

Draft

Draft

Draft

**AGREEMENT
BETWEEN
THE WASHINGTON METROPOLITAN AREA
TRANSIT AUTHORITY
AND
THE COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA
FOR PHASE TWO OF THE
ROSSLYN STATION ACCESS IMPROVEMENT PROJECT**

This AGREEMENT is made, this ____ day of _____, 2008, by and between the Washington Metropolitan Area Transit Authority ("WMATA"), a body corporate and politic created by Interstate Compact, and The COUNTY BOARD of Arlington County, Virginia ("COUNTY" or "COUNTY BOARD"), a political subdivision of the Commonwealth of Virginia, collectively referred to herein as the "PARTIES".

RECITALS

WHEREAS, on August 2, 2000, WMATA and the COUNTY BOARD executed an Agreement ("Phase One Agreement"), which Agreement was amended by WMATA and the COUNTY BOARD on November 11, 2007, that provided for the development of certain public transportation projects initiated by the COUNTY ("Phase One Amended Agreement"), including, but not limited to, such activities as conceptual and preliminary project design, project approval, and applicable public hearing(s); and

WHEREAS, on February 23, 2008, the COUNTY BOARD approved one such project, the Rosslyn Station Access Improvement Project ("PROJECT"), for final design and additional related services under a PHASE TWO AGREEMENT; and

WHEREAS, it is expected that certain federal and State transportation grants, local capital funds, and private developer contributions will be available to finance the PROJECT; and

WHEREAS, the applicable required approvals described in Section 2.01 of the Phase One Agreement relating to the PROJECT, as herein defined, have been obtained and/or completed or will be obtained and/or completed consistent with the Phase One Agreement; and

WHEREAS, this AGREEMENT (sometimes also referred to as "PHASE TWO AGREEMENT") defines the respective obligations, responsibilities and duties of the PARTIES regarding the final design development for the completion of Phase Two of the PROJECT pursuant to a PROJECT MANAGEMENT PLAN ("PMP") submitted to the COUNTY by WMATA, as required by the Phase One Agreement; and

Draft

Draft

Draft

WHEREAS, by this AGREEMENT the parties establish their obligations to each other; generally the obligation of WMATA to design the Rosslyn Station Access Improvements as set forth in Section 2.01 and the obligation of the County to pay for such services; and

NOW THEREFORE, in consideration of the understandings and mutually agreeable covenants contained herein, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the PARTIES agree as follows:

ARTICLE 1 DEFINITIONS

The following words and phrases when used in this AGREEMENT shall have the meanings provided below unless the context clearly indicates a different meaning:

- A. AGREEMENT or PHASE TWO AGREEMENT shall mean this AGREEMENT between WMATA and the COUNTY BOARD of Arlington County, Virginia for Phase Two of the Rosslyn Station Access Improvement Project.
- B. CONTRACTORS shall mean any person or entity that has entered into a contract with WMATA to provide goods or services that are utilized by WMATA to meet its obligations under this AGREEMENT. DAYS shall mean calendar days unless otherwise stated.
- C. FUNDING or FUNDS shall mean all monies from various sources, as set forth in Article 4 hereof, necessary to complete the PROJECT within, and in accordance with the PROJECT BUDGET approved by the COUNTY BOARD.
- D. GRANTING ENTITY (IES) shall mean Federal, State and/or local entity (ies) to whom the COUNTY makes application for transportation grant funds for the PROJECT.
- E. PROGRAM MANAGER shall mean the General Manager/Chief Executive Officer, or designee, responsible for administering this Agreement on behalf of WMATA. PROJECT or PROJECT WORK

shall mean the Rosslyn Station Access Improvement Project, as generally described in Section 2.01 herein, and the activities associated with its completion, including but not limited to, final design, development of construction plans, financial plans, detailed specifications, construction cost estimates, bid documents, (and the direct and indirect costs of WMATA's project management and technical oversight of the PROJECT as defined herein.

- F. PROJECT BUDGET shall mean the portion of the PMP that provides in accordance with the COUNTY BOARD approval of the PMP: (1) a complete listing and accounting of the PROJECT FUNDING sources and estimated expenditures; (2) a description of the extent of the financial commitment of the PARTIES to the PROJECT; and (3) a description of the estimated allocation of costs associated with the application of PROJECT resources (e.g., materials, personnel, consultant and non-personnel resources) to be devoted to accomplishing the PROJECT WORK.
- G. PROJECT MANAGEMENT PLAN or PMP shall mean the document developed in Phase One of this PROJECT, which provides project scope; public hearing; project approval stages of the PROJECT; description of specific PROJECT tasks, staff and consultant resources, PROJECT materials and other non-personnel resources; PROJECT schedules; PROJECT BUDGET; PROJECT risk exposure analysis and insurance recommendations; and any other subjects deemed necessary and appropriate by the PARTIES. The PROJECT MANAGEMENT PLAN is subject to the approval of the COUNTY and may be revised by mutual written agreement between the PROGRAM MANAGER and PROJECT OFFICER as necessary and as determined by the PARTIES; provided, however, that the PROJECT BUDGET may not be revised to require an increase in costs to the COUNTY without prior approval of the COUNTY BOARD.

Draft

Draft

Draft

H. PROJECT OFFICER shall mean the County Manager, or designee, responsible for administering this AGREEMENT on behalf of the COUNTY.

I. STATION shall mean the Rosslyn Metrorail Station in Arlington, Virginia.

ARTICLE 2 SCOPE OF WORK

Section 2.01: Generally.

The following description of the PROJECT and facilities to be designed hereto supersedes and replaces the general description thereof found in Exhibit A-1 to the Phase One Amended Agreement. The work to be performed by WMATA and its CONTRACTORS to complete the requirements of this AGREEMENT shall include: WMATA shall procure design services, provide project management and technical oversight for the completion of final design, development of construction plans, financial plans, detailed specifications, construction cost estimates, and bid documents for the Rosslyn Station Access Improvements, which shall consist of, but not be limited to: three high-speed, high-capacity elevators, an emergency stairway, air shaft(s), underground station mezzanine and passageway connection with finishes, all appurtenant facilities and systems, including but not limited to electrical, communications, fare collection, and mechanical equipment, and any other facilities agreed to by the COUNTY, JBG Associates, the Developer of Central Place, and WMATA, as more fully set forth on the Developer's Plans dated 4/13/07 and in the Rosslyn Station New Entrance Study Final Report, prepared by WMATA and dated March 2007, or as may be determined by mutual written agreement of WMATA and the County during the design of the PROJECT. The particular tasks and details of the PROJECT's Scope of Work is set forth, and is included herein by reference, in Attachment A, which may be modified by mutual written agreement of WMATA and the COUNTY. The PROGRAM MANAGER for WMATA and the PROJECT OFFICER for the COUNTY may, by written agreement, make adjustments in the Scope of Work that do not result in an increase in costs beyond the FUNDING levels previously authorized by the County. All modifications to the Scope of Work that may result in additional costs will require prior approval by the COUNTY BOARD.

Section 2.02: Division of Responsibilities.

A. WMATA Responsibilities.

a. Pursuant to Section 2.03(a) of the Phase One Agreement, WMATA has determined that it is not necessary to convene public hearings concerning this PROJECT in accordance with provisions of the WMATA Compact.

b. WMATA shall exercise technical control and management oversight of the PROJECT. WMATA shall prepare, or cause to be prepared, design drawings and specifications sufficient for the COUNTY to enter into contract(s) for the construction of the PROJECT WORK to the levels required for a design-bid-build contract. All design drawings and plans will be developed in accordance with all applicable WMATA design criteria and approved system-wide facility requirements in effect at the time of design.

c. WMATA shall transmit design submittals to the COUNTY for review and approval. To the extent that design comments are timely made by the COUNTY as required in Section 2.02.B.3, WMATA shall cause those appropriate changes to be made to the design documents, provided that the changes are consistent with WMATA design criteria.

d. WMATA shall procure and enter into contracts with CONTRACTORS for the design of the PROJECT facilities in accordance with WMATA's standard procurement procedures. WMATA shall have complete and overall management and administrative responsibility for said contract(s). In accordance with Section 22 of the WMATA Compact, WMATA is not authorized to make any commitments (i.e., award any contracts) or incur any obligations until FUNDING is identified and available. In no event

shall such contracts between WMATA and others for the design of the PROJECT be considered to be, or construed as, contracts of the COUNTY.

e. All contracts between WMATA and other entities for the design of the PROJECT shall include and abide by all federal contract provisions for Architectural and Engineering services contracts, including the additional provisions that: (1) prohibit employment discrimination by contractor(s); and (2) require the Contractor(s) to maintain drug-free workplaces. The required provisions are incorporated herein as Attachment A.

B. COUNTY Responsibilities.

a. The COUNTY acknowledges that the PROJECT is a reimbursable project, that there are, and will be, no WMATA funds available for the PROJECT, and that the PROJECT shall be funded as provided in Article 4 below.

b. The COUNTY shall promptly review design submittals when those documents are transmitted by WMATA to the COUNTY. Not later than fourteen (14) DAYS after COUNTY'S receipt of the design submittals, the COUNTY shall, in writing, either approve or reject and provide comments on the design submittals. In the event that the COUNTY does not transmit a written comments revision or rejection of the design submittals, within thirty (30) DAYS after receipt of those documents, then the COUNTY shall be deemed to have approved these design submittals in full, without reservation.

ARTICLE 3

OWNERSHIP, OPERATION AND MAINTENANCE

WMATA shall own, operate and maintain those facilities described in section 2.01 of this AGREEMENT, which facilities have been improved or added at, or around, the STATION. For all facilities (e.g., elevators), that are constructed upon or attached to private property, WMATA shall maintain such facilities, at WMATA's cost, and provide

Draft

Draft

Draft

the same level of operation, maintenance, repair and replacement as WMATA does for any other WMATA facility. WMATA shall enter into such agreements with the owners of such private property as are necessary for WMATA to perform such duties and responsibilities.

ARTICLE 4 PROJECT FUNDING

Section 4.01: Obligations of the PARTIES.

- A. Under the Phase One Amended Agreement, and consistent with the WMATA Board-approved Reimbursable Projects Policy, Resolution No. 99-63, the COUNTY is responsible for all costs associated with the PROJECT. Under no circumstances shall WMATA have any financial obligation to assist in the FUNDING of this PROJECT, unless agreed to by WMATA and the COUNTY.
- B. Subject to appropriation of FUNDS by the COUNTY for such specific purpose and subject to the provisions of this AGREEMENT, the COUNTY shall be responsible only for costs and expenses attributable to the PROJECT, provided that the COUNTY BOARD, consistent with the PROJECT BUDGET as described in the PROJECT MANAGEMENT PLAN, has approved such costs and expenses. The COUNTY shall notify WMATA thirty (30) DAYS prior to the end of the COUNTY'S fiscal year as to whether FUNDS have been appropriated for the PROJECT for the subsequent fiscal year. If the COUNTY does not appropriate sufficient FUNDS for the PROJECT for the subsequent fiscal year, then either Party may terminate this AGREEMENT as provided in Section 8.01 herein.
- C. Notwithstanding any provision of the AGREEMENT to the contrary, WMATA shall not incur any cost, expenses or obligations for any goods, services or work to be performed for the PROJECT unless and until the COUNTY BOARD approves a FUNDING plan for the Phase Two PROJECT BUDGET and the County Board appropriates or authorizes the expenditure of sufficient FUNDING therefore.
- D. WMATA shall ensure that all costs, expenses and obligations charged to the PROJECT, by WMATA and its CONTRACTORS, are supported by properly

Draft

Draft

Draft

executed payrolls, time records, invoices, contracts, vouchers, or receipts evidencing in detail the nature and propriety of the charges. Upon fifteen (15) DAYS' prior written notice to WMATA, with the full cooperation of WMATA, the COUNTY shall have the right to audit these records at the COUNTY'S expense as provided in Article 5 herein.

- E. WMATA shall monitor the costs, expenses and obligations of the PROJECT to prevent expenditures greater than the approved PROJECT BUDGET notwithstanding any provision of this AGREEMENT to the contrary. Upon expending eighty percent (80%) of the PROJECT BUDGET, WMATA shall notify the COUNTY in writing of the final anticipated costs, expenses and obligations. If, at any time, the anticipated final costs, expenses and obligations are projected to exceed the PROJECT BUDGET, WMATA shall promptly notify the COUNTY in writing of such projection, and WMATA shall not undertake any work or incur any expense in excess of the approved PROJECT BUDGET without prior approval of the COUNTY BOARD.

Section 4.02: Project Payments.

The following provisions shall apply to payments required of the COUNTY pursuant to this AGREEMENT:

- A. Upon execution of this AGREEMENT, the COUNTY shall release and authorize the use of the remaining FUNDS (previously reallocated from the Ballston Station Improvement Project for Phase 1 of this PROJECT) in the amount of approximately \$772,000, and an additional amount of approximately \$455,940 in previously unallocated FUNDS in Arlington's account in the Transportation Infrastructure Investment Fund (TIIF).
- B. On or about March 1, 2008, WMATA shall submit to the COUNTY PROJECT OFFICER an invoice for the balance of FUNDS of approximately \$985,060 necessary to fund the PROJECT BUDGET. The County shall pay WMATA said balance of FUNDS within thirty (30) DAYS of its receipt on the invoice; provided however, that if WMATA has not provided all monthly statements then due under paragraph D herein, the County shall pay said balance within 30 DAYS from the date of its receipt of any of the outstanding monthly statements due under paragraph D herein.

Draft

Draft

Draft

- C. In the event that the COUNTY does not pay the invoice as provided in paragraph B above, WMATA will notify the COUNTY and request payment of the overdue amount. The COUNTY shall pay the overdue amount within seven (7) DAYS after receipt of the notice. If WMATA does not receive the overdue amount by said time frame, then either Party may terminate this AGREEMENT pursuant to Article 8 herein. Any dispute related to the final invoice which cannot be resolved by the COUNTY PROJECT OFFICER and WMATA PROGRAM MANAGER shall be handled in accordance with Article 10 herein.
- C. Irrespective of the source or sources of FUNDS for the PROJECT, WMATA shall submit to the COUNTY monthly statements reflecting obligations made by WMATA in performing the PROJECT WORK, and the balance of any remaining cash advances. WMATA will submit the statement for the previous month within thirty (30) DAYS following the end of the month. Such monthly statement shall not be for billing purposes, but shall be intended to provide the COUNTY with an accurate accounting of WMATA's obligations made to date toward the PROJECT BUDGET. WMATA shall ensure that all costs charged to the PROJECT are supported by properly executed payrolls, time records, invoices, contracts, or vouchers evidencing in detail the nature and propriety of the charges.
- D. At the conclusion of the PROJECT WORK, or upon termination under Article 8 hereof, WMATA shall present to the COUNTY a final reconciliation and a final accounting of all PROJECT costs. The COUNTY will pay the final invoice within thirty (30) DAYS of the date of its receipt of the invoice, provided that the costs do not exceed the PROJECT BUDGET. In the event of a dispute, either Party may initiate the dispute resolution process pursuant to Article 10. Any excess FUNDS at the completion of the PROJECT WORK will be returned to the COUNTY.
- E. If the PROJECT costs exceed the PROJECT BUDGET and if FUNDS are exhausted, then the COUNTY has the sole discretion to determine whether to use Federal grant funds to pay for all services provided by WMATA, or its CONTRACTORS, to complete the PROJECT. If Federal grant funds are used for such payments, WMATA hereby agrees to comply with all pertinent Federal requirements, including invoicing procedures

**ARTICLE 5
PROJECT CONDITIONS**

Section 5.01: Records Access Audit, and Retention.

WMATA agrees that the COUNTY or any duly authorized representative shall, at the COUNTY's expense, have access to and the right to examine, copy and audit any pertinent books, documents, papers, accounts, reports and records of WMATA involving Phase Two PROJECT WORK. Unless otherwise required by law or agreements with any GRANTING AGENCY to be retained for a longer period of time, WMATA hereby agrees, for the PROJECT, to retain and maintain books, documents, papers, accounts, reports and records required under this AGREEMENT for a period of not less than three (3) years after the date on which WMATA's obligations and services provided under this AGREEMENT for each Project are finally completed. If any litigation, claim, negotiation, audit, or other action has commenced before the expiration of the three (3) year period, then the books, documents, papers, accounts, reports and records shall be retained by WMATA until the action and resolution of all issues that arise from it have been finally concluded, or until the end of the three (3) year period, whichever is later. The COUNTY, its authorized agents and/or COUNTY auditors, and the Granting Entities, shall have full access to and the right to examine and audit any of WMATA's books, documents, papers, accounts, reports and records related to the PROJECT during said period.

Section 5.02: Third Party Inquiries.

The PARTIES agree that, as to all oral or written inquiries from any person or entity to WMATA regarding the status of the PROJECT, or any record generated as a result of the existence of this AGREEMENT, the WMATA Public Access to Records Policy (Policy/Instruction 1.12/0) shall provide the WMATA procedure for said inquiries. The request may be referred to: Office of the Secretary/Chief of Staff, WMATA, 600 5th St., N.W., Washington, D.C. 20001. Any request to the COUNTY for documents or records shall be governed to the extent applicable by the Virginia Freedom of Information Act.

Section 5.03: Non-Appropriation.

- A. All of the COUNTY's obligations under this AGREEMENT are subject to appropriation of FUNDS by the COUNTY BOARD for the specific purpose of satisfying the payment and performance of such obligations. The COUNTY

Draft

Draft

Draft

shall not be liable for any amounts payable to WMATA unless and until such FUNDS have been appropriated for payment and then only to the extent thereof. It is agreed by the PARTIES that no subsequent amendment of this AGREEMENT, no addendum to this AGREEMENT (or to any PROJECT document), and no action by the PROJECT OFFICER shall compromise the full legal effect and implication of this provision between the PARTIES or their respective successors or assigns, CONTRACTORS or agents. This AGREEMENT shall not constitute a pledge of the full faith and credit of the COUNTY or a bond or debt of the COUNTY in violation of Section 10, Article VII of the Constitution of the Commonwealth of Virginia.

- B. If FUNDS are not appropriated for the specific purpose of satisfying any of the obligations of the COUNTY for the PROJECT, then the PROJECT shall terminate upon written notification by or on behalf of the COUNTY to WMATA, without any termination fee or any liability or obligation whatsoever by the COUNTY to WMATA, its CONTRACTORS or any third party or PARTIES, other than obligations for which FUNDS have been appropriated. In such event, any previously appropriated FUNDS shall not be affected thereby. This AGREEMENT shall continue as to any other Project for which funds have been appropriated. It is agreed by the PARTIES that, notwithstanding any provision in this AGREEMENT to the contrary, this non-appropriation provision shall supersede any and all obligations imposed by any other provision of this AGREEMENT.
- C. All of WMATA's obligations under this AGREEMENT are subject to appropriation of FUNDS by the COUNTY BOARD for the specific purpose of satisfying the payment and obligating WMATA to perform work. WMATA shall not be liable for performance of work as described herein or in the PMP unless and until such Funds have been appropriated for payment and then only to the extent thereof.

ARTICLE 6 FORCE MAJEURE

Section 6.01: WMATA Responsibilities in Event of Force Majeure.

Provided that WMATA gives prompt written notice to the COUNTY at the beginning of

Draft

Draft

Draft

the period of Force Majeure, WMATA shall be excused from performing hereunder and shall not be liable in damages to the COUNTY , if performance is totally interrupted by reason of Force Majeure provided, however, that the period of excused performance shall last only as long as the period of Force Majeure.

Section 6.02: Force Majeure Defined.

The term "Force Majeure" shall mean any event beyond the reasonable control of, and without the fault or negligence of, WMATA including, but not limited to, acts of God, labor strike, flood, earthquake, storm, fire, lightning, epidemic, war, riot, acts of terrorism and/or sabotage, civil disturbance, change in law or applicable regulation subsequent to the date hereof, and action or inaction by federal, State or local legislative, executive, administrative or judicial agency or body.

**ARTICLE 7
INSURANCE**

Section 7.01: Generally.

Any policy(ies) of insurance, including but not limited to, professional liability, motor vehicle liability, and general liability, required of any contractor, subcontractor, consultant or any third party (jointly referred to as "Contractor(s)") performing PROJECT WORK for WMATA to satisfy the requirements of this AGREEMENT, shall have a written endorsement making the COUNTY BOARD of Arlington County, Virginia, all Arlington County elected and appointed officers, officials, employees, CONTRACTORS, and agents and WMATA each as additional insureds to the Contractor's insurance policies. The policy limits of all Contractor-provided insurance for the PROJECT WORK are set forth in Section 7.03 below.

Section 7.02: Indemnification.

WMATA shall require its Contractor(s) to indemnify and hold harmless WMATA, the COUNTY BOARD of Arlington County, Virginia and all Arlington County elected and appointed officers, officials, employees, CONTRACTORS and agents against any and all liability claims, and the cost of whatsoever kind and nature arising or alleged to have arisen for injury, including personal injury to or death of person or persons, and for loss or damage occurring in connection with the PROJECT WORK and or any acts in

Draft

Draft

Draft

connection with activities to be performed under the PROJECT WORK resulting in whole or in part from the acts, errors or omissions of the Contractor, or any employee, agent or representative of the Contractor(s). The indemnity provided herein is a contractual undertaking that is not limited by the limits of insurance provided in Section 7.02 below.

Section 7.03: Insurance.

WMATA shall require its Contractor(s) and all sub-contractors performing PROJECT WORK to obtain the following insurance coverage and to comply with the requirements of this section (7:03):

A. Worker's Compensation:

An insurance policy complying with the requirements of the statutes of the jurisdiction in which the work will be performed, and if there is any exposure to the Contractor(s) or to any of the Contractor's personnel, compliance with the U.S. Longshoremen's and Harbor Worker's Act, Jones Act or Admiralty Laws and the Federal Employers' Liability Act. WMATA shall have its Contractor provide coverage for these requirements.

The coverage under such an insurance policy or policies shall have limits not less than:

| | |
|------------------------|-------------------------|
| Worker's Compensation: | STATUTORY |
| Employer's Liability: | |
| Each Accident | \$1,000,000 |
| Disease – Policy Limit | \$1,000,000 |
| \$1,000,000 | Disease – Each Employee |

B. Commercial General Liability Insurance (CGL):

An insurance policy covering the liability of the Contractor(s) for all work or operations under or in connection with this PROJECT; and all obligations assumed by the Contractor(s) under its Contract. Products, Completed Operations and Contractual Liability must be included, in addition to coverage for explosion, collapse, and underground hazards, wherever required.

The coverage under such an insurance policy or policies shall have limits not less than:

| | |
|---------------------------|-----------------------------------|
| Bodily Injury and | \$1,000,000/\$2,000,000 |
| Property Damage Liability | per occurrence/aggregate |
| | Or combined single limit not less |

Draft

Draft

Draft

than \$2,000,000.

| | |
|-----------------------------|-------------|
| Premises Medical Payments | \$5,000 |
| Fire Legal Liability | \$1,000,000 |
| Personal Injury/Advertising | \$1,000,000 |

WMATA shall require its Contractor(s) to include WMATA and the COUNTY BOARD of Arlington County, Virginia, all Arlington County elected and appointed officers, officials, employees, CONTRACTORS, and agents, each as an additional insured under the general liability insurance coverage with respect to activities related to the PROJECT WORK.

C. Professional Errors and Omission Liability Insurance:

WMATA shall require its Contractor(s) to provide a separate liability insurance policy to pay on behalf of the Contractor all costs the Contractor shall become legally obligated to pay as damages due to any claim(s) caused by any negligent act, error or omission of the Contractor or any other person for whose acts the Contractor is legally liable arising out of their contractual agreement with WMATA or under any agreement between the Contractor and its subcontractors regarding the PROJECT.

Minimum Limits of Liability for this coverage shall be \$3,000,000 Per Occurrence/\$3,000,000 Aggregate

D. Automobile Liability Insurance:

An insurance policy covering the use of all owned, non-owned, hired, rented or leased vehicles bearing license plates appropriate for the circumstances for which they are being used, as required by the Motor Vehicle Laws of the District of Columbia, Maryland or Virginia, and not covered under the Contractor's Commercial General Liability Insurance aforementioned. The coverage under such an insurance policy or policies shall include uninsured motorist coverage and have limits not less than:

| | |
|-------------------|-----------------------------|
| Bodily Injury and | \$1,000,000 Combined Single |
|-------------------|-----------------------------|

Draft

Draft

Draft

Property Damage Liability

Limit

WMATA shall require its Contractor to include WMATA and the COUNTY BOARD of Arlington County, Virginia; all Arlington County elected and appointed officers; officials; employees; CONTRACTORS; and agents, each as an additional insured under the coverage for Automobile Liability Insurance with respect to performance of all PROJECT activities.

E. General Provisions:

(1) WMATA shall require its Contractor(s) to forward to WMATA, Office of Insurance, Room 8D01, a certificate or certificates, issued by the insurer(s), of the insurance required under the foregoing provisions, including special endorsements. Such certificate(s) shall be in a form satisfactory to WMATA and shall list the various coverages and limits.

Insurance companies providing the coverage must be acceptable to WMATA and the COUNTY, rated by A.M. Best, and carries at least an "A" Rating. In addition to any and all aforementioned provisions, the insurance policies shall not be changed or canceled, and they will be automatically renewed upon expiration and continued in full force and effect until completion and acceptance of all work covered by the contract between WMATA and its Contractor(s), unless the WMATA Office of Insurance is given thirty (30) DAYS written notice before any change or cancellation is made effective. WMATA shall require its Contractor to directly furnish WMATA's Office of Insurance with a certified copy of each insurance policy upon request.

(2) The initial and subsequent certificates of insurance shall include a description of the contract work and the assigned contract number. Prior to beginning any PROJECT WORK, the insurance requirements as outlined by the WMATA Office of Insurance must be approved in writing.

(3) All insurance shall be procured from insurance or indemnity companies acceptable to WMATA and licensed and authorized to conduct business in the District of Columbia, State of Maryland and Commonwealth of Virginia. WMATA approval or failure to disapprove insurance furnished by the Contractor(s) shall not release the

Contractor(s) of full responsibility for liability for damage and accidents.

(4) If at any time the above required insurance policies should be canceled, terminated or modified so that the insurance is not in full-force and effect as required herein, WMATA reserves the right to terminate the contract between WMATA and its Contractor(s).

(5) The Contractor(s) shall require each subcontractor, at all tiers, to provide evidence of insurance coverage specified herein and such evidence of coverage shall be provided to WMATA, Office of Insurance, prior to commencement of work. Such coverage shall remain in full force and effect during the performance of activities under the contract between WMATA and its Contractor(s).

(6) Any contract of insurance or indemnification naming WMATA, the United States of America, all Arlington County elected and appointed officers, officials, employees, CONTRACTORS, and agents as additional insureds shall be endorsed to provide that the insurer will not contend in the event of any occurrence, accident, or claim that WMATA, the United States of America, or the COUNTY are not liable in tort by virtue of being governmental instrumentalities, public or quasi-public bodies, or political subdivisions of the Commonwealth of Virginia.

(7) In the event the required certificates of insurance as specified herein are not furnished within ten (10) business DAYS after the execution of the contract, the Contractor(s) shall not be permitted to enter upon the property to perform the duties outlined in the contract until all required insurance certificates or evidence of self-insurance have been received.

(8) Prior to commencement of PROJECT WORK by any contractor or sub-contractor, WMATA shall deliver to the County PROJECT OFFICER copies of all required certificates of insurance and as determined by the COUNTY any additional evidence that the CONTRACTORS and sub-contractors have met the insurance requirements.

ARTICLE 8
PROJECT TERMINATION

Section 8.01: Termination by Mutual Agreement and Termination for Convenience.

- A. This AGREEMENT may be terminated with the mutual written agreement of the PARTIES upon such agreed terms and conditions.
- B. Notwithstanding any provision of this AGREEMENT to the contrary, either Party may terminate this AGREEMENT, in whole or in part, for convenience whenever the terminating Party determines that such termination for convenience is in its best interests. Any such termination shall be effected by the delivery of a written notice of termination from the PROJECT OFFICER to WMATA, or from WMATA to the PROJECT OFFICER, as the case may be, at least thirty (30) DAYS before the date of termination, specifying the date upon which such termination becomes effective and specifying that the remainder of this AGREEMENT is in full force and effect.
- C. After receipt of a notice of termination, and except as otherwise directed, WMATA shall stop all work specified in the notice, including work of all WMATA CONTRACTORS and their subcontractors, on the date of receipt of the notice of termination or other date specified in the notice, complete any and all work as may be necessary to perform that portion of the PROJECT not subject to the notice, and place no further orders or subcontracts for materials, services or facilities, except as are necessary for the completion of such portion of the work not terminated. WMATA shall immediately transfer all documentation and paperwork for terminated work to the COUNTY ; terminate all vendors and CONTRACTORS and settle all outstanding liabilities and claims; and use WMATA's best efforts to mitigate any damages that may be sustained as a consequence of termination.
- D. Subject to the provisions of Section 5.03 of this AGREEMENT, the COUNTY shall pay WMATA all costs for PROJECT obligations

Draft

Draft

Draft

incurred under this AGREEMENT up to, and including, the date of termination for convenience in accordance with this Section.

E. If the COUNTY terminates this AGREEMENT, then WMATA shall be entitled to reasonable costs associated with demobilization as agreed to by the PARTIES.

Section 8.02: Termination for Cause.

Upon cancellation of the PROJECT due to an inability of the PARTIES to agree upon a revised PROJECT scope and/or PROJECT BUDGET under Section 4.01.G. of this AGREEMENT, the PARTIES agree that, if work related to PROJECT design has begun, then WMATA shall submit to the COUNTY, within thirty (30) DAYS after acceptance of a cancellation notice, an invoice for services rendered by WMATA's design consultant for costs, incurred prior to the effective date of cancellation. Such invoice will be paid by the COUNTY in accordance with the provisions of Section 4.02 herein.

- A. Not later than thirty (30) DAYS after the date of the cancellation notice, WMATA shall submit to the COUNTY all documents, information, and tangible products resulting from, or generated by work related to the PROJECT.
- B. Upon cancellation of the PROJECT, WMATA shall discontinue work on the PROJECT as of the date specified in the notice of cancellation.

**ARTICLE 9
NOTICES**

All notices hereunder shall be in writing and shall be deemed to have been given or served for all purposes when delivered personally, or when received by certified or registered mail, first-class, postage paid, return receipt requested to any party hereunto and received at the following addresses:

COUNTY BOARD
OF ARLINGTON
COUNTY, VIRGINIA

County Manager
Arlington County, Suite 302
2100 Clarendon Blvd.
Arlington, VA 22201

- cc: 1. Director, Department of Environmental Services
- 2. Director, Department of Management and Finance
- 3. PROJECT OFFICER

WASHINGTON
METROPOLITAN AREA
TRANSIT AUTHORITY
(WMATA)

Director of Procurement
WMATA
600 Fifth Street, N.W.
Washington, D.C. 20001

- cc: 1. General Counsel
- 2. Assistant General Manager for Department of Capital Projects Management
- 3. Project Manager

**ARTICLE 10
DISPUTE RESOLUTION**

Section 10.01: Dispute Resolution by Written Agreement.

Any dispute arising under the AGREEMENT may be disposed of by written agreement between WMATA and the COUNTY .

Section 10.02: Mediation.

If such a dispute cannot be resolved by the PARTIES within fourteen (14) DAYS of receipt by the non-disputing party of a notice of dispute from the disputing party, then the disputing party may, but shall not be required to, request that such dispute be considered and resolved by a mediator mutually agreed upon by the PARTIES. If the PARTIES

Draft

Draft

Draft

agree to resolve the dispute by mediation, then the mediator shall provide a written recommendation to resolve the dispute.

Section 10.03: Good Faith.

The PARTIES agree to make a good faith effort to accept such a recommendation. Nothing herein is intended to limit the rights of either of the PARTIES to resolve disputes through any other means not described or provided for in this AGREEMENT, nor do the PARTIES waive their respective legal rights and remedies.

ARTICLE 11
MISCELLANEOUS

Section 11.01: No Waiver of Sovereign Immunity.

Notwithstanding any other provisions of this AGREEMENT to the contrary, nothing in this AGREEMENT nor any action taken by the COUNTY , the PROJECT OFFICER, or any COUNTY elected or appointed official, officer or employee, pursuant to this AGREEMENT, nor any document which arises out of this AGREEMENT shall constitute or be construed as a waiver of either the sovereign immunity or governmental immunity of the COUNTY , the PROJECT OFFICER, or any of the COUNTY 's elected and appointed officials, officers and employees.

Section 11.02: Governing Law, Proper Venue and Enforcement.

This AGREEMENT shall be construed and enforced in accordance with the laws of the Commonwealth of Virginia. The PARTIES hereto agree that all disputes arising hereunder shall be brought in a court of competent jurisdiction.

Section 11.03: No Third Party Beneficiaries.

The PARTIES hereto mutually agree that no provisions of this AGREEMENT shall create in the public, or in any person or entity other than those signing this AGREEMENT as PARTIES hereto, rights as a third party beneficiary hereunder, or authorize any person or entity, not a party hereto, to maintain any action for personal injury, property damage, or breach of contract pursuant to the terms of this AGREEMENT or otherwise.

Section 11.04: Entire Agreement.

This AGREEMENT contains and embodies the entire agreement of the PARTIES hereto.

Draft

Draft

Draft

No representations, inducements, or agreements, oral or otherwise, between the PARTIES not contained and embodied in said AGREEMENT shall be of any force and effect, and the same may not be amended, modified, changed or terminated, in whole or in part, in any manner other than by an agreement in writing approved by the COUNTY BOARD of Arlington County and duly signed by properly authorized individuals of all PARTIES.

Section 11.05: No Employee Benefit.

No employee of Arlington County, Virginia or of WMATA shall be admitted to any share or part of this AGREEMENT or to any benefit that may arise therefrom which is not available to the general public.

Section 11.06: Severability.

The sections, paragraphs, sentences, clauses and phrases of this AGREEMENT are severable, and if any phrase, clause, sentence, paragraph or section of this AGREEMENT shall be finally declared invalid by the valid judgment or decree of a court of competent jurisdiction, then such invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this AGREEMENT.

Section 11.07: Project Officer.

The performance of WMATA's obligations under this AGREEMENT is subject to the review and approval of the COUNTY 's PROJECT OFFICER. It shall be the responsibility of WMATA to manage the details of the execution and performance the PROJECT consistent with this AGREEMENT.

Section 11.08: No Assignment

Neither party may assign this AGREEMENT without the prior written consent of the other party.

Section 11.09: Other Laws.

No provision of this AGREEMENT is intended to, or shall be construed as, authorizing WMATA to act or fail to act in any manner which is inconsistent with or not authorized by any applicable federal, State or local law, ordinance or regulation.

Draft

Draft

Draft

Section 11.10: Captions.

For the purposes of this AGREEMENT, except as otherwise expressly provided or unless the context otherwise requires, 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.

Section 11.11: Recitals.

The recitals are incorporated into this AGREEMENT.

Section 11.12: Amendments.

The PARTIES may amend the AGREEMENT by written amendment executed by duly authorized representatives on behalf of the PARTIES.

IN WITNESS WHEREOF, the Washington Metropolitan Area Transit Authority and The COUNTY BOARD of Arlington County, Virginia certify that this AGREEMENT is executed by their respective authorized signatories and shall be effective as of the date first above written.

Approved as to Form:

WASHINGTON METROPOLITAN
AREA TRANSIT AUTHORITY

Name
General Counsel

John Catoe
General Manager/Chief Executive Officer

Approved as to Form:

THE COUNTY BOARD OF ARLINGTON COUNTY,
VIRGINIA

County Attorney

Ronald Carlee
County Manager

ATTACHMENT A

I. Employment Discrimination by Contractor Prohibited

During the performance of this contract, the Contractor agrees as follows:

- A. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex sexual orientation, national origin, age, disability or any other basis prohibited by State law related to discrimination in employment except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
- B. The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor is an Equal Opportunity Employer.
- C. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.
- D. The Contractor will comply with the provisions of the Americans with Disabilities Act of 1990, which prohibits discrimination against individuals with disabilities in employment and mandates their full participation in both publicly and privately provided services and activities.
- E. The Contractor will include the provisions of the foregoing paragraphs in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

Draft

Draft

Draft

II. Drug-Free Workplace to be Maintained by Contractor

During the performance of this contract, the Contractor agrees to (1) provide a drug-free workplace for the Contractor's employees; (2) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (3) state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace; and (4) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to a Contractor in accordance with the Arlington County Resolution, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession, or use of any controlled substance or marijuana during the performance of the contract.

Rosslyn Station Access Improvements Project
Arlington County, Virginia

Project Management Plan

1. Project Purpose, Benefits and Scope

In response to the continuing development of area surrounding Rosslyn Metrorail Station, the County Board of Arlington, Virginia has planned and initiated the construction of the Rosslyn Station Improvements Project ("Project"). The County Board has contracted on a reimbursable basis with WMATA for the planning and design of the Project. The County will construct the Project, while the WMATA will monitor, test, accept, own and operate the Project.

The Project will provide many long-term public benefits, foremost being improved access to the Rosslyn Station. It will also support the anticipated increase in Metrorail ridership that will result from new high density mixed land use development adjacent to the Station.

The scope of the Project includes the following elements:

- a. Three high-speed, high-capacity elevators.
- b. Emergency exit stairway and mechanical shaft(s).
- c. Underground station mezzanine with manager's kiosk, fare collection system, passageway connection, all equipment and architectural finishes.
- d. All related appurtenant facilities and systems, including, but not limited to, electrical, communications, fare collection and mechanical equipment and integration as necessary into existing WMATA system.

2. Project Management Plan Requirement

The "Agreement between the Washington Metropolitan Area Transit Authority and the County Board of Arlington County, Virginia (the "Board") for The Design and Approval (Phase One) of Certain Public Transportation Projects", executed August 2, 2000, ("Phase One Agreement") as amended January 2008, requires the preparation of a Project Management Plan ("PMP") to guide the development and implementation of the included projects. The PMP is subject to approval by the County's Project Officer and addresses and details, among other things, the scope, tasks, resources, schedule and budgetary requirements and procedures to do the work approved by the Phase One Agreement. As required by the Agreement, a subsequent Phase Two Agreement between the County Board of Arlington and WMATA will be prepared for each project to address the conditions regarding services to be performed subsequent to authorized Phase One activities to complete the project.

The Phase One Agreement described the PMP, as consisting of a Preliminary PMP and a Final PMP. This PMP combines the Preliminary and Final PMP. The PMP identifies the

Rosslyn Station Access Improvements Project Arlington County, Virginia

Project's key elements: budget, resources, schedule, risk avoidance and insurance requirements, the Project's phases, and the tasks supporting each phase. It guides the performance of tasks under both Phase One and Phase Two. WMATA will supplement the PMP at the end of Phase Two for Phase Three - Procurement, Construction, and Start-Up Testing.

The PMP describes the strategy and plan for ensuring that all professional services, short-term as well as long-term, are delivered to Arlington County in the most effective and efficient manner. The County desires to assess realistically the progress of the Project at each Phase. The County and WMATA seek adequate flexibility in steering the Project through budgetary and schedule constraints and accomplishing a quality product.

The PMP does not supersede the Phase One and Phase Two Agreements.

3. Project Phases

The Project has three phases:

- a. Phase One is project initiation, in which
 - i. WMATA, the County and the developer of Rosslyn Central Place determine real estate requirements for the Project.
 - ii. WMATA and the County negotiate and execute the Phase Two Agreement.
 - iii. The County secures funding for the Project.
 - iv. WMATA and its contractor for design services complete preliminary engineering and provide a preliminary estimate of Project costs.
- b. Phase Two is project design, in which
 - i. WMATA, the County and the developer of Rosslyn Central Place settle real estate requirements for the Project.
 - ii. WMATA and its contractor for design services complete design and Invitation for Bid documents.
- c. Phase Three is project construction, in which
 - i. The County issues the Invitation for Bids, evaluates bids and awards, administers the construction contract, and manages construction.
 - ii. WMATA monitors construction, performs start-up and testing of the Project, certifies the Project under its safety and security program, and accepts the Project for ownership, operations and maintenance.

4. Project Tasks by WMATA

As stated in the Phase Two Agreement, WMATA shall

- a. Procure design services,

Rosslyn Station Access Improvements Project
Arlington County, Virginia

- b. Provide project management and technical oversight for the completion of
 - i. final design,
 - ii. development of construction plans,
 - iii. financial plans,
 - iv. detailed specifications,
 - v. construction cost estimates, and
 - vi. construction bid documents for the Project.

WMATA has procured and contracted with its on-call General Architectural and Engineering Consultant, P2D ("Contractor") to provide design services for the Project, according to Attachment A, Scope of Services, dated September 12, 2007.

- c. The Contractor will undertake the design and other tasks as set forth in Attachment A – Scope of Services.
 - d. WMATA will provide project and consultant management services; prepare exhibits, renderings and handouts as required; conduct design review meetings; make appropriate revisions to documents as necessary during the review and approval process; negotiate and assure approval of requisite agreements; perform risk assessment; identify, seek appraisals and draft agreements necessary to acquire any required real property, including construction easements; develop project schedule; identify resource requirements; prepare cost estimates; prepare construction bid documents, and complete work in the project scope within the approved budget, advising the County of any changes in scope or cost in accordance with provisions in the Phase Two Agreement.
5. Project Tasks by Arlington County include, but are not limited to, review and approval of project design submissions; participation in periodic project status meetings and design reviews; negotiate and assure approval of requisite agreements; identify and secure project funding; initiate invitation for bids, negotiate and award construction contract; administer construction contract; and manage construction, including final administrative closeout.

6 WMATA Project Resources

To serve as WMATA's liaison to the County and to administer and manage the Project, WMATA has assigned a Program Manager with staff and necessary resources as described below:

- a. WMATA will provide periodic administrative and management support of the above Project tasks and direct WMATA staff to provide engineering,

Rosslyn Station Access Improvements Project Arlington County, Virginia

architectural and systems engineering support, all on a cost reimbursable basis.

- b. As noted above, WMATA has procured and contracted with its on-call General Architectural and Engineering Consultant, P2D, at a cost that WMATA has negotiated based on Attachment A, Scope of Services.
 - c. As appropriate, WMATA will provide other staff support, such as financial, legal, procurement, audit, operations and maintenance, all on a cost reimbursable basis. Other WMATA material and non-personnel resources may be included in general support services that will be provided as a contribution to general overhead of the Project as appropriate; e.g., computer equipment/ software, vehicles, telecommunications equipment, radios, office supplies, and other supplies and equipment necessary for the performance of the work. Existing resources will be used to the maximum extent practicable.
 - d. WMATA will distribute to all appropriate WMATA departments and offices, for concurrence and subsequent use, a copy of the PMP to ensure that all appropriate WMATA departments and offices are aware of and able to support the Project.
 - e. It may be necessary for portions of certain tasks to be performed by the County, which may require reimbursement of the County by WMATA.
 - f. The Federal Transit Administration ("FTA"), Federal Highway Administration ("FHWA"), Virginia Department of Transportation ("VDOT"), Virginia Department of Rail and Public Transportation ("VDRPT"), Metropolitan Washington Council of Governments' Transportation Planning Board ("TPB"), the Commonwealth Transportation Board ("CTB"), and others are expected to support the Project as necessary.
6. County Project Resources
- a. Provide periodic administrative and management support of the Project tasks.
 - b. Provide other staff support such as financial, legal, procurement, and accounting, as required.
 - c. Assure an independent review of design submissions and Project documents.

7. Project Schedule

Rosslyn Station Access Improvements Project
Arlington County, Virginia

Subject to the availability of County funding and County authorizations, WMATA has proposed the Design Schedule shown in Attachment B and the County has proposed the Project Schedule shown in Attachment C.

8. Project Budget and Funding

Subject to the availability of County funding, WMATA has prepared the attached Expenditure Forecast by Month for Phases One and Two in Attachment D.

WMATA has estimated its staff and contractor costs for the Project as follows:

| | |
|---|--------------------|
| WMATA Staff Costs | |
| Phase One - Preliminary Engineering, Agreements | \$ 80,000 |
| Phase Two- Final Design, Contract Documents | \$ 183,000 |
| Sub-Total | \$ 263,000 |
| WMATA Contractor Costs | |
| Phase One - Preliminary Engineering, Agreements | \$ 300,000 |
| Phase Two- Final Design, Contract Documents | \$2,450,000 |
| Sub-Total | \$2,750,000 |
| Phase One and Two Total | \$3,013,000 |
| WMATA Staff Support Costs | |
| Phase Three - Procurement, Construction, Start-Up & Testing | To be negotiated |

9. Project Risk & Insurance Recommendations

This PMP will not supersede the insurance provisions of the Phase Two Agreement.

As described in the Phase Two Agreement,

- a. WMATA will provide insurance or self-insurance coverage.
- b. Arlington County, its elected and appointed officers, officials, employees and agents, when appropriate, shall be additional named insured on certain insurance policies.

Rosslyn Station Access Improvements Project
Arlington County, Virginia

- c. The cost of the insurance coverage shall constitute part of the Project budget. WMATA is self-insured for general and professional liability up to \$5 million. Above \$5 million, WMATA is protected by commercial insurance.
- d. Prior to commencing any work under the Phase Two Agreement, WMATA will provide evidence of the required insurance consultants to Arlington County coverage.
- e. Details concerning additional insurance coverage and requirements for contractors are provided in the Phase Two Agreement.

Approved by:

Washington Metropolitan
Area Transit Authority

Thomas R. Robinson, Jr.
Director, JDAC
WMATA Authority Representative

Date:

Arlington County

Blanche (Bee) Buergler
Project Officer
Arlington County

Date:

Attachments

| | |
|--------------|-------------------------------|
| Attachment A | Scope of Services |
| Attachment B | Design Schedule |
| Attachment C | Project Schedule |
| Attachment D | Expenditure Forecast by Month |