ATTACHMENT C
NATIONAL HISTORIC PRESERVATION ACT
SECTION 106
MEMORANDUM OF AGREEMENT
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AMONG THE FEDERAL TRANSIT ADMINISTRATION,
VIRGINIA DEPARTMENT OF HISTORIC RESOURCES, AND
VIRGINIA DEPARTMENT OF RAIL AND PUBLIC TRANSPORTATION,

CONCERNING THE EFFECTS OF
THE DULLES CORRIDOR METRORAIL PROJECT ON
HISTORIC AND ARCHAEOLOGICAL RESOURCES

WHEREAS, the Virginia Department of Rail and Public Transportation (DRPT) proposes to construct, in phases, the Dulles Corridor Metrorail Project (Project) in Fairfax and Loudoun Counties, Virginia, a 23.1 mile extension of the existing regional Metrorail system as shown in Exhibit A. Project elements will include an electrically-powered rapid rail transit line operating in an exclusive right-of-way with at-grade, aerial, and subway sections, stations and parking facilities, new and improved yard and shop facilities, and ancillary facilities for the distribution of electrical power and stormwater management; and

WHEREAS, DRPT has applied to the Federal Transit Administration (FTA) for financial assistance in designing and constructing the first phase of the Project (Extension to Wiehle Avenue), which will extend from the existing Metrorail Orange Line near the West Falls Church Station and terminate at Wiehle Avenue in Reston, and plans to apply for separate FTA funding for the subsequent extension west of Wiehle Avenue to Dulles International Airport and eastern Loudoun County (Extension to Dulles Airport/Route 772). FTA has determined that the Project will constitute a federal undertaking pursuant to 36 CFR 800.3(a) if FTA financial assistance is provided; and

FTA is the lead federal agency pursuant to the National Environmental Policy Act of 1969 (NEPA, 42 USC §§4321 et seq.) and is responsible for compliance with Section 106 of the National Historic Preservation Act (NHPA) of 1966 (Section 106, 16 USC §470f).

WHEREAS, FTA and the Federal Aviation Administration (FAA), whose approval is required for any change in the use of land at Washington Dulles International Airport for the Project, have agreed that the FTA will serve as the lead Agency Official who shall act in cooperation with the FAA in fulfilling their collective responsibilities under Section 106; and

WHEREAS, FTA and the Metropolitan Washington Airports Authority (MWAA), as the lessee and operator of Washington Dulles International Airport, have agreed that the FTA will serve as the lead Agency Official who shall act in cooperation with MWAA in fulfilling their collective responsibilities under Section 106; and

WHEREAS, FTA has consulted on the Project with DRPT and the Virginia Department of Historic Resources, which is the State Historic Preservation Office (SHPO) for Virginia, pursuant to Section 106 and its implementing regulations at 36 CFR 800 (FTA, DRPT and the SHPO are the "required signatories"); and

WHEREAS, FTA, in consultation with the SHPO, has determined the Area of Potential Effects (APE) for the Project, as defined in 36 CFR 800.16(d), as shown in Exhibit B and has completed the identification and evaluation of historic resources within the APE; and
WHEREAS, the FTA, in consultation with the SHPO, has determined that the Extension to Wiehle Avenue phase of the Project will not adversely affect historic properties; and

WHEREAS, the FTA, in consultation with the SHPO, has determined that the Extension to Dulles Airport/Route 772 phase of the Project will have an adverse effect, as defined in 36 CFR 800.5(a), on the Washington Dulles International Airport historic district shown in Exhibit C, which is eligible for the National Register of Historic Places (National Register), by altering the remaining historic “peekaboo” views of the main terminal control tower for approaching travelers from the Dulles International Airport Access Highway (DIAAH); and

WHEREAS, the FTA, in consultation with the SHPO, has determined that the Project will not affect archaeological properties; and

WHEREAS, FTA and DRPT have informed and involved the public in Section 106 review through public NEPA scoping meetings held in July 2000, public information meetings held in January 2001, public hearings on the Draft Environmental Impact Statement (EIS) held in July 2002 and on the Supplemental Draft EIS held in December 2003, and through additional informal meetings and outreach materials, pursuant to 36 CFR 800.2(d), and has specifically invited comments on the Section 106 process; and

WHEREAS, the FAA has been invited to concur in this Agreement; and

WHEREAS, MWAA has been invited to concur in this Agreement; and

WHEREAS, the Washington Metropolitan Area Transit Authority (WMATA), as the operator and future owner of the Project’s facilities, has been invited to concur in this Agreement; and

WHEREAS, Fairfax and Loudoun counties, have participated in the Section 106 consultation and have been invited to concur in this Agreement; and

WHEREAS, the Advisory Council on Historic Preservation has been invited to participate in the Section 106 process for this Project and has declined; and

WHEREAS, the Virginia Council on Indians has been invited to participate in the Section 106 process for this Project and has declined; and

WHEREAS, FTA’s decision to fund each phase of the Project for design and construction will be made independently in accordance with its regulations on major capital investment projects (49 CFR 611) and any stipulations specific to a particular Project phase are not applicable until FTA financial assistance is provided; and

NOW, THEREFORE, the FTA and the SHPO agree that upon FTA’s decision to proceed with a particular phase of the undertaking, the FTA shall ensure that the following stipulations are implemented in order to take into account the effects of the undertaking on historic properties and that these stipulations shall govern the Project and all of its parts until this Agreement expires or is terminated.
STIPULATIONS

1. Unanticipated Discovery
   A. Historic Properties
      In the event that unanticipated effects on historic properties are found during the implementation of this Agreement, DRPT will stop any work that may adversely affect the historic property or that may foreclose opportunities to avoid such adverse effects. FTA shall consult with the SHPO and with the other required and concurring signatories to this Agreement, as appropriate, to determine the appropriate course of action to comply with Section 106. If necessary, the required signatories shall review the terms of this Agreement and determine whether revisions are needed. Any revisions to the Agreement shall be made in accordance with Stipulation 5 below.

   B. Archaeological Resources
      1. In the event that a previously unidentified archaeological resource is discovered during ground disturbing activities, DRPT shall halt all construction work involving subsurface disturbance in the area of the resource and in the surrounding area where further subsurface deposits may reasonably be expected to occur. An archaeologist meeting the Secretary of the Interior's Professional Qualifications Standards (36 CFR 61) will immediately inspect the work site and determine the extent and the nature of the affected archaeological property. The archaeologist may consult the SHPO and other parties as deemed appropriate by the archaeologist in setting the boundaries of the archaeological resource. Construction work may then proceed in the Project area outside of the site area.

      2. Within two (2) working days of the discovery, DRPT shall notify FTA and the SHPO. The notification shall describe DRPT's assessment of the National Register eligibility of the property and proposed actions to resolve the adverse effect (if any). The SHPO shall respond within two (2) working days of notification and construction may resume when the SHPO agrees. DRPT shall take into account the SHPO's recommendations regarding National Register eligibility and proposed actions, and then carry out appropriate actions. DRPT shall provide SHPO with a report of these actions once they are complete.

      3. If the resource is determined to meet the National Register Criteria (36 CFR Part 60.6), FTA shall ensure compliance with Section 800.13 of the Council's regulations.

   C. Human Remains
      DRPT will ensure that human remains and associated funerary objects encountered during the course of actions taken as a result of this Agreement shall be treated in a manner consistent with the provisions of the Virginia Antiquities Act, Section 10.1-2305 of the Code of Virginia, final regulations adopted by the Virginia Board of Historic Resources and published in the Virginia Register on July 15, 1991. In addition, human remains and associated funerary objects that may be of Native American origin, encountered on Federal land, including but not limited to the land of the Washington Dulles International Airport and the Dulles International Airport Access Highway, shall be treated in a manner consistent with the provisions of the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001).
2. **Washington Dulles International Airport Historic District**

   A. At the extant Saarinen “peekaboo” view locations shown in Exhibit D, the vertical profile of the Metrorail tracks and the concrete safety barrier will be constructed as low as practicable given site conditions to minimize any obstruction of these views of the main terminal control tower.

   B. The design of the Dulles Airport Metrorail station and terminal connections will consider, and incorporate where appropriate, established airport design themes and finishes within the context of the WMATA design criteria, approved system-wide facility requirements and operational practices in effect at the time of the design. The design of aerial structures and portals located within the historic district boundaries will consider, and incorporate where appropriate, concepts and materials that are mutually agreed to be compatible with the historic terminal and other contributing elements of the historic district. No later than the completion of Preliminary Engineering for the Extension to Dulles Airport/Route 772 phase of the Project, DRPT shall submit the proposed designs to the SHPO for review and approval and to the other required and concurring signatories for review and comment.

   C. No later than the completion of Preliminary Engineering for the Extension to Dulles Airport/Route 772 phase of the Project, DRPT will submit a treatment plan to the SHPO for review and approval and to the other required and concurring signatories for review and comment. This treatment plan will identify specific treatments that would provide users of the Metrorail station and airport travelers with an appreciation for the airport’s unique historic characteristics. Several potential measures will be considered, including, but not limited to: interpretive exhibits or artwork within the station facilities, connecting walkways, or terminal buildings; photo or video documentation of the view sequence; and removal of non-historic vegetation on airport property to enhance the historic views. DRPT will ensure that all measures in the approved treatment plan are completed or installed prior to the beginning of revenue service for this phase of the Project.

   D. The SHPO shall, within 30 calendar days of receipt, review any treatment recommendations and designs submitted pursuant to this Agreement and either approve or provide comments. If no response is provided by the SHPO within 30 calendar days of receipt, DRPT may assume SHPO concurrence and approval. DRPT will review any comments and take them into account in the continued development of Project design. Should the SHPO object to any plans submitted pursuant to this Agreement, the provisions of Stipulation 4 will apply.

3. **Annual Report**

DRPT, in consultation with MWAA, will prepare an annual report summarizing the activities carried out in accordance with this Agreement. This report will be transmitted to all required and concurring signatories by January 15th of each year this Agreement is in effect, beginning in the year following the execution of the Agreement and continuing until the year following completion of construction activities associated with the Project. The DRPT shall also ensure that this annual report is made available for public review and that members of the public are invited to provide comments to the SHPO and other required and concurring signatories to the Agreement.

The required signatories to this Agreement shall review the annual report and provide any comments to the DRPT. Concurring signatories to this Agreement may review and
comment on the annual report at their discretion. Based on this review, the required signatories to this Agreement shall determine whether this Agreement shall continue in force, be amended, or be terminated. If requested by any required or concurring signatory to this Agreement, the FTA shall ensure that a meeting is held to facilitate review and comment, to resolve questions, or to resolve adverse comments.

4. Dispute Resolution

A. If any required or concurring signatory should object in writing regarding any action specified in the Agreement, then FTA shall consult with the objecting party to resolve this objection. If after such consultation, FTA determines that the objection cannot be resolved through consultation, then DRPT shall prepare documentation relevant to the objection in accordance with 36 CFR 800.11, and FTA shall forward such documentation to the Council, including FTA’s proposed response to the objection. Within 30 days after receipt of all pertinent documentation, the Council is expected to exercise one of the following options:

- Provide FTA with a staff-level recommendation, which FTA shall take into account in reaching a final decision regarding its response to the objection; or
- Notify FTA that the objection will be referred for formal comment pursuant to 36 C.F.R. Section 800.7(c), and proceed to refer the objection and comment. FTA shall take into account the Council’s comments in reaching a final decision regarding its response to the objection.

B. The responsibility of each required signatory to this Agreement to carry out all actions under the Agreement not affected by the dispute shall remain unchanged.

C. If the dispute cannot be resolved upon involvement of the Council, FTA, DRPT, or the SHPO may terminate the Agreement in accordance with Stipulation 6.B below.

5. Amendments

Any required signatory to this Agreement may request that it be amended, whereupon the required and concurring signatories shall consult to consider the proposed amendment in accordance with 36 CFR 800.6(c)(7). Any amendment shall be in writing and signed by all required signatories of this Agreement.

6. Termination

A. This Agreement shall terminate on January 15th of the year following completion of construction activities associated with the Project.

B. Any required signatory to this Agreement may terminate it by providing a 30 day written notice to the other required and concurring signatories, provided that these parties consult during the period prior to termination to seek agreement on amendments or other actions that would avoid termination. In the event of termination, work on the Project in the area(s) with affected historic properties will cease until FTA has fulfilled its Section 106 responsibility in accordance with 36 CFR 800.3 through 800.13.
Execution of this Agreement by the FTA and the SHPO and its submission to the Advisory Council on Historic Preservation in accordance with 36 CFR 800.6(b)(1)(iv), shall, pursuant to 36 CFR 800.6(c), be considered to be an Agreement with the Council for the purposes of Section 110(l) of NHPA. Execution and submission of this Agreement, and implementation of its terms evidences that FTA has afforded the Council an opportunity to comment on the Project and its effects on historic properties and has taken into account the effects of the Project on historic properties.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be signed intending thereby to be bound by its provisions.

FEDERAL TRANSIT ADMINISTRATION

By: Herman Shipman Date: 10/5/04

Herman Shipman
Acting Regional Administrator

VIRGINIA DEPARTMENT OF RAIL AND PUBLIC TRANSPORTATION

By: Karen J. Rae Date: 9/4/04

Karen J. Rae
Director

VIRGINIA DEPARTMENT OF HISTORIC RESOURCES

By: Kathleen S. Kilpatrick Date: 9/4/04

Kathleen S. Kilpatrick
Director
CONCUR:

FEDERAL AVIATION ADMINISTRATION

By: [Signature] Date: 10/25/04

Terry Page
Manager, Washington Airports District Office
CONCUR:

METROPOLITAN WASHINGTON AIRPORTS AUTHORITY

By: Margaret E. McKeough
   Executive Vice President and
   Chief Operating Officer

Date: 11/5/04
CONCUR:

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

By: Richard A. White Date: 11/13/05

Richard A. White
General Manager and Chief Executive Officer
CONCUR:
FAIRFAX COUNTY
By: [Signature] Date: 11-03-04

Michael Kane
Director, Fairfax County Park Authority
CONCUR:
LOUDOUN COUNTY

By: _________________________ Date: __________

John Clark
Director, Office of Transportation Services

Loudoun County participated in the Section 106 consultation and was invited to concur in this agreement. (See page 2.) On October 29, 2004, John Clark, Director, Office of Transportation Services, Loudoun County, notified DRPT that: "Given that there are no affected [historic] resources in Loudoun County, we will not be a signatory to this agreement." Accordingly, the Loudoun County concurrence sheet is included in this agreement, but not signed.