



ARLINGTON COUNTY, VIRGINIA

County Board Agenda Item Meeting of April 21, 2012

DATE: March 19, 2012

SUBJECT: Approval of the Automatic Fare Collection (AFC) Equipment Procurement and Installation Agreement between the Washington Metropolitan Area Transit Authority (WMATA) and the County Board of Arlington County, Virginia (County) for the Rosslyn Station Access Improvement Project (RSAIP)

C. M. RECOMMENDATION:

Authorize the County Manager to execute the attached Agreement with WMATA for the purchase and installation of AFC equipment.

ISSUES: County Board approval is required to authorize the County Manager to execute the Agreement. No issues have been identified.

SUMMARY: The new entrance being built at the Rosslyn Metrorail station by the County will be a completely outfitted mezzanine and a separate entrance to the station platform requiring its own fare collection and fare vending equipment. AFC is proprietary equipment unique to WMATA and using WMATA to secure and install the equipment will simplify the process. The Board has approved the budget for the procurement and installation of AFC equipment. It is now necessary for WMATA and the County to enter into an agreement which sets forth their obligations and responsibilities for furnishing, installing, testing, and acceptance of the AFC as well as the terms of payment to WMATA for the AFC equipment.

BACKGROUND: In May 2007, the County Board approved the Site Plan for the development of a project known as Central Place which included conditions requiring the Developer's cooperation and contribution toward a new Rosslyn Metrorail station entrance consisting of three (3) high speed, high capacity elevators, a mezzanine, emergency stairs and related infrastructure as well as conveyance of all necessary easements or other permissions for construction and location of the RSAIP by Arlington County.

A number of activities have been accomplished to advance construction of the RSAIP:

County Manager:

County Attorney:

24.

Staff: Bea E. Hicks, DES Transportation

- Engaged the services of WMATA who used its on-call consultant to design the RSAIP;
- Contracted with STV Incorporated to provide construction management services;
- Negotiated a general construction contract with Clark Construction Group (Clark);
- Negotiated an agreement with WMATA to provide support services during construction of the new entrance as it will be built adjacent to the existing Metrorail station, in close proximity to the operating railroad, and will require WMATA acceptance to own, operate and maintain it;
- Began construction of the RSAIP and progress to date includes completion of the excavation for the elevator shaft, emergency stairs, and upper (public) and lower mezzanines; and
- The County Board approved an amount of up to \$1,000,000 for the purchase and installation of AFC equipment at the RSAIP.

DISCUSSION: Construction of the RSAIP began October 2010 and completion is expected in late Spring 2013. AFC equipment is required at the new station entrance. Because it is proprietary equipment unique to WMATA, using WMATA to secure the equipment will simplify the procurement process. WMATA will also be responsible for installing the equipment and integrating it into the existing system.

The terms and conditions of the AFC Agreement, which is attached, have been negotiated between WMATA Counsel and the Arlington County Attorney Office and is consistent with other agreements related to the RSAIP.

FISCAL IMPACT: None

Automatic Fare Collection (AFC)
Equipment Procurement and Installation Agreement
Between
The Washington Metropolitan Area Transit Authority
And
The County Board of Arlington County, Virginia
For
The Rosslyn Station Access Improvement Project

This agreement (hereinafter "Agreement") is made and entered into this _____ day of _____ of 2012 (hereinafter "Effective Date") by and between the Washington Metropolitan Area Transit Authority, a body corporate and politic created by Interstate Compact (hereinafter "WMATA") and Arlington County, Virginia, a political subdivision of the Commonwealth of Virginia (hereinafter the "County"). WMATA and the County are sometimes referred to herein jointly as the "Parties" or individually as a "Party".

Article 1. General Provisions

- 1.1 The County has agreed to construct (i) a new mezzanine area, (ii) three new elevators for ingress and egress between the street and the Existing Transit Station and (iii) such other improvements as are included in the final design referenced below in Section 1.4 This is known as the Rosslyn Station Access Improvement Project (RSAIP). At the completion of construction and in accordance with the terms of this Agreement, WMATA will accept ownership and operation of the RSAIP.
- 1.2 The Parties have executed: (i) a Construction Support Agreement dated February 1, 2011 and (ii) a Project Coordination Agreement dated March 31, 2010, hereinafter collectively "the Prior Agreements".
- 1.3 The Prior Agreements did not address the specifics regarding the funding, purchase, installation, testing and acceptance of the Automatic Fare Collection Equipment (AFC), the parties having agreed to address these issues in a subsequent separate agreement.
- 1.4 It is necessary now for the Parties to enter into such an agreement which sets forth the obligations and responsibilities of the Parties for the funding, furnishing, managing, installing, testing and acceptance of the AFC.
- 1.5 The time frame for this AFC work will begin upon the Effective Date and is expected to extend until such time as the RSAIP Project is finally accepted by WMATA.
- 1.6 Guidelines Governing the Parties' Conduct During AFC Work:

- 1.6.1 WMATA staff will work through and coordinate with the County's Project Manager for any AFC work performed by WMATA staff or its contractors and for any coordination with the County's contractors.
- 1.6.2 The County or its contractors will keep WMATA informed of all site meetings such as weekly coordination meetings and progress meetings related to the installation and testing of the AFC.
- 1.7 WMATA commissioned, finalized and approved 100% design documents for the RSAIP, and this design, dated September 2, 2010 and thereafter amended, is incorporated into this Agreement by reference and hereinafter referred to as "the Design."

Article 2. WMATA Scope of Services and Cost

- 2.1 The Parties agree that the scope of services includes services provided by WMATA and its contractors required to complete furnishing, managing, installing, testing and acceptance of the AFC. This scope of work also includes the removal and decommissioning of existing AFC currently required for the existing elevator to be abandoned.
- 2.2 This specific scope of work related to the AFC is required by the Design documents that show the following:

Furnish and install:

Four (4) fare vending machines on New Mezzanine
Two (2) exit fare machines on New Mezzanine
Three (3) standard faregates on New Mezzanine
One (1) ADA compliant faregate on New Mezzanine

Remove:

One (1) exitfare exit vending machine
One (1) ADA faregate

- 2.3 The Parties acknowledge that the installation of AFC may be accomplished in a number of ways which include: (i) WMATA procurement and purchase of all new AFC from the manufacturer; (ii) relocate existing WMATA AFC already owned by WMATA; or (iii) a combination of purchase and reuse of AFC. The Parties acknowledge a common preference to relocate existing AFC in lieu of procuring new equipment, thereby eliminating costs for new AFC. This preference is at WMATA's discretion based on available equipment and time horizon for implementation of WMATA's new fare collection system.
- 2.4 The Parties, therefore, have provided herein alternative payment schemes for reuse and purchase options.
- 2.5 In the event that a decision is made to acquire any new AFC, WMATA shall procure and

enter into a contract for the acquisition of AFC in accordance with WMATA's design criteria and WMATA's standard procurement procedures. WMATA shall have complete and overall management and administrative responsibility for said contract. In accordance with Section 22 of the WMATA Compact, WMATA is not authorized to make any commitments (i.e. award any contract) or incur any obligations until funding is identified by the County and made available to WMATA.

- 2.6 The County acknowledges that the RSAIP is a reimbursable project and that there are, and will be, no WMATA funds available for any work related to the AFC. The Parties agree that WMATA and its contractors will provide this scope of work for a cost not to exceed \$1,000,000 (One Million). The County, consistent with the terms of this Agreement, has agreed to make available to WMATA, an amount up to \$1,000,000 for the work performed under this Agreement.
- 2.7 The County and WMATA agree that WMATA will exercise appropriate professional judgment to perform only such work by its staff or its contractors as is necessary to ensure that the AFC installation work will be completed and functioning properly for acceptance into the WMATA automatic fare collection system upon completion.
- 2.8 Completion of WMATA's AFC installation work, for purposes of this Agreement, includes any AFC commissioning periods, AFC punch list work, AFC inspections, AFC walk-throughs, AFC testing or any other acts or activities necessary for WMATA to accept the AFC work into the WMATA system.

Article 3. Work Site Access, Storage of Materials, and Work Scheduling

- 3.1 The County and its contractors agree to permit WMATA necessary access to WMATA and its contractors for AFC related work in the areas of work shown in the plans. Access will be available to WMATA and its contractors beginning no earlier than July 23, 2012, or the "Early Start Date" provided in the most current approved RSAIP Construction Schedule for the Activity "WMATA Install Fare Gates and Rails" (whichever occurs earlier) until project completion.
- 3.2 WMATA agrees to notify the County in writing of its proposed weekly work schedule no later than 3 calendar days prior to the date of scheduled work start to minimize any potential impact to the County's RSAIP work and schedule.
- 3.3 In the event of conflicting coordination of installation or activities (e.g. kiosk, ductwork, communications), excluding activity items on the critical path or AFC predecessor activity items to be performed by the County's contractor as shown on the Construction Schedule, the County and its contractors agree to provide WMATA and its contractors first right of access to subject areas.

- 3.4 The County and its contractors agree to collaborate with WMATA to provide an accessible area within the limits of work for WMATA to stage and store its equipment and materials for AFC installation work during the period provided for AFC work. WMATA will take the necessary steps to protect and secure equipment and tools related to AFC work and the County will cooperate with and support WMATA in those efforts.
- 3.5 WMATA shall exercise appropriate care to avoid damage to the RSAIP work which may be ongoing or completed in the same physical space as the AFC work.
- 3.6 The County will exercise appropriate care to avoid damage to the AFC work which may be ongoing or completed in the same physical space as the RSAIP.

Article 4. Proposed Additional Work

- 4.1 WMATA's scope of services does not include the services identified in Sections 4.2 below. In order for any work outside the scope of services WMATA must comply with the procedures set forth in Article 5.
- 4.2 Significant deviations from the Design which may impact AFC work originating from:
 - 4.2.1 The County's decision to make directed revisions to the RSAIP Design impacting the AFC work, which do not include compliance with new codes or ordinances unless the code or ordinance changes could not have been reasonably anticipated at the time the Design was sealed by the designer of record; or
 - 4.2.2 Engineering and structural requirements NOT related to design flaw or errors in the Design or any failure, fault or negligence on P2D's part in creating the Design; or
 - 4.2.3 External mandates outside of the County or WMATA's control; or
 - 4.2.4 Site conditions that were not foreseeable through the exercise of proper and due diligence by WMATA or any WMATA contract or subcontractor.

Article 5. Procedures for Memorializing Proposed Additional Work Identified in Article 4

- 5.1 In order for WMATA to be eligible for any additional payment for additional work, inclusive of any WMATA staff time or contractor services, WMATA must fully and completely comply with the procedures set forth in this Article 5 and the billing procedures and records requirements set forth in Article 6.
- 5.2 In advance of incurring such time or cost, WMATA shall submit notice to the County, as soon as WMATA's discovery of any of the circumstances causing WMATA to claim that it must perform work outside the scope of services as identified in Article 4, Sections 4.2.1, 4.2.2, 4.2.3 or 4.2.4. WMATA will use diligent efforts and act in good faith to

notify the County within ten (10) days of the discovery of such need and causation for additional work. The Parties agree and understand that timely notification within this Section is critical for a proper examination of WMATA's claim for additional scope of work and failure to comply with this timely notification provision may preclude WMATA's ability to pursue additional funding for such additional scope claims. Upon request by WMATA, the County may waive this provision if the County determines, in its sole discretion, that WMATA's delayed notice is not prejudicial to the County.

5.3 Within 30 days of the date that WMATA discovers any circumstance leading to a claim of additional work, WMATA will supply to the County an itemized accounting of such additional services or products necessitated by any of the precipitating events in Article 4, Sections 4.2.1, 4.2.2, 4.2.3 or 4.2.4, segregated by labor, equipment and materials for the various components for the deviation or increase in the Work.

5.3.1 Should such itemized accounting include proposed work by WMATA or WMATA's contractor, such notification shall also include a signed proposal or proposals from such contractor or for any business concerns providing materials, products or equipment.

5.3.2 Such itemized accounting that includes WMATA's estimated staff time for services shall be based upon the salary and benefits by employee classification established beforehand of such designated or proposed employee, but no mark up of any kind may be included in such notification and itemized time accounting.

5.4 The County, after receipt of WMATA's notification of additional scope pursuant to Article 4, Sections 4.2.1, 4.2.2, 4.2.3 or 4.2.4, will review the notice and supporting documentation to determine whether WMATA's claimed triggering event and proposed work is outside the scope of WMATA's work under this Agreement. After reviewing WMATA's submissions and discussing the matter further with WMATA, if the County deems necessary, the County will either:

5.4.1 Agree that WMATA has met the requirements for additional work under Article 4; or

5.4.2 Determine that WMATA has not met the requirements for additional work under Article 4 and that the work falls within WMATA's scope of work and place in writing its reasons for such determination.

5.5 Should the County disagree with WMATA's request and determine that the work is not outside the scope of work, WMATA may accept that determination and proceed with the work as within the scope of services or may appeal the County's determination.

5.6 Appealing the County's determination that the work is not outside the scope of services.

5.6.1 If WMATA wishes to appeal the County's determination, WMATA's General Manager will communicate directly with Arlington's County Manager to resolve the matter.

5.6.2 The Parties agree that time is of the essence in resolving the appeal and dispute and that the General Manager and the County Manager should exercise all deliberate speed in reaching a conclusion to resolve the dispute.

5.7 If the Parties' discussions regarding the disputed claims for additional work result in the County's agreement that the work is additional work under Article 4 and outside the scope of services, WMATA will bill the County for this additional work in accordance with Article 6.

Article 6. Payment Procedures and Billing Requirements

6.1 The County and WMATA agree that the work to be performed by WMATA staff or its contractors will be only such work as is necessary to ensure that the AFC work conforms to the requirements for such installation according to the Design and that the work will be accepted by WMATA upon final completion. This Article pertains to all work for which WMATA claims it should be paid by the County – whether within the scope of services or additional services.

6.2 In order for the County to provide any payment to WMATA, WMATA must comply with the following records keeping and sharing requirements:

6.2.1 Create, maintain and provide to the County daily logs detailing the services provided by WMATA by all of its employees who bill to the Project;

6.2.2 Create, maintain and provide to the County monthly reports detailing WMATA's work and its contractor's work under this Agreement in furtherance of the scope of work for the AFC.

6.3 Within thirty (30) days of the execution of this Agreement by both Parties, the County will pay WMATA \$100,000.00 (One Hundred Thousand). This amount, \$100,000.00, will constitute the first installment for WMATA and its contractor's services anticipated to be necessary under this Agreement.

6.4 In the event that WMATA determines that new AFC equipment must be procured, WMATA will provide to the County an invoice for the procurement deposit amount required by WMATA's AFC manufacturer. The County agrees to pay WMATA the procurement deposit amount within 30 days of receipt of invoice. WMATA will not award the AFC contract unless such procurement deposit amount is received by WMATA 30 days in advance of awarding the contract. Thereafter, WMATA may provide to the County invoices or other documentation submitted by the manufacturer of

additional payments necessary to secure the AFC. The County agrees to pay WMATA these sums provided the documentation supports the payment for such equipment.

- 6.5 The Parties understand and agree that the first installment is provided to WMATA as a sum from which WMATA may draw down for activities within the scope of work and necessarily performed either by WMATA or its contractor. Should the first installment be reduced for such work to \$25,000.00 (Twenty-Five Thousand) and supported by the documentation required by this Article, WMATA may submit a request of the County for an additional sum for these activities.
 - 6.5.1 WMATA's statement and request must contain a detailed accounting, to the satisfaction of the County, of actual WMATA costs showing how the previously funded amount has been spent, including, among other things, the number of hours expended by staff or contractors, the particular tasks performed during those hours and the purpose for which those tasks were performed.
 - 6.5.2 WMATA's statement and request must be supported by the daily logs for all activities of WMATA and/or its contractor.
 - 6.5.3 WMATA's statement and request must break out the hourly rates being charged, the position held by the person whose time is billed and a justification or explanation why a person in a higher position has performed the task, if such funding is being requested.
 - 6.5.4 WMATA shall certify, with each request for payment, that all funds previously expended relate solely to the Rosslyn Station AFC work and are services necessary to be performed by WMATA or its contractor in order to accept the AFC work into the WMATA system.
 - 6.5.5 WMATA will provide to the County an amount for the next installment understanding that the total available for all services and equipment under this Agreement shall not exceed \$1,000,000 (One Million).
- 6.6 Should WMATA fully comply with its obligations under this Article, the County, by its Project Manager and Finance Department will review WMATA's submittals to validate and confirm that the submittals are actual WMATA expenditures necessary for the project and necessarily performed by WMATA or its contractor for this Project and not in excess of \$1,000,000 (One Million).
- 6.7 Within thirty (30) days of receipt and confirmation by the County under Section 6.5, the County will pay to WMATA another installment in the amount requested by WMATA under 6.5.5 unless providing that amount would commit the County to an amount in excess of \$1,000,000 (One Million).
- 6.8 WMATA agrees to deposit all funding provided by the County in an interest-bearing account and provide to the County an accounting of such interest.

- 6.9 The Parties agree that efforts to minimize overpayments to WMATA will be taken, however in the event that WMATA has been paid more than it spends for the work of this Agreement, WMATA and the County agree that any excess funding shall be returned to the County.

Article 7. WMATA Acceptance, Ownership, Operation and Maintenance

At substantial completion, the AFC work will be complete for the full use and function intended by the Design documents. WMATA will take over operations and maintenance upon final completion and acceptance of the RSAIP contract work including the AFC work.

Article 8. Appropriation of Funds

- 8.1 WMATA's obligations under this Agreement are subject to the availability and appropriation of funds provided by the County and through allocation by the WMATA Board for the specific purpose of satisfying any payment and obligating WMATA to perform work in accordance with Section 22 of the WMATA Compact, which prohibits WMATA from making any commitments or incurring any obligations unless funds are available.
- 8.2 The County's obligations under this Agreement are subject to the appropriation of funds by the County Board for the purposes set forth in this Agreement.

Article 9. Applicable Law

This Agreement, and the rights and obligations of the Parties under this Agreement, shall be governed by the laws of the Commonwealth of Virginia without regard to principles of conflicts of laws. Any lawsuits arising from this Agreement will be filed in the Arlington County Circuit Court. WMATA is governed by the WMATA Compact in all of its actions and decisions.

Article 10. No Limitation

Nothing contained in this Agreement shall be construed to prohibit any Party from (1) obtaining injunctive relief to enforce the provisions of this Agreement or (2) exercising any rights and remedies as may be available at law or in equity in the event of negligence, fraud, intentional misconduct, or misappropriation of funds by another Party. Nothing in this Agreement shall be construed to waive the County's sovereign immunity or to limit any protections or rights the County enjoys under Virginia law as a political subdivision of the Commonwealth of Virginia.

IN WITNESS WHEREOF, the Washington Metropolitan Area Transit Authority and The County Board of Arlington County, Virginia certify that this Amendment is executed by their respective authorized signatories and shall be effective as of the date of the latest endorsement below.

Approved as to Form:

WASHINGTON METROPOLITAN AREA
TRANSIT AUTHORITY

Carol O’Keeffe
General Counsel

Richard Sarles
General Manager/Chief Executive Officer

Approved as to Form:

COUNTY BOARD OF ARLINGTON COUNTY,
VIRGINIA

Stephen A. MacIsaac
County Attorney

Barbara Donnellan
County Manager