

**AMENDED AND RESTATED AGREEMENT
BETWEEN
THE WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
AND
THE CITY OF ALEXANDRIA, VIRGINIA
FOR THE FUNDING OF THE POTOMAC YARD STATION PROJECT**

This **AMENDED AND RESTATED AGREEMENT** ("Agreement") is made this ^{20th} day of June, 2018, by and between the Washington Metropolitan Area Transit Authority ("WMATA"), and the City of Alexandria, Virginia ("City"), each individually referred to as "Party" and collectively, referred to as the "Parties".

RECITALS

WHEREAS, the Parties have worked together since 2009 to develop plans and receive necessary approvals to move forward with the Potomac Yard Station Project ("**Project**"), which project generally involves the construction of an infill Metrorail Station in Potomac Yard; and

WHEREAS, on September 16, 2010, the WMATA Board approved the establishment of the Project, and authorized WMATA to enter into an agreement with the City to advance the development of the Project; and

WHEREAS, on or about September 1, 2011, the Parties entered into the agreement contemplated by the WMATA Board approval ("**September 2011 Agreement**"), which agreement defined the respective obligations, responsibilities and duties of the Parties regarding the performance of the environmental evaluation and the funding by the City to support the Project and all costs incurred by WMATA; and

WHEREAS, the September 2011 Agreement established a Project Budget and required, among other things, WMATA to develop, for the City's approval, task orders, budgets, schedule and scope for discrete services, including WMATA's: (a) performance of an environmental evaluation; (b) coordination and holding public hearings; and (c) completing and submitting to the City General Plans and specifications, concept sketches, and engineering estimates; and

WHEREAS, on or about July 9, 2012, the Parties entered into the First Amendment to the September 2011 Agreement, which amendment increased the Project Budget; and

WHEREAS, on or about June 25, 2015, the Parties entered into the Second Amendment to the September 2011 Agreement, which amendment further increased the Project Budget; and

WHEREAS, on or about February 2, 2016, the Parties entered into the Third Amendment to the September 2011 Agreement, which amendment: (a) further increased the Project Budget; (b) amended WMATA's scope to include all work necessary to advance the Project through contract advertisement and the proposal evaluation process, including the development of a complete set of bridging documents, Development Special Use Permit ("DSUP") approval, attendance at public and City hearings, and provision of updated work schedules and deliverables;

and (c) established the concept of contingency reserve in the event unexpected or new items were required in the furtherance of Project Work; and

WHEREAS, on June 16, 2016 the City Council approved Master Plan Amendment #2016-0001, Rezoning #2016-0001, Development Special Use Permit #2016-0004, for the construction of the Potomac Yard Metro Station;

WHEREAS, the Parties are desirous of defining their respective roles and responsibilities for the continuation and construction of the Project, including establishing a budget for the construction and management of the Project; and

WHEREAS, the Parties have determined that the most efficient means of accomplishing the preceding objective is to amend and restate the September 2011 Agreement, as previously amended, with this Agreement.

NOW, THEREFORE, in consideration of the understandings and mutually dependent covenants contained herein, the Parties hereby agree to the following terms and conditions:

ARTICLE 1
AGREEMENT, TERM, INCORPORATION OF RECITALS AND ATTACHMENTS,
RULES OF INTERPRETATION AND DEFINITIONS

1.1 **Agreement**. The Parties agree that WMATA will construct the Project and the City will fund the Project. Such agreement is subject to the following scope, budget and schedule for the Project and the processes set forth in this Agreement. Any changes to the scope, budget or schedule shall be agreed upon by both Parties as provided in this Agreement.

1.1.1 *Project Scope*. The scope of WMATA's work for the Project is included as **Attachment A** to this Agreement.

1.1.2 *Project Budget*. The Project Budget prepared by WMATA and agreed to by the City will be included as **Attachment B** at such time that the Design Build Contract is awarded. The total Project Budget will in no event be more than **Two Hundred and Ninety Million Dollars (\$290,000,000)**.

Updated
Attachments B
and C on
April 2, 2019

1.1.3 *Project Schedule*. The Project Schedule prepared by WMATA and agreed to by the City is included as **Attachment C** to this Agreement.

1.2 **Agreement Implementation**. The Parties agree that construction of the Potomac Yard Metro Station is a high priority for both Parties and that each Party will make best efforts to complete the Project within the Project Budget and within the Project Schedule.

1.3 **Incorporation of Recitals and Attachments**. The above Recitals, and all documents attached to this Agreement, are incorporated into and made a part of this Agreement.

1.4 **Term of Agreement.** This Agreement shall be in effect until close out of the Project, or all warranties under any contract related to the Project have expired, whichever is last to occur.

1.5 **Rules of Interpretation.** For the purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

1.5.1 All references in this Agreement to designated Articles, Sections and other subdivisions are to the designated Articles, Sections and other subdivisions of the Agreement.

1.5.2 The headings and captions used in this Agreement are for convenience of reference only and shall not define, limit or describe any of the provisions herein or the scope or intent hereof.

1.5.3 Each party and its counsel has participated in the drafting of this Agreement, and any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in interpreting this Agreement.

1.6 **Definitions.** The following capitalized terms, when used in this Agreement, shall have the meaning stated herein. Other terms in this Agreement shall have the meanings given to them in the Section in which each such term is used.

Bid Process. Means the process by which WMATA will develop and complete all necessary documentation and tasks to prepare a complete RFP (Request for Proposal) package for the procurement of design-build services.

Change Order. Means a written change to the terms of the Design Builder Contract.

Contingency Reserve. Means an allocated amount of money set aside in the event that unexpected costs arise from previously identified items or new items during the furtherance of the Project Work.

Days. Means calendar days, unless expressly stated otherwise.

Design-Build Contract. Means that contract entered into between WMATA and the Design-Builder for the Project.

Design-Builder. Means that entity designated as the Design-Builder under the Design-Build Contract.

DSUP. Means Development Special Use Permit #2016-0004 approved by the City Council on June 16, 2016 for the construction of the Metrorail Station.

FTA. Means the Federal Transit Administration, an agency of the United States Department of Transportation.

Fiscal Year. Means (a) WMATA's fiscal year commencing on July 1st and ending on June 30th or (b) such other fiscal year as WMATA may hereafter adopt with prior written notice to the City.

Force Majeure. Means any act, event or condition affecting a Party to the extent that it materially and adversely affects the ability of such Party to perform under this Agreement that is not reasonably foreseeable or avoidable and is beyond the reasonable control of, and without the fault or negligence of, the Party claiming Force Majeure including, but not limited to, acts of God, labor strike, flood, earthquake, storm, fire lightning, epidemic, war, riot, civil disturbance, sabotage, and change in law or applicable regulation subsequent to the date hereof.

General Plans. Means the engineering plans necessary to identify real property requirements and to identify the environmental impacts of the Project.

NEPA Documentation: Means any project related documentation associated with the National Environmental Policy Act (NEPA), a United States environmental law that promotes the enhancement of the environment and established the President's Council on Environmental Quality (CEQ) enacted on January 1, 1970. This includes the Draft Environmental Impact Statement (DEIS), the Final EIS, and the Record of Decision (ROD), as well as the documents associated as attachments to the ROD.

Project. Means all necessary studies, design plans, approvals, real estate acquisition (temporary and permanent), and construction to construct the Potomac Yard Metrorail Station in the Potomac Yard neighborhood of Alexandria, Virginia in accordance with Attachments A, B and C.

Project Budget. Means a complete listing and accounting of the Project funding sources and estimated expenditures and a description of the estimated allocation of costs associated with the Project, as set forth in Attachment B.

Project Work. Means the work performed by WMATA as set forth in Section 1.1.1 herein.

Senior Executive Board. Means the board established pursuant to Section 5.3.2 below.

WMATA Contractor. Means any person or entity that has entered into a contract with WMATA to provide goods or services that are utilized by WMATA to perform the Project Work, including the Design-Builder.

WMATA Design Criteria. Means that document identified as the *WMATA Manual of Design Criteria dated November 2016*, that establishes the engineering design criteria for WMATA's Facilities and Systems, as may be amended from time to time by WMATA.

ARTICLE 2 FUNDING

2.1 **Reimbursable Project.** The Parties acknowledge and understand that this Agreement is intended to be a Reimbursable Project as defined by WMATA Board Resolution 99-63, and that no WMATA funds are available for the Project. Subject to the conditions set forth in this Agreement, the City shall be responsible for all costs associated with the Project, including but not limited to any and all costs related to Special Use Permit #2016-0004, as the same may be amended, or other land use permits, any environmental site assessment, any land exchange agreement or other real property agreement, applicable WMATA staff costs, WMATA Contractor costs, insurance costs, cancellation costs, property acquisition costs, including applicable taxes and fees, and any other expenses related to the administration and performance of the Project, including any costs associated with delay.

2.2 **Project Payments.** The following conditions shall apply to payments required of the City pursuant to this Agreement.

2.2.1 *Certification of Funding Plan.* Prior to commencement of any Project Work, the City shall certify to WMATA that it has a funding plan, which may from time to time be amended, sufficient to cover the cost of the Project Work. The Parties understand and acknowledge that the City is seeking federal participation in the Project and as such, WMATA is instructed to follow federal procurement requirements. The Parties further acknowledge that the City's obligation to fund costs associated with the Project is not limited to federally-reimbursable costs and is expected by the Parties to include costs that are not federally-reimbursable.

2.2.2 *Quarterly Payments.* Funding shall be provided by the City quarterly in advance of work anticipated to be performed by WMATA or WMATA Contractors, provided that the aggregate amount of such funding shall not exceed the then-current Project Budget. WMATA shall provide to the City quarterly invoices at least thirty (30) days in advance of each quarterly funding date, including a schedule of the work anticipated to be performed during the funding quarter, the WMATA Project Manager's estimate of the cost of the anticipated work, and all other supporting documentation as may reasonably be requested by the City, to support all charges. The quarterly funding invoice shall include as applicable an adjustment for any estimated unspent cumulative balances from the previous quarter. The City shall not be required to advance the quarterly funds until WMATA has complied with all conditions contained in this Agreement relating to funding, including a satisfactory accounting for its expenditures under the Project Budget. Provided, however, that should the City's failure to provide funding in advance result in a negative balance or uncollected arrearage on the account, WMATA may stop work on the Project at the City's sole cost and expense.

2.2.3 Documentation. WMATA shall provide to the City, on a monthly basis, documentation to justify all charges made to the Project during the preceding month, including but not limited to properly executed payrolls, time records, invoices, contracts, and vouchers evidencing in detail the nature and propriety of the charges. As part of the quarterly invoice, WMATA shall include a Project Budget forecast, which shall capture, among other things, the status of the Project in relation to the Project Budget, both on a historical and projected basis.

2.2.4 Budget Tracking. WMATA shall provide to the City, on the fifteenth (15) business day of every month, a statement of actual costs incurred through the end of the previous month compared to the expected costs and/or budgeted costs.

2.2.5 Interest-Earning Account. All funding provided by the City shall be deposited into WMATA's interest-earning account, and shall be accounted for in WMATA's books and records as a separate project and on a utilization basis. Interest credited to the funding provided by the City shall be used, subject to written instruction from the City and reprogramming, if applicable, by the WMATA Board, to pay for unpaid costs reflected in the Project Budget and in accordance with WMATA Board Resolution 2002-55 and this Agreement.

2.2.6 Final Invoice. WMATA shall provide the City with a final reconciliation of costs of the Project Work on a line item basis, based on actual costs as compared to the Project Budget, and provide the City with a final invoice for any unpaid costs within thirty (30) Days' notice of either a) Project completion/close out or b) termination of this Agreement. The final invoice will be paid out of funds on account at WMATA, unless that funding is insufficient, in which case, the City shall pay the final invoice within ninety (90) Days of receipt. Any excess funds at the completion of the Project will be returned to the City within ninety (90) days of the final reconciliation.

2.3 Design Building Reports. WMATA shall provide City with access to the PROCORE system for access to all documents provided by the Design-Builder to WMATA regarding the construction.

2.4 Insufficient Funds or Insufficient Project Budget.

2.4.1 Notice. WMATA shall provide notice as soon as possible should it appear that either the funding on hand at WMATA or the Project Budget is insufficient to complete the Project. In the event that such notice is provided, WMATA shall include a revised Project Budget articulating the amount of additional funding required for the Project along with a detailed explanation of the reason(s) the Project is exceeding the Project Budget.

2.4.2 City's Response upon Notice. The City shall, within thirty (30) days, advise WMATA:

.1 that more information is required by the City in order to complete their review and approval of the proposed Project Budget revision estimate;

.2 that the City will fund the anticipated shortfall and agrees to the revised Project Budget estimate, in which case the Parties shall enter into an amendment of this Agreement to approve such revised Project Budget;

.3 that the City request that WMATA and the City meet to develop a mutually satisfactory revised Project Budget and Scope that avoids the projected cost overrun;

.4 to suspend the Project and cease to incur costs; or

.5 as to which portions of the work the City intends to de-scope in order to meet Project Budget availability.

2.4.3 *No Obligation to Act without Funding.* WMATA has no obligation to act without funding and may suspend work on the Project in the event that either a) the City fails to provide an approved revised scope or additional funding within thirty (30) days as required above, or b) the City requests that WMATA suspend work on the Project should funding not be available at any time during the Project.

2.5 Source of Funding.

2.5.1 *Ability to Seek Funding.* The City may seek any source of funding, including federal, state and regional grants to support the Project. WMATA will not interfere with any such application, provided, however, that a WMATA application for funding from the same source of funds, but for a different project, shall not be considered interference for purposes of this Agreement.

2.5.2 *Types of Funding Sources.* The City intends to seek, but is not limited to, the following types of funding: (a) Virginia Transportation Infrastructure Bank ("VTIB") loan; (b) Transportation Infrastructure Finance and Innovation Act ("TIFIA") loan; (c) General Obligation Bonds; (d) Northern Virginia Transportation Authority Grants and (e) Potomac Yard generated local taxes.

2.5.3 *Credit Assistance.* Nothing in this Agreement is intended to or shall preclude the City from applying for additional credit assistance for the Project. This includes funding through FTA, bank letters of credit, grants, or other monies that may be made available from other entities, including but not limited to, the Commonwealth of Virginia.

2.6 Contingency Reserve. The Project Budget shall include a contingency reserve for the Project in the event there are unexpected or new items required in furtherance of the Project Work.

Funds requested from the contingency reserve shall be available for Change Orders, claims, and any other unforeseen expenses incurred in support of the Project that have been approved by the City in accordance with Article 3 herein.

ARTICLE 3 CHANGE ORDERS

3.1 *Change Orders.* WMATA shall be responsible for processing all changes in the Project Work consisting of additions, deletions, modifications, or claims; and changes to the schedule through WMATA's established processes including issuing Change Orders to the Design-Builder. All Change Orders shall be subject to the following process:

3.1.1 *City Review and Approval.* WMATA shall obtain the City's written consent to all Change Orders prior to submitting them to the Design-Builder. Such consent shall not be unreasonably withheld and shall take into consideration the need to comply with WMATA Design Criteria and not impact the WMATA operations or acceptance of the Project. The City Project Manager shall review the Change Order and will respond to WMATA within two (2) business days if possible but no more than five (5) business days with one of the following answers:

.1 *Approval.* If the City Project Manager approves the Change Order, WMATA may submit it to the Design-Builder and proceed with WMATA's established process.

.2 *Denial.* If the City Project Manager denies the Change Order, then the response shall state with specificity the reasons for denial and the matter shall be brought to the Senior Executive Board for resolution in accordance with the Dispute Resolution process established in Article 9 herein.

.3 *Additional Information is Necessary.* The City Project Manager may respond that additional information is necessary in order to determine the necessity of the Change Order. WMATA shall provide such additional information as soon as is practical upon the City Project Manager's request. The City Project Manager shall provide a response consisted with either 1 or 2 above within two (2) business days if possible but no more than five (5) business days of receiving additional information that satisfies the City's Project Manager's request for additional information.

ARTICLE 4 REAL PROPERTY ACQUISITION

4.1 *Authority of WMATA to Purchase Real Property.* WMATA shall be and is authorized to purchase the real property identified and approved by the City in the DSUP that is necessary for the operation of the Project as well as any necessary temporary occupation of real property including, but not limited to, rights of entry, licenses, construction easements, ground leases, and

permits regardless of how that agreement is styled, including through eminent domain proceedings. Purchases of property for permanent occupation that may be required beyond what was approved in the DSUP shall be approved by the City prior to WMATA taking action to purchase the property.

ARTICLE 5 ROLES AND RESPONSIBILITIES

5.1 WMATA.

5.1.1 *Design Criteria.* The Project shall be built in compliance with the DSUP, the NEPA Documentation and WMATA Design Criteria. The WMATA Design Criteria may be waived by WMATA pursuant to WMATA's processes for review and approval of such waivers to the extent that such waiver is not in violation of the DSUP or the NEPA Documentation. If there is a conflict between the WMATA design criteria and the requirements of the DSUP, the DSUP shall govern. However, if WMATA identifies a conflict between the WMATA design criteria and the DSUP that would impact WMATA operations or acceptance of the Project and cannot be waived by WMATA, the Parties shall work cooperatively and in good faith in seeking an amendment to the DSUP by the Planning Commission and City Council in order to remedy such conflict.

5.1.2 *Project Management.* WMATA shall manage this Project, and all decisions shall be made by WMATA through its established processes and in accordance with the project management plan for the Project approved by the FTA. All Change Orders shall be approved in writing by the City as described in Article 3 herein.

5.1.3 *Obligation to Obtain Permits and Approvals.* WMATA and WMATA Contractors are required to obtain all City, state and federal permits and approvals and City land use regulatory land use approvals from all agencies having any jurisdiction over the Project, and applicable to the Project, including but not limited to the Final Site Plan and Building Permits.

5.1.4 *Obligation to Comply with Laws and Regulations* WMATA and WMATA Contractors are responsible for insuring that the prosecution of all Project Work is in compliance with all applicable local, state and federal laws and regulations.

5.1.5 *Obligation to Provide the City with Documentation.* In addition to the documentation requirements in Articles 2 and 3 herein, WMATA shall provide, upon request from the City, access to all Project documentation, including but not limited to: (a) all documentation pertaining to station components that will be owned, operated, and maintained by WMATA; and (b) design submittals, Requests for Information, Change Orders, or other associated documents.

5.1.6 *Outreach and Community Relations.* WMATA shall conduct all public outreach and community relations and, in coordination with the City and the Design-Builder, will develop an overall outreach strategy and communications plan. The City will review and approve the final plan.

5.1.7 *Design Build Contract.* WMATA shall award a contract to a Design Build contractor after complying with all rules and regulations of the WMATA procurement process. Once awarded, WMATA shall be responsible for enforcing all terms and conditions of the contract.

5.2 City.

5.2.1 *Review and Approval Authority.* The City shall review and approve: (a) all Project elements that will be owned, operated, and maintained by the City; (b) all Public Art however the public art will be subject to and developed through the WMATA Arts-In-Transit Program with final selection of art to be made by WMATA (c) interior and exterior aesthetics; (d) proposed changes to the Project Budget and Cash Flow Curve; and (e) proposed Change Orders under the Design-Build Contract, including any changes to the Project's contractual completion dates, as described in Article 3 herein.

5.2.2 *Attendance at Project Meetings.* The City's Project Manager or his representative will be timely informed of and may attend all Project meetings and shall receive meeting minutes of all such meetings contemporaneously with the distribution to other participants, except for those meetings that are internal to WMATA.

5.2.3 *Inspection, Monitoring, Etc.* The City may, at its discretion and at its expense, provide staff to inspect, monitor, audit, witness and review the Project's progress and Design-Builder's work. The City shall use good faith efforts to report promptly any perceived deficiencies to WMATA. Notwithstanding the above, and subject to the obligation to comply with Section 5.1.4 herein, WMATA shall be the final decision maker regarding whether any deficiencies identified by the City and brought to WMATA's attention require revision or rework for facilities that will be owned, operated, and maintained by WMATA. For facilities that will be owned, operated, and maintained by the City, the City will be the final decision maker regarding whether any deficiencies identified by the City and brought to WMATA's attention require revision or rework.

5.2.4 *City Decisions as Affecting WMATA's Ability to Accept Project.* The City acknowledges that decisions to either de-scope a portion of the Project or not to fund a portion of the Project may prevent WMATA from accepting the Project into the Metro System.

5.3 Party Representatives

5.3.1. *Project Manager.* The Parties shall each designate an individual (each a “Project Manager” and collectively the “Project Managers”) who shall serve as the contact person for the Party.

5.3.2. *Senior Executive Board.* The Parties shall establish a Senior Executive Board that will be comprised of two (2) individuals representing WMATA to be appointed by WMATA and two (2) individuals representing the City to be appointed by the City Manager. Each party shall agree that its representatives have decision making authority with regard to this Project, subject to the last sentence of this Section 5.3.2. The Senior Executive Board will meet on a quarterly basis to ensure the overall execution and delivery of the Project. Specifically, the purpose of the Senior Executive Board will be to: (a) implement the terms of this Agreement; (b) regularly monitor the progress of planning, design, and construction of the Project to ensure that the Project is successfully deployed in a manner satisfactory to all of the Parties; and (c) resolve disputes in accordance with Article 9. Nothing herein shall be construed as authority for the City party representatives to make decisions that require City Council action.

ARTICLE 6 WAIVER AND INSURANCE

6.1 Indemnity from WMATA Contractors. WMATA shall require each WMATA Contractor to indemnify and hold harmless WMATA and the City, provided, however, WMATA may negotiate the terms and conditions associated with its contractual indemnity. The City’s level of indemnity from any WMATA Contractor shall be approved by the City’s Office of Risk Management in writing.

6.2 Obligation to Include City’s Insurance Requirements. WMATA shall include insurance requirements approved by its Office of Risk Management in writing in any contract let to support the Project. At a minimum, WMATA shall require each WMATA Contractor to include the City and the United States Department of Transportation as additional insured on its insurance policies to a level approved by the City’s Office of Risk Management in writing.

ARTICLE 7 TERMINATION

7.1 Right to Terminate for Convenience. City may terminate this Agreement, or any work or delivery required hereunder, from time to time either in whole or in part, whenever such termination is determined to be in the best interest of the City, subject to the notice provisions contained herein.

7.1.1 *Notice and Impact of Termination.* Termination, in whole or in part, shall be effected by delivery of a Notice of Termination signed by the City, mailed or delivered to WMATA, at least sixty (60) Days prior to the date of termination specifically setting

forth the effective date of termination. WMATA may waive the notice period that it is required to receive herein. Upon receipt of such notice, WMATA shall:

- .1 cease any further work under this Agreement on the date and to the extent which may be specified in the notice;
- .2 not enter into any commitments or contracts with respect to any work under this Agreement that is the subject of such Notice of Termination;
- .3 to the extent that any termination notice is a partial termination notice, continue any and all work as may be necessary to perform that portion of the Project Work not subject to the Notice of Termination; and
- .4 use its commercially reasonable efforts to mitigate any damages and costs which may be sustained as a consequence of termination under this Agreement.

7.1.2 *Costs.* In the event of a termination for convenience, the City shall be responsible for the costs of all work completed at the time of termination.

ARTICLE 8 NOTICES

All notices hereunder shall be in writing and shall be deemed to have been sufficiently given or served for all purposes when presented personally or sent by certified or registered mail first-class, postage paid, return receipt requested, to any party hereunto as follows:

City of Alexandria:

Mark Jinks
City Manager
City of Alexandria
301 King Street
Alexandria, VA 22314

cc:
City Attorney and
Director of Department of Project Implementation

WMATA:

Chief Engineer, Design and Construction
Washington Metropolitan Area Transit Authority

600 Fifth St., N.W.
Washington, D.C. 20001

cc:
General Counsel and
Chief Capital Planning and Program Management

ARTICLE 9 DISPUTE RESOLUTION

9.1 **Disputes Process.** Any dispute between the Parties arising out of or related to this Agreement, including any breach hereof, shall be decided pursuant to this Article 9.

9.2 **Project Manager.** A Party may raise a dispute or objection in writing to the other Party's designated Project Manager within five (5) calendar days of identification of the item in dispute. Any such objection shall specifically identify the contested item and the basis for objection. The Project Managers shall meet promptly following the receipt of a notice of dispute and shall use commercially reasonable efforts to reach a mutual resolution or settlement to such dispute within ten (10) days after the notice of dispute is issued.

9.3 **Senior Executive Board.** If the dispute is not resolved at the Project Manager level within ten (10) days after the applicable notice of dispute is issued, either Party may elevate the dispute to the Senior Executive Board. The Senior Executive Board shall have twenty (20) days following elevation to reach mutual resolution or settlement to such dispute. If the Senior Executive Board is unable to resolve the dispute within twenty (20) Days, either Party may elevate the dispute to the Responsible Executives.

9.4 **Responsible Executive.** If the dispute is not resolved at the Senior Executive Board level within twenty (20) days of elevation to the Senior Executive Board, either Party may elevate the dispute to the Responsible Executives – the WMATA General Manager/Chief Executive Officer and the City Manager or their delegates. If the Responsible Executives are unable to resolve the dispute within (60) Days, either Party may pursue any available remedy at law or equity in accordance with Sections 9.5 or 9.6 below.

9.5 **Mediation.** If a dispute cannot be resolved by the Parties based on the discussions set forth in Sections 9.2 through 9.4 above, the Party seeking a resolution of such dispute may request that such dispute be considered and resolved by a mediator mutually agreed upon by the Parties. If the matter is not resolved in mediation, the mediator shall provide a written recommendation as to how he/she would resolve the dispute. The Parties agree to make a good faith effort to accept such a recommendation. If the Parties do not accept such recommendation within thirty (30) Days of its issuance, the Parties shall have the rights to resolve the disputes through political means or by litigation.

9.6 Litigation and Venue for Litigation. If a dispute cannot be resolved by the Parties based on the discussion set forth in Section 9.2 through 9.4 above, the Party seeking a resolution of such dispute may commence litigation to resolve the dispute. The sole and exclusive jurisdiction and venue for any legal action between the parties arising out of or relating to this Contract shall be filed in and decided by a court of competent jurisdiction in the Commonwealth of Virginia.

ARTICLE 10

AUDITS

10.1 City's Right to Audit. At any time within three (3) years from the date the Potomac Yard Metro Station is open for revenue service, the City and/or a State or Federal entity providing funds for this Project, directly or through consultants, may perform an audit(s) of WMATA's expenditures of funds and the sources of those funds provided by this Agreement starting from September 1, 2011 through the termination of this Agreement. The Parties acknowledge and agree that the standard for review of any action taken prior to the effective date of this Agreement, shall be the standards in place pursuant to the then-current agreement.

10.2 Audit Process. Any audit(s) performed hereunder shall be commenced within sixty (60) days after the date of the request, and shall be completed (to the maximum extent practicable) within one hundred and eighty (180) days after the date it is commenced.

10.3 Financial Responsibility for Costs. The City will assume all financial responsibility for any costs associated with the performance of such audit(s).

ARTICLE 11

GENERAL CONDITIONS

11.1 Applicable Law. This Agreement shall be construed pursuant to the laws of the Commonwealth of Virginia, provided, however, should the WMATA Compact be found to be in conflict with those laws, WMATA shall be bound by the Compact.

11.2 Laws Applicable to Project Work. WMATA shall determine the applicability of and comply with all Federal, State, or local laws, rules, regulations or orders as may be applied to the Project Work.

11.3 Amendment. This Agreement may only be amended in writing by each Party which amendment shall be valid upon execution by both Parties.

11.4 Binding Agreement. This Agreement is intended to be binding upon WMATA, the City and their successors and assigns.

11.5 Entire Agreement. This Agreement, along with any exhibits and attachments hereto, encompasses the entire agreement of the Parties, and supersedes all previous understandings and

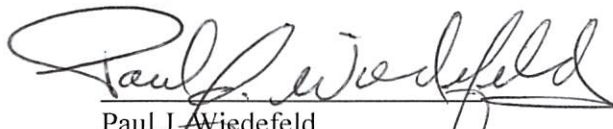
agreements between the Parties, whether oral or written. To the extent that there are any outstanding costs incurred and payable under the September 2011 Agreement, as amended, they will be carried forward and paid under this Agreement.

11.6 Counterparts. This Agreement may be executed in identical counterparts, each of which shall constitute an original and all of which shall constitute, collectively, one agreement.

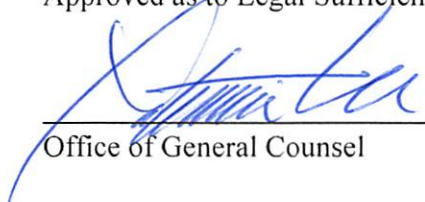
11.7 Force Majeure. Except for the obligations of the City to make payments under this Agreement for work performed and invoiced, the Parties shall be excused from performing hereunder and shall not be liable in damages or otherwise, if performance is totally or partially interrupted by reason of Force Majeure.

IN WITNESS WHEREOF, WMATA and City certify that this Agreement is executed by their respective authorized signatories and shall be effective as of the date first above written.

Washington Metropolitan Area Transit Authority
(WMATA):


Paul J. Wiedefeld
General Manager and Chief Executive Officer

Approved as to Legal Sufficiency by:


Office of General Counsel

The City of Alexandria (City):

Mark B. Jinks
City Manager

Approved as to Form:

City Attorney

IN WITNESS WHEREOF, WMATA and City certify that this Agreement is executed by their respective authorized signatories and shall be effective as of the date first above written.

Washington Metropolitan Area Transit Authority
(WMATA):

Paul J. Wiedefeld
General Manager and Chief Executive Officer

Approved as to Legal Sufficiency by:

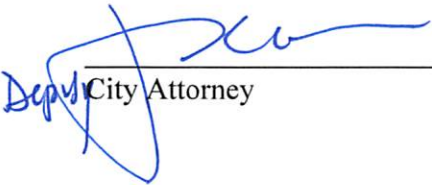
Office of General Counsel

The City of Alexandria (City):



Mark B. Jinks
City Manager

Approved as to Form:



Deputy City Attorney

AMENDED AND RESTATED AGREEMENT BETWEEN THE WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY AND THE CITY OF ALEXANDRIA, VIRGINIA FOR THE FUNDING OF THE POTOMAC YARD STATION PROJECT

Attachment A

PROJECT SCOPE OF WORK

This is a Contract for the final design and construction of a new in-fill Metrorail Station located in Alexandria, Virginia, on the former site of the Historic Potomac Yard.

The Potomac Yard Metrorail Station project consists of construction of a new Metrorail station and ancillary facilities located at Potomac Yard within the City of Alexandria along the existing Metrorail Blue and Yellow Lines between the Ronald Reagan Washington National Airport Station and the Braddock Road Station. The project would serve existing neighborhoods and retail centers as well as high-density, transit-oriented development planned by the City of Alexandria. The project would provide access to the regional Metrorail system for the U.S. Route 1 corridor of north Alexandria. The Potomac Yard area is currently without direct access to regional transit services, such as Metrorail.

The Work includes all design and construction services, including final design, supervision, quality control and quality assurance, labor, materials, machinery, equipment, tools, supplies and facilities required to complete the Project, or the various separately identifiable parts thereof including but not limited to Safety, Security, System Safety Certification and Commissioning requirements, in accordance with the terms of the Contract.

The completed Project will result in the complete design, construction, testing, and commissioning of the following Authority facilities:

Track: Includes approximately 3,750-foot of new and re-aligned track, Traction Power, and Automatic Train Control. The Train Control Room shall be relocated from the existing Traction Power Substation to a dedicated Train Control Room located in the Potomac Yard Station. Included in the 3,750 feet long track will be a No. 8 Double Crossover north of the Station structure. The new, re-aligned track will be constructed east of, and adjacent to, the existing Blue/Yellow WMATA revenue tracks.

Traction Power: upgrades to existing Traction Power Substations to accommodate the new station.

Station: The Design-Builder is responsible for designing, and constructing the Potomac Yard Station in accordance with the Project Requirements and WMATA Design Criteria, the requirements of the City of Alexandria, as well as all applicable Federal, State, and local codes, and standards. The station consists of several elements including, but not limited to, entrance pavilion, pedestrian bridge, mezzanine, side platforms, below-platform service rooms, interior station lighting, a separate AC Room building, mechanical and electrical services and equipment, restrooms, WMATA systems equipment, and signage and graphics.

The design and layout of all rooms and functional spaces shall conform to the Project Requirements and Criteria. The square foot areas for rooms and spaces indicated represent

minimum net floor area in square feet of usable floor space. The Design-Builder shall coordinate actual room dimensions and locations by functional relationships, all applicable codes and Americans with Disabilities Act (ADA) requirements, equipment requirements (including vertical and horizontal clearance requirements), as well as user access and maintenance requirements to ensure a proper and functional facility design. The Design-Builder is responsible for adjusting any rooms and spaces necessary to meet the design requirements for: circulation, wall thicknesses and construction types, structures, equipment arrangement, and furnishings.

The Design-Builder is responsible for coordinating and integrating station design and construction with all other disciplines to ensure a fully integrated WMATA Metrorail Station. The Design-Builder shall also provide all infrastructure, systems, facilities and equipment necessary to facilitate the installation of equipment and materials to be provided by WMATA and others, including, but not limited to:

- Fare collection equipment for both the initial system configuration. The Design-Builder shall provide conduit and/or under floor ducts for the fare equipment and shall coordinate detailed installation requirements with WMATA. WMATA will furnish and install all fare equipment.
- Supports and display cases. WMATA will furnish and install all display materials.

Public restroom facilities shall be included in the paid areas of the stations. The Design-Builder shall provide the minimum number of plumbing fixtures per VUSBC requirements based on the NFPA 130 station occupant load.

AC Room Building: The Station AC Room Building is located west of the Blue/Yellow Line adjacent to the existing Traction Power Sub Station. The AC Room, although separate from the Station, shall comply with all WMATA Design Criteria. The Design-Builder shall provide all equipment, connections, utilities, communications, and systems needed to provide a fully functional AC Room.

Pedestrian Bridges: The station pedestrian bridge provides passenger access from the entrance Pavilion to the station.

Entrance Pavilion: The station entrance pavilion provides passenger access from the neighborhood streets and parks to the Pedestrian Bridge. The pavilion includes two escalators, two elevators and a single stair.

Potomac Greens Park:

The Potomac Greens Park will require the relocation of the existing playground temporarily as depicted in the preliminary plan and the Design-Builder shall ensure that it remains safe and accessible for public use throughout the construction phase, and restore it at completion of construction. Landscape restoration work entails a landscape design including wetland restoration of temporarily impacted wetland areas and other natural areas which are disturbed during construction. The landscape design will be reviewed and approved by NPS to ensure compliance with the NPS ROD and will also be part of the City's Final Site Plan submission. The Design Builder will be responsible for complying with all conditions stipulated in the NPS ROD for plant warranty and monitoring.

Tree Conservation and Protection Program (TCPP): A TCPP will be developed per the City

of Alexandria Landscape Guidelines and to the satisfaction of the Directors of P&Z and RPCA and the National Park Service (NPS). All proposed tree protection details shall be depicted on the final site plan and early site preparation permit plans. Such tree protection measures shall be installed prior to any site or utility work and be maintained throughout the construction period. The tree preservation measures shall be inspected by the City Arborist prior to any construction, demolition, grading or utility work for the site.

In addition, the Design-Builder shall provide all Site work including site clearing, site and wetland restoration, site and wetland mitigation, site utilities, construction access roads required during construction, landscaping, graphics and signage required for the complete project.

Site Lighting: All Site Lighting shall be in accordance with the City of Alexandria standards. The lighting plan and lighting details will be consistent with the approved Potomac Yard Urban Design Guidelines that allow minimum light leakage, particularly around the perimeter of the site in order to minimize the obtrusion to the George Washington Memorial Parkway.

Old Town Greens Tennis Courts and Playground: The Project will require the use of the property known as the Old Town Greens Neighborhood Association Tennis Courts and Playground for construction related access. The Design Builder will be required to demolish two tennis courts and a playground.

Tennis Courts: The complete removal of tennis court pavement, fencing, walls, and any other appurtenance related to the tennis courts such as lighting, seating, site furniture, and nets shall be required.

Playground: The Design Builder is responsible for providing a replacement playground for the residents of Old Town Greens. The existing playground equipment, seating, site furniture, and trash receptacles, shall be removed and new playground equipment, seating, site furniture, and trash receptacles, shall be supplied and installed by the Design Builder, to an area within Old Town Greens Neighborhood Association. The Design Builder shall provide new playground equipment equal in size, quantity and quality, to the temporary playground. The temporary playground area shall be fenced and secured including gates, signage, as provided and installed by the Design Builder.

Any utilities that serve the existing tennis court and playground areas shall be capped, relocated, or removed as required to provide construction access.

Upon completion of the project, the Design Builder is required to restore the Old Town Greens Park. All elements of the tennis courts and playground including pavement, fencing, walls, nets, security fencing and gates, and playground equipment, as well as any other appurtenance related to the tennis courts and playground such as lighting, seating, site furniture, signage, and landscaping shall be supplied and installed by the Design Builder. Type, size, quantity and quality of the tennis and playground equipment shall be approved by the City of Alexandria and the Old Town Greens Home Owners Association.

Upon completion of the restored Old Town Greens Park, the Design Builder shall remove the temporary playground equipment and all temporary appurtenances associated with the temporary playground, and restore the site of the temporary playground to its original condition.

Potomac Greens Drive Traffic Circle: To facilitate the turning movement of large construction equipment and materials, the removal of the traffic circle at the intersection of Potomac Greens Drive and Carpenter Road will be required. The Design Builder shall remove brick paving, site lighting, trash receptacles, raised planter, site furniture, concrete curbs, landscaping and irrigation systems. The traffic circle shall then be paved with full depth capable of withstanding the loads and turning movement of construction equipment. The full depth asphalt shall be maintained by the Design Builder throughout the duration of the project.

Once paved, the Design Builder shall provide Maintenance of Traffic (MOT) at the intersection that will replicate the Traffic Circle functions while providing an expanded turning radius for construction equipment and materials to and from Potomac Greens Drive to and from Carpenter Road.

The Design Builder shall provide an MOT Plan to the City of Alexandria for approval and permit prior to the demolition of the existing traffic circle.

Upon completion of the project, the Design Builder is required to restore the Traffic Circle. The Design Builder shall design and construct all elements of the Traffic Circle including brick paving, site lighting, trash receptacles, raised planter, site furniture, concrete curbs, landscaping, irrigation systems, as well as any other appurtenance related to the Traffic Circle. Type, size, quantity and quality of the Traffic Circle elements to be designed and installed by the Design Builder shall be approved by the City of Alexandria and the Potomac Greens Home Owners Association.

Potomac Greens Drive and Carpenter Road: In addition to the requirements included in Section 01 73 10 CUTTING AND PATCHING and Section 00 73 06, PROTECTION OF EXISTING VEGETATION, STRUCTURES, UTILITIES AND IMPROVEMENTS, the Design Builder shall keep Potomac Greens Drive and Carpenter Road in a state of good repair throughout the duration of the Contract. Any damages to, but not limited to pavement, concrete curb, brick sidewalks, landscaping, irrigation systems, fences, drainage structures, utilities, or signage to, or adjacent to, Potomac Greens Drive and/or Carpenter Road that is the direct result of the use of these roads for construction related traffic, shall be the responsibility of the Design Builder to repair and/or replace at the time the damage occurs.

Complete restoration of Potomac Greens Drive and Carpenter Road shall be the responsibility of the Design Builder at Contract completion. All road restoration activities, including design, maintenance of traffic, materials, and advanced community notices, shall receive the approval of the City of Alexandria

**Attached 04/02/19
per Section 1.1.2 of
this Agreement.**

AMENDED AND RESTATED AGREEMENT BETWEEN THE WASHINGTON
METROPOLITAN AREA TRANSIT AUTHORITY AND THE CITY OF ALEXANDRIA,
VIRGINIA FOR THE FUNDING OF THE POTOMAC YARD STATION PROJECT

Attachment B

PROJECT BUDGET

POTOMAC YARD STATION PROJECT BUDGET Sep-18

BUDGET DESCRIPTION BY MAJOR COST ITEMS		Estimated Budget
Contract 1 - Design/Build Contract		\$213,700,000
Guideway and Track Elements		\$0
Stations, Stops, Terminals		\$0
Support Facilities Yards, Shops, Admin. Bldgs.		\$0
Sitework and Special Conditions		\$0
Systems		\$0
Contract 2 - Fare Collection Equipment		\$3,500,000
		\$3,500,000
Art-In-Transit		\$250,000
Artist		\$245,000
Miscellaneous AIT Costs		\$5,000
Utilities		\$600,000
Dominion Work Authorization		\$150,000
Washington Gas Work Authorization		\$0
Water & Sewer Work Authorization		\$150,000
Verizon Work Authorization		\$150,000
Miscellaneous Utilities		\$150,000
Design & Engineering Services		\$15,858,012
Concept Phase (P2d)		\$348,920
Surveying		\$140,896
EIS Task I		\$323,630
EIS Task II		\$530,000
EIS Task III		\$2,376,415
EIS Task III Extra Work #1		\$460,523
EIS Task III Extra Work #2		\$118,706
EIS Task III Extra Work #3		\$275,000
EIS Task III Extra Work #4		\$600,000
EIS Task IV		\$39,986
Financial Analysis Task I		\$54,655
Financial Analysis Task II		\$24,226
Financial Analysis Task III		\$46,754
AECOM Task Mgmt.		\$23,114
Expense Distribution		\$3,573
Preliminary Engineering/Contract Pkg. Prep.		\$2,400,000
Train Control		\$550,000
Construction Support Services		\$7,500,000

Attached 04/02/19
per Section 1.1.2
of this Agreement.

Safety & Security	\$19,086
Consultant Fees	\$22,528
WMATA Proj. Mgmt.	\$11,600,000
Project Management	\$9,100,000
Project Adm. Fee	\$2,500,000
Real Estate	\$6,150,000
Appraisal & Title/Settlement Services	\$100,000
Property Survey & Legal Documents	\$250,000
Property Acquisition	\$5,800,000
Potomac Greens Roundabout	\$500,000
Old Town Greens Tennis Courts (5 years)	\$300,000
Parking Lot/Laydown Area (5 years)	\$5,000,000
Information Technology	\$3,700,000
Hardware	\$2,100,000
Software	\$1,100,000
ESS	\$500,000
Miscellaneous	\$1,125,000
CSX Flagperson	\$500,000
Field Office Support	\$125,000
Task Order Contract	\$500,000
Contingency	\$33,516,988
Contract #1 (7.5% of award amount)	\$16,027,500
Contract #2 (5% of award amount)	\$175,000
Project	\$17,314,488
Total	\$290,000,000

AMENDED AND RESTATED AGREEMENT BETWEEN THE WASHINGTON METROPOLITAN AREA
TRANSIT AUTHORITY AND THE CITY OF ALEXANDRIA, VIRGINIA FOR THE FUNDING OF THE
POTOMAC YARD STATION PROJECT

Attachment C

**Updated 04/02/19 with
NTP Date. No other
timeframes were changed.**

PROJECT SCHEDULE

NTP = Notice to Proceed: September 24, 2018
cds = Calendar Days

- a. Milestone 1: Development Special Use Permit (DSUP) submittal to city of Alexandria. **NTP+30 cds**
- b. Milestone 2: DSUP approval by city of Alexandria. **NTP+200 cds**
- c. Milestone 3: **Construction Access and Trailers:** Complete required demolition of Old Town Greens Park and construction access preparation including construction fencing and gates, erection of Design Builder and WMATA Construction Trailers (Field Office) and parking lot, construction access pedestrian bridge, and all temporary utilities that will be required for the Construction Trailers. **NTP+330 cds**
- d. Milestone 4: **Approvals and Permits:** Complete design and permitting required to obtain City of Alexandria Site Plan approvals and associated permits, including the issuance of Certificate of Appropriateness and Building Permits - Complete all jurisdictional approval processes including but not limited to the receipt of Final Site Plan Approval from the City of Alexandria, and Board of Architectural Review approvals, as well as all appropriate approvals and permits from the City of Alexandria, National Park Service, and the Corp of Engineers required to construct the Potomac Yard Metrorail Station. **NTP+ 575 cds**
- e. Milestone 5: **Complete Communication and IT Rooms and Systems Facilities:-** Complete construction of all required communications and IT rooms. The rooms shall be complete and securable, with HVAC, plywood backboard installation on walls, and static resistant flooring, fiber and copper backbone installation and testing and made ready for WMATA installation of IT equipment. All wiring, cables and/or fiber optic lines and appurtenances shall be installed, tested, and commissioned, Permanent Power for the station shall be completed and connected to the communications and IT Rooms. **NTP+ 1100 cds**
- f. Milestone #6: **Complete IT Equipment Installation:** WMATA will complete installation and testing of all required IT equipment for the station. **NTP + 1130 cds**
- g. Milestone 7: **Complete Preparation for Double Cross-Over Installation and Track Cut-Over:** Complete Station Platforms, Station Structures adjacent to and over the new IB and OB tracks, new IB and OB tracks to clearance points outside of the existing fence line and the Tie Breaker/Train Control rooms and their associated equipment. Obtain Safety Certification for facilities and systems associated with the operation of WMATA trains through the station. This milestone must be attained prior to the commencement of the two-week, two-track shutdown in July/August of 2021. **NTP+ 1160 cds**
- h. Milestone #8: **Readiness for Installation of Fare Collection Equipment:** Complete installation of the kiosk, ductwork and paver tile for the installation of fare gates and vending machines by a follow-on contractor. **NTP + 1250 cds**
- i. Milestone #9: **Final Station Completion-** Complete work necessary to obtain Safety Certification which will allow the station to be opened for public use (i.e. Revenue Service). Complete work necessary to obtain third-party approvals (such as, but not limited to, elevators/escalators, fire/life/safety systems, etc.). All O&M submittals have been approved, all O&M training has been performed and all spare parts have been delivered to WMATA. **NTP+ 1280 cds.**