. WMATA shall furnish to the County as part of its report all information necessary to verify the accuracy of the surcharge determination, including, but not limited to, calculation of the daily surcharge, records of receipts, expenditures and balances, records of the interest earnings and other pertinent records.

(b) New Surcharge Account.

(i) The New Surcharge Account is a special account for Fairfax established by Fairfax and held by a qualified financial institution designated by Fairfax for application to the purposes herein provided. As provided in and subject to the provisions of Section 3(a), the New Surcharge Account is to receive transfers from the Surcharge Reserve Account.

(ii) Fairfax shall record and account for all such transfers.

(iii) The County shall report to WMATA, on request, not later than 60 days after the receipt of such request, in a format agreeable to both parties, the monthly activity in the New Surcharge Account during such prior period or periods as WMATA may designate. The County shall furnish to WMATA as part of its report all information reasonably necessary to verify the accuracy of the records of receipts, expenditures and balances, records of the interest earnings and other pertinent records.

(c) Record Retention. WMATA and the County each shall retain records pertaining to each project undertaken pursuant to the 1999 Surcharge Agreement and this Agreement for at least seven years after the retirement of any tax-exempt debt issued to finance or refinance such project. Each party to this Agreement shall permit the other party to conduct an independent audit of the records, receipts and documents relating to the performance of the 1999 Surcharge Agreement and this Agreement on an annual basis at the auditing party's expense.

6. Survival of this Agreement. This Agreement shall survive any termination of the agreements between the parties related to the Vienna II Project or to any Fairfax County Controlled Parking Projects that are dealt with by amendment to this Agreement until the costs

incurred by the County to fund the WMATA approved Metrorail-related parking projects, including amounts paid as advances in accordance with Section 3(b)(ii), are paid.

7. **Governing Law.** The laws of the Commonwealth of Virginia shall govern the validity, interpretation, construction, and performance of this Agreement. The parties acknowledge that WMATA is bound by the WMATA Compact.

8. **Compliance with all Laws, Rules and Regulations.** Each of the parties hereto represents that it will comply with all applicable binding laws, rules and regulations, whether Federal, Commonwealth of Virginia or County, relating to this Agreement.

9. **Amendments.** This Agreement shall not be amended, changed or modified except by a written instrument duly executed by the parties hereto.

10. **Severability.** In the event that any provision of this Agreement shall, for any reason be, determined by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, the remaining provisions shall remain in full force and effect. In addition, the parties agree in that event to negotiate in good faith such amendments, modification or supplements as are necessary to give effect to the intention of the parties as reflected in this Agreement.

11. **No set off; recoupment.** The obligation of WMATA to remit the surcharge revenues and the interest thereon in and accruing to the Surcharge Reserve Account in accordance with this Agreement shall be absolute and unconditional, and WMATA will remit such amounts without abatement, diminution or deduction all such amounts regardless of any cause or circumstance whatsoever, including, without limitation, any defense, set-off, recoupment or counterclaim that WMATA may have against the County relating to the County's payment to WMATA of its jurisdictional contribution.

12. **Further Assurances.** WMATA and the County covenant to cooperate with one another in all reasonable respects necessary to consummate the transactions contemplated by this Agreement and each will take all reasonable actions within its authority to secure cooperation of its officials, agents and other third parties.

13. **Assignment.** This Agreement may not be assigned by either party without the prior written consent of the other party.

14. **Obligation of Fairfax County.** This Agreement shall not constitute a pledge of the full faith and credit of Fairfax County or a bond or debt of Fairfax County, in violation of Section 10 of Article VII of the Constitution of the Commonwealth of Virginia

15. **Termination.** This Agreement may be terminated (i) with the mutual consent of both parties, or (ii) by either party upon 30 days' notice to the other party when all the costs incurred for the Fairfax County Metrorail Parking Spaces, including repayment to the County for advances to the New Surcharge Account, have been fully recovered.

16. **Notices.** All notices, requests and demands to or upon the respective parties hereto to be effective shall be in writing and shall be deemed to have been duly given or made when delivered by hand (or when refused delivery), three (3) days after being deposited in any post office or mail depository regularly maintained by the U.S. Postal Service and sent by certified mail, return receipt requested postage prepaid, or one (1) Business Day after being deposited with a nationally recognized overnight courier, addressed at their addresses set forth below or to such other address as may be hereafter notified by the respective parties hereto:

(i) If to WMATA, to:

Washington Metropolitan Area Transit Authority
600 Fifth Street, N.W.
Washington DC , 20001
Attention: General Manager

With a copy thereof sent to:

Washington Metropolitan Area Transit Authority
600 Fifth Street, N.W.
Washington DC , 20001
Attention: General Counsel

With copies to the County at the two addresses set forth below:

(ii) If to the County, to:

by registered or certified mail, postage prepaid, return receipt requested, or hand delivery, addressed to the:

County of Fairfax,
12000 Government Center Parkway
Fairfax, Virginia 22035,
Attention: County Executive
With a copy thereof sent to:

Office of the County Attorney
12000 Government Center Parkway
Suite 549
Fairfax, Virginia 22035
Attention: County Attorney

[Signature page(s) to follow]

IN WITNESS WHEREOF, WMATA and the County have executed and sealed this Agreement as of the Effective Date.

[SEAL]

**WASHINGTON METROPOLITAN
TRANSIT AUTHORITY**

ATTEST:

By: _____

Approved as to form and legal
sufficiency

Office of General Counsel

[SEAL]

COUNTY OF FAIRFAX, Virginia

ATTEST:

By: _____