

Dated: August 7, 2013

Cooperative Agreement

For Phase 2 of the

Dulles Corridor Metrorail Project (Silver Line)

Between

The WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

and

The METROPOLITAN WASHINGTON AIRPORTS AUTHORITY

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THIS COOPERATIVE AGREEMENT is made and entered into as of this 7th day of August, 2013 by and between the METROPOLITAN WASHINGTON AIRPORTS AUTHORITY (“**MWAA**”), an interstate compact entity created by the Commonwealth of Virginia and the District of Columbia with the consent of the Congress, and the WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY (“**WMATA**”), an interstate compact agency and a common agency and instrumentality of the District of Columbia, the Commonwealth of Virginia and the State of Maryland. MWAA and WMATA are the “**Parties**”.

RECITALS

- A. The Department of Rail and Public Transportation (“**DRPT**”), an agency of the Commonwealth of Virginia, and WMATA entered into an Agreement dated April 28, 2000, under which WMATA assisted DRPT in the preparation of a National Environmental Policy Act (“**NEPA**”) Environmental Impact Statement (EIS) for transit improvements in the Dulles Corridor.
- B. DRPT and WMATA entered into a Second Agreement (the “**Second Agreement**”) dated April 22, 2004, to define the manner in which WMATA was to support DRPT through preliminary engineering for Phase 1 and Phase 2 of the Dulles Corridor Metrorail Project (as further defined on page 5, the “**Project**”) and to provide for reimbursement of WMATA for its costs associated with the technical management work for preliminary engineering and related support activities by DRPT.
- C. The WMATA Board of Directors (“**WMATA Board**”), as a part of the WMATA Compact Hearing and General Plans process, by Resolutions 2000-15, 2004-45, 2002-54, 2006-01, 2006-62, 2007-04, and 2012-24 (“**WMATA Resolutions**”), amended WMATA’s Adopted Regional System (“**ARS**”) so as to incorporate the proposed 23.1 mile Dulles Metrorail Extension (“**Silver Line**”), subject to the fulfillment of certain conditions precedent. WMATA Board Resolution 2012-24 is attached hereto as **Exhibit 1**. Such conditions, as set forth in Article 6 below, are sometimes referred to herein as the “**ARS Incorporation Conditions**”.
- D. On December 29, 2006, MWAA and the Commonwealth of Virginia executed two agreements relating to the transfer of the Dulles Toll Road (“**DTR**”) to MWAA and construction of the Project. The first agreement established conditions for the transfer of the DTR and associated facilities and funds to MWAA. That transfer occurred on November 2, 2008. The second agreement was in the form of a permit with a specific term that authorizes MWAA to operate and manage the DTR, and to receive and own the revenue of the DTR. That agreement was executed and became effective at the time of the DTR transfer. Under that agreement, MWAA is obligated, *inter alia*, to use the DTR revenue to fund and to oversee construction of the Project. In addition, MWAA assumed responsibility of the Sponsor of the Project for purposes of implementing the Project and for purposes of satisfying the requirements of the Federal Transit Administration. As part of interrelated agreements, MWAA agreed to assume a major financing responsibility and to use the revenue from the DTR as security for the debt financing necessary to design and construct the Project. The assumption by MWAA of broad Project responsibility in the two agreements with the Commonwealth of Virginia resulted from

MWAA's unique role in the Dulles Corridor and MWAA's experience with the management of large projects, including the financing and engineering for large projects. MWAA's overall Project responsibility necessitates that it have managerial control over the contracts for the design and construction of Phase 2 of the Project.

E. With responsibility for the Project residing with MWAA, it is appropriate for MWAA and WMATA to specify WMATA's role, as intended owner and operator of the Silver Line, during the final design and construction of Phase 2 of the Project.

F. By Resolution 2007-04, the WMATA Board adopted, as a policy of WMATA, that in order to successfully meet the ARS Incorporation Conditions, WMATA, as the ultimate owner and operator of the Silver Line, must have a role in reviewing and concurring in significant project-related decisions and in the form of the agreements before the agreements are finalized.

G. WMATA and MWAA entered into that certain Cooperative Agreement dated September 14, 2007 to provide for such role. That Cooperative Agreement shall remain in effect as to Phase 1. The Parties intend in this Agreement to specify the roles and responsibilities of WMATA with respect to the Phase 2.

H. MWAA will provide the day-to-day management of the contracts for the design and construction of Phase 2 to which it is a party and will represent to the contractors under those contracts that WMATA, as the intended owner and operator of the Silver Line, will provide technical assistance and serve as Technical Advisor to MWAA, as set forth herein, during the work covered by the contracts. Phase 2 will be designed and constructed under the following contracts:

(i) a design-build contract for the design and construction of all of Phase 2 except the WMATA maintenance and storage yard at Dulles Airport ("**Phase 2 Design-Build Contract**"); and

(ii) a design-build contract for the maintenance and storage yard ("**Phase 2 Yard Contract**").

MWAA will be a party to the Phase 2 Design-Build Contract and the Phase 2 Yard Contract. Work to be performed under the Phase 2 Design-Build and Phase 2 Yard Contracts is referred to herein as the "**Phase 2 Work**". WMATA, as a Technical Advisor, will provide assistance to MWAA during Phase 2. WMATA is not a party to the Phase 2 Contracts but is expressly made a third party beneficiary under those contracts following Substantial Completion.

I. Pursuant to Resolution #99-63 adopted by the WMATA Board on October 28, 1999, WMATA is able to participate in reimbursable projects ("**Reimbursable Projects Policy**") at the request of a WMATA Compact jurisdiction, here the Commonwealth of Virginia, provided that the funding for WMATA's services shall be established in advance based upon a budget submitted and approved for each quarter and that payments shall be made based upon invoices that reflect actual or projected levels of effort subject to adjustment to reflect actual

costs expended.

J. MWAA and WMATA desire to enter into this Agreement under which WMATA will serve as a Technical Advisor to MWAA for design, construction, and related support activities for the Phase 2 Work as more specifically described herein, and to provide for MWAA's reimbursement to WMATA of WMATA's reasonable and allocable costs incurred in performing this function.

K. In its role as Technical Advisor (see Section 2.7.B), WMATA will advise MWAA as necessary to ensure that the Phase 2 Work is performed in accordance with the WMATA Design Criteria and Requirements, and that the work, when completed, is fit for revenue service and acceptance into the ARS. In addition, in its role as Technical Advisor and as intended owner and operator of the Silver Line, WMATA will review and approve the design of the work performed under the Phase 2 Design-Build Contract and the Phase 2 Yard Contract and perform other activities described in this Agreement (see Section 2.7.B).

L. WMATA will also perform the ARS Acceptance Tasks described in the Agreement (see Section 2.7.C). MWAA will reimburse WMATA as provided herein for all reasonable and allocable costs incurred in performing the ARS Acceptance Tasks. This Agreement identifies the actions and activities that must occur before the WMATA Board will accept the Phase 2 of Project into the ARS.

M. WMATA will also provide, in support of the Contractors' work, access to WMATA facilities, qualified personnel, equipment, and services, as described in Section 2.7.B of this Agreement.

N. Additionally, this Agreement addresses WMATA's responsibilities for the design, procurement, installation and commissioning of certain capital equipment for Phase 2. (See Section 2.7.A).

O. Finally, this Agreement addresses the conditions under which work may be performed on the portions of the Silver Line that are, at the time of the work, part of WMATA's existing system ("**WES**"). MWAA and its contractor under the Phase 2 Design-Build Contract will be permitted to perform work on the WES after executing a Right of Entry Permit, the form of which attached hereto as **Exhibit 2**.

P. In December 2011, a Memorandum of Agreement relating to Phase 2 of the Project ("**MOA**") was executed by various parties, including WMATA and MWAA. The MOA is attached hereto as **Exhibit 3**.

NOW, THEREFORE, in consideration of the preceding and the agreements, terms, covenants and conditions set forth herein, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

Article 1. DEFINITIONS AND INTERPRETATIONS

Section 1.1 Definitions

The definitions set forth in the above recitals are incorporated by reference to the same extent and with the same force and effect as if fully hereinafter set forth in this Section 1.1. The following are definitions of additional terms used in this Agreement:

- A. **“Adopted Regional System Acceptance Tasks” or “ARS Acceptance Tasks”** means those tasks to be performed by WMATA to meet the terms of the WMATA Board Resolutions and enable the WMATA Board to accept Phase 2 of the Project into the ARS, as identified in Section 2.7.C.
- B. **“Agreement”** means this Cooperative Agreement for Phase 2 of the Silver Line project between MWAA and WMATA.
- C. **“Approved Deviations”** means the deviations from WMATA Design Criteria and Requirements for Phase 2 (i) that have been approved by WMATA as of the date of this Agreement (listed on Exhibit 4), (ii) that are requested by MWAA or Contractors and are approved by WMATA during the term of this Agreement in accordance with the provisions of Section 3.2, or (iii) are initiated by WMATA and agreed to by MWAA or the Coordinating Committee during the term of this Agreement pursuant to the provisions of Section 3.2.
- D. **“Approved PE Design”** means the preliminary engineering design for Phase 2, as set forth in the Statement of Work including Appendices 1, 3, 5, 6, 7 (including agreed-upon resolutions) and 10 thereto issued in MWAA’s Final Request for Proposals No. 8-13-C001 for the award of the Phase 2 Design-Build Contract.
- E. **“Authorized Representative”** means the occupant of the named position(s) for each party who has the delegated authority to act for that party in certain sections of this Agreement, and who is to receive official notices for that party under this Agreement. Either party may name a new Authorized Representative by a written letter to the other party.
- F. **“Business Day” or “business day”** means any day other than a Saturday, Sunday or other day on which The New York Stock Exchange or banks are closed in New York, New York or Richmond, Virginia.
- G. **“CIL”** means Certifiable Items List which includes the SCIL “Safety Critical Items List”.
- H. **“Days” or “days”** means calendar days unless otherwise stated.

- I. **“Contracts”** means the Phase 2 Design-Build Contract and the Phase 2 Yard Contract.
- J. **“Contractor”** and **“Contractors”** means the contractors under the Phase 2 Design-Build Contract and/or the Phase 2 Yard Contract.
- K. **“Coordinating Committee”** means the Coordinating Committee established under Section 3.7 of the MOA.
- L. **“Dynamic Testing Readiness”** and **“Certificate of Dynamic Testing Readiness”** shall have the same meaning as in the Phase 2 Design-Build Contract.
- M. **“Eligible Costs”** means those costs allowed for reimbursement under federal grants as specified in OMB Circular A-87 (as amended), including WMATA start-up costs. Such start-up costs shall include start-up utility costs to the extent allowed by such OMB Circular.
- N. **“Financial Records”** means any and all original documents that are used under OMB Circulars A-87 and A-133, as those documents may be amended from time to time, to support federal grant costs or to generate the invoices submitted by WMATA to MWAA under this Agreement. Financial Records includes all documents submitted, or relied upon, by WMATA staff, consultants, sub-consultants, vendors, and suppliers working on the Project, to the extent those documents support federal grant costs or submitted invoices.
- O. **“OCIP”** means the Owner-Controlled Insurance Program to be maintained by MWAA pursuant to the Contracts.
- P. **“Operational Readiness Date”** or **“ORD”** means the date on which WMATA determines that the Project is sufficiently complete for WMATA to commence simulated rail service and prepare for revenue operation.
- Q. **“Phase 1”** means the segment of the Project from its junction with the Orange Line near the West Falls Church Station to the Wiehle Avenue pocket track in Reston, Virginia.
- R. **“Phase 2”** means the segment of the Project from the Wiehle Avenue pocket track in Reston to Route 772 in Ashburn, Virginia.
- S. **“Project”** means the Dulles Corridor Metrorail Project as approved by the Federal Transit Administration in its Record of Decision dated March 2005, as supplemented on November 17, 2006, and such approval is further amended from time to time. Notwithstanding the foregoing, as used in the Agreement, “Project” does not include the parking structures that are intended under the MOA to be built at the Phase 2 rail stations by or through Fairfax County and Loudoun County.

- T. **“Project Schedule”** means the Critical Path Method schedule to be developed and maintained by MWAA representing the plan for the execution of the Phase 2 Work, and integrating Project tasks for the Contractor, MWAA, WMATA, Fairfax County, Loudoun County, and other Project participants.
- U. **“Record Deliverables”** means the final, clean, and comprehensive version of the as-built drawings, technical reports, technical specifications, calculations, shop drawings, system software, and other records created during the course of the Phase 2 Work. Record Deliverables must be complete in every detail in accordance with industry standards and correctly depict the as-constructed or as-installed condition of the completed Phase 2 Work. The Record Deliverables for the Phase 2 Design-Build Contract are described in Division 1, Specification 01 78 39. MWAA and WMATA shall agree upon the Record Deliverables to be required in the Contract for the Yard.
- V. **“SSCP”** means WMATA’s plan, entitled “Safety & Security Certification Program Plan” dated March 2012, attached hereto as **Exhibit 5**, for, among other things, verifying that safety and security requirements are incorporated into design, construction/installation, procurement and testing activities, training programs, and operations and maintenance procedures for Metrorail extensions.
- W. **“Substantial Completion”** has the same meaning as in the Phase 2 Design-Build Contract.
- X. **“Transit-Related Facility”** means any facility, structure, or other physical element of the Project including work constructed or delivered under Phase 2 Design-Build Contract and Yard Contract that WMATA, as the eventual owner and operator of Phase 2, will own, operate or maintain.
- Y. **“WMATA Acceptance”** means the decision by the WMATA Board to accept Phase 2 of the Project into the ARS which is estimated to occur approximately 90 days after ORD.
- Z. **“WMATA Acceptance Determination”** means the determination by WMATA that, with respect to Phase 2 of the Project, all conditions in Article 6 of this Agreement have been satisfied and all ARS Acceptance Tasks have been completed, and that Phase 2 is therefore eligible and ready for WMATA Acceptance.
- AA. **“WMATA Design Criteria and Requirements”** means the design criteria, requirements and standards in the WMATA Manual of Design Criteria (Release 9, dated May 2008); WMATA Standard Drawings, included updated drawings, as set forth on **Exhibit 6**; Summary of WMATA Technological Enhancements Supplement to Design Criteria 9.0, dated March 2013, as set forth in **Exhibit 7**; all as modified by Approved Deviations including changes approved under this Agreement including without limitation Section

3.2 below; provided, that for the performance of the Phase 2 traction power system, WMATA Design Criteria and Requirements means the criteria and performance requirements applied to the traction power substations in Phase 1 of the Project.

BB. "Yard" means the WMATA railcar maintenance and storage yard as described in the MOA

Section 1.2 Interpretations

For the purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

1.2.A References.

All references in this Agreement to designated Articles, Sections, and other subdivisions are to the designated Articles, Sections and other subdivisions of this Agreement as originally executed. The words "herein," "hereof," "hereunder," "herewith," and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or other subdivision hereof.

1.2.B Terms.

The terms defined in this Article have the meanings assigned to them in this Article and include the plural as well as the singular.

1.2.C Headings.

The headings and captions used in this Agreement are for convenience of reference only, shall not be deemed to be part of this Agreement for any other purpose, and shall not define or affect the meaning, scope or intent of the provisions hereof.

Article 2. ROLES & RESPONSIBILITIES DURING DESIGN, CONSTRUCTION, TESTING, AND START-UP ACTIVITIES UNDER THE CONTRACTS

Section 2.1 Basic Roles.

MWAA is the overall manager of Phase 2 of the Project. WMATA, as the intended owner and entity responsible for operating and maintaining the completed facilities at such time as the Phase 2 may be accepted into the ARS, will serve as a Technical Advisor to MWAA to assist with review and where specified herein to approve work under the Contracts as more specifically set forth herein. MWAA will utilize WMATA to provide assistance on specialized technical matters relating to the integration of Phase 2 of the Project into the existing WMATA system and relating to the compliance of the Phase 2 Work with (i) the WMATA Design Criteria and Requirements and (ii) WMATA's SSCP. WMATA will also provide access to its facilities, qualified personnel, equipment, and services in support of work by the Contractors.

Section 2.2 Technical Communication Protocols and Contractual Authority.

MWAA shall have sole managing and contractual authority for the Phase 2 Work to ensure the

Contractors' compliance with the Contracts. MWAA shall give consideration to WMATA's advice because WMATA, as the intended owner and operator, will ultimately determine whether Phase 2 is accepted into the ARS. The Contractors will interface with MWAA on a contractual basis and technical basis. MWAA may establish technical communication protocols that will involve direct technical interface and communication between the Contractors and WMATA, other authorized technical representatives of MWAA and WMATA, and directly between MWAA and WMATA. WMATA will provide advice on technical matters, including but not limited to WMATA's Design Criteria and Requirements and whether the final design is consistent with the WMATA approved Phase 2 Preliminary Engineering 100% Design Submittals with agreed upon resolution of all WMATA review comments.

Section 2.3 MWAA's Roles and Responsibilities.

2.3.A Contractor Oversight.

2.3.A(1) Because WMATA will be a third party beneficiary to the Contracts after substantial completion, MWAA shall ensure that the final Contracts terms conform to the following terms reflected in the proposed draft "Phase 2 Design-Build Contract – Dulles Corridor Metrorail Project – Phase 2 – Package A" provided to offerors with the Draft Request for Proposals for the Phase 2 Design-Build Contract, Solicitation No. 8-13-C001 dated October 19, 2012 (the "**Draft RFP**"): (i) the proposed provision for maximum Contractor liability reflected in section 26.2.2 of such draft contract, adjusted in the case of the Yard Contract in proportion to the relative values of the Contracts, and (ii) the proposed provisions regarding the respective Contractor's obligations to correct latent defects or to timely perform warranty work.

2.3.A(2) MWAA will ensure that the Contractors perform all of the design, construction management, quality assurance, analysis, scheduling, construction, installation, start-up, commissioning, testing and all other obligations set forth herein and in the Contracts in order to deliver a safe, reliable, complete, compatible, and fully operational rail transit system which meets or exceeds the performance standards established in this Agreement and in the Contracts. MWAA, with the assistance of WMATA as provided in this Agreement, shall further ensure that the ARS Incorporation Conditions are fulfilled.

2.3.B Compliance Requirements.

Compliance with WMATA Criteria. MWAA shall ensure that all design and construction work performed by the Contractors and their subcontractors under the Contracts or by any contractors under MWAA's control meets or exceeds all of the WMATA Design Criteria and Requirements (which are defined herein to include Approved Deviations), as well as any applicable state or federal regulatory requirements.

Compliance with Approved Design. MWAA shall obtain WMATA's approval for any material change in the final design of any Transit-Related Facility, compared to the

Approved PE Design for such facility, if WMATA reasonably determines that the change materially and adversely affects the appearance, functionality, or durability of such facility. In addition, after a 100% design submittal for a Transit-Related Facility has been approved by WMATA as described in Section 2.7.B(2)(a) below, MWAA shall not approve a change to such approved design, if WMATA reasonably determines that the change materially and adversely affects the appearance, functionality, or durability of such facility.

Compliance with the MOA. MWAA acknowledges that completion of operational readiness testing, ORD, and simulated train service for Phase 2 is dependent on the Phase 2 Yard Contract reaching completion at the same time or before the Phase 2 Design-Build Contract reaches completion. MWAA shall ensure that the Yard is designed and constructed as described in the MOA, with any modifications approved by WMATA.

2.3.C Access to Site and Testing.

MWAA shall ensure reasonable access to the sites where all phases of work under the Contracts is performed, to allow WMATA to perform its oversight activities. MWAA will inform WMATA of any testing activity to be performed under the Contracts at least 14 days in advance of the activity, to the extent the testing is relevant to compliance with WMATA's requirements for Transit-Related Facilities. Twenty-one (21) days' advance notice shall be provided for off-site testing to be conducted at remote locations that would necessitate arrangements for travel and lodging. MWAA shall ensure that the Contractors provide WMATA with a detailed schedule for all required testing and maintain a thirty (30) day look ahead update of all planned testing dates.

Section 2.4 Access to WMATA's Right-of-Way.

Prior to entry on to WMATA property to perform work on the WES, MWAA or the Contractor shall execute a Right of Entry Agreement in the form attached hereto as **Exhibit 2**. Consistent with the terms of (i) the Right of Entry Agreement, and (ii) the limitations inherent in working on an operating system, WMATA will provide access to MWAA, the Contractors, and their subcontractors, as well as the employees and consultants of each, to those portions of the WES or other WMATA property necessary to implement work under the Contracts. As more fully set forth in the Right of Entry Agreement, the Contractors shall provide insurance coverage naming WMATA an additional named insured as specified therein prior to entry onto WMATA property. MWAA shall exercise its oversight responsibility in close coordination with WMATA to achieve consistency with WMATA operating, safety and security standards that are referenced in the Contracts and to avoid contract delays and changes. However, MWAA agrees and acknowledges that access to the WES is subject to WMATA's on-going safety, security, and operational needs and that WMATA may limit or deny access to MWAA or the Contractors where WMATA, in its sole but reasonable discretion, determines that access to the WES will impair revenue operation or interfere with WMATA's on-going safety, security, operational, and maintenance needs. WMATA will take reasonable measures to coordinate with MWAA and the

Contractors to anticipate where and when access to the WES will impair WMATA's operations, operational safety or planned maintenance activities and, where possible, to mitigate that impairment without denying or unduly limiting access. Notwithstanding anything herein, WMATA shall have no liability to MWAA or the Contractors for failing to provide access to the WES.

Section 2.5 Project Office.

2.5.A Description of Office.

MWAA shall establish and maintain, or cause to be established and maintained, a Project office at a location in Northern Virginia and provide adequate office space for WMATA Project personnel necessary to perform the tasks provide in this Agreement. For space planning purposes, the Parties estimate that WMATA will have at the maximum up to 45 people at the Project office, principally in design, and up to a total of 65 people working at any time on the Project. Space will be made available in field offices and trailers as appropriate. MWAA and WMATA recognize that WMATA staffing may fluctuate with the needs of the Project. All costs and expenses associated with leasing, buying, equipping, and maintaining the Project office, and providing for utilities hook-ups and utilities will be a Project cost and a responsibility of MWAA in accordance with Project funding agreements.

2.5.B Specific Office Requirements.

The Project office will also be used to conduct Project team meetings, technical committee meetings, and any other meetings supporting the Project. The Project office will be established, equipped, and maintained by MWAA for all Project staff, including, but not limited to, T-1 Line, computer communication network cabling (internal and external), required building security items, telephones, printers, facsimile machines, and office supplies necessary to fully support WMATA core Project personnel in performing its technical advisory services. However, MWAA shall not be responsible for the provision of computers and specialty software, cell phones, personal or PDA devices, or motor vehicles to WMATA personnel but shall reimburse WMATA for the actual reasonable Project-related cost incurred for these resources. MWAA shall provide a secured and conditioned space to support WMATA computer network equipment at the Project office, with connectivity to data cabling at WMATA offices and cubicles, as required to support installation by WMATA of secure access to WMATA's network for all WMATA employees in the Project office. Space in the field construction trailers will be provided by the Contractor for use by at least two WMATA staff at each office trailer to use during construction to write reports, make phone calls, and seek shelter from the weather.

Section 2.6 Phase 2 Project Records.

2.6.A Access to Documents.

MWAA shall ensure WMATA's access to the most current issued version of all Project documents in order to support its activities on the Project, including, but not limited to the most current project management plans (e.g., Quality Plan, System Acceptance Plan, Integration Plan, etc.), current design and issued for construction (IFC) drawings, specifications,

design change documents, requests for information, construction submittals, shop drawings, field changes, and nonconformance or deficiency reports. The documents shall be made accessible in an indexed manner which allows locating documents relevant to a facility, element, system, or subsystem. MWAA shall also provide WMATA access to all information in MWAA's possession or control information on key Contractor personnel, qualification of specialty design subcontractors, and approved vendors.

2.6.B Shared Project Management Software.

MWAA shall provide that the final Request for Proposals, issued in connection with the Phase 2 Design-Build Contract, requires the awarded Contractor to deliver a project management software system to be shared by MWAA, WMATA and the Contractors, and a requirements-based database system to be maintained by MWAA that will facilitate verification and acceptance of the Phase 2 Work performed under the Phase 2 Design-Build Contract. The purpose of this system is to provide an effective tool to WMATA and MWAA to determine with confidence that work under the Phase 2 Design-Build Contract has been designed, built, and tested in full conformance with contract requirements.

2.6.C Confidential Information.

Information of a proprietary or confidential nature that is provided to WMATA by MWAA or any of the Contractors shall be retained in confidence and not released without the agreement of MWAA, except for disclosures that WMATA is required to make under its Public Access to Records Policy. Prior to disclosing any documents containing such information, WMATA shall give MWAA seven (7) days' written notice of its intended disclosure. Upon WMATA Acceptance, WMATA shall have the right to use, reproduce, and distribute all Project documents and records as WMATA determines appropriate in connection with the ownership and operation of the entire ARS, free of any restrictions by MWAA or any of the Contractors on such use, reproduction, or distribution.

2.6.D Warranty Information.

Upon the transfer of any warranty to WMATA, MWAA shall provide all relevant documents and supporting data to WMATA for warranty administration.

Section 2.7 WMATA's Roles and Responsibilities.

WMATA, as the intended owner and operator, will ultimately determine whether Phase 2 of the Project is accepted into the ARS. To that end, WMATA will perform a multiple-part role, as described below in Sections 2.7.B, 2.7.C, and 2.7.D to support MWAA's goal of delivering a safe and reliable transit system which complies with WMATA Design Criteria and Requirements and the Contracts. WMATA will also provide certain capital equipment necessary for the operation of Phase 2, as provided below in Section 2.7.A.

2.7.A Capital Equipment Design, Procurement, Installation, and Commissioning.

2.7.A(1) Subject to timely funding by MWAA, WMATA shall design, procure, install and commission the following equipment, systems and hardware/software:

2.7.A(1)(a) Railcars. Prior to the date hereof, WMATA entered a contract for the purchase of 128 railcars for the Project, including 64 railcars for Phase 2. WMATA shall continue to manage this procurement and purchase, shall be responsible for the design, testing and commissioning of these railcars, and shall ensure that a Fleet Management Plan which includes these railcars is approved by the FTA.

2.7.A(1)(b) Automatic Fare Collection (“AFC”). WMATA shall complete the following tasks associated with the AFC equipment at the Phase 2 passenger stations. This Agreement and Capital Equipment Budget assume that the parking garages provided at the Phase 2 station sites will not be operated or maintained by WMATA, and therefore do not address or include parking revenue control equipment. However, WMATA will cooperate with Fairfax and Loudoun Counties, and the contractors they engage to construct the Phase 2 parking garages, in defining the garages’ parking revenue control equipment.

(1) Provide MWAA with the technical information required for this AFC equipment. Technical information includes dimensions, weights, environmental requirements, power requirements, control wiring requirements, and any other information necessary to coordinate the interface of the WMATA supplied equipment with the designs for the Project’s passenger stations.

(2) Procure the AFC equipment for the passenger stations, and complete the installation of the equipment. MWAA will provide for the design and installation of the cable ducts and conduits identified by WMATA for the connection of the AFC equipment to the station operator’s kiosk.

(3) Complete all commissioning and acceptance testing of the AFC.

2.7.A(1)(c) Tie-in Activities to the WES. WMATA shall procure and install all database updates and all other hardware, firmware, software, computer equipment, required to tie-in the addition of Phase 2 into the existing WMATA System. MWAA and WMATA will work jointly to provide the software interface data required by WMATA and the Contractor under the Phase 2 Design-Build Contract to update the Rail Operations Computer System (“**ROCS**”) or its successor system and other computer-based control systems on a timely basis. To assist in the coordination of these interfaces, design data deliverables from the Contractor to WMATA and from WMATA to the Contractor shall be established, and applicable milestone dates identified in the Project Schedule.

2.7.A(1)(d) Signage and Graphics. WMATA shall design, fabricate and install in existing stations and railcars new signage, wayside graphics and maps to reflect the Phase 2 stations.

2.7.A(1)(e) Arts-in-Transit. As provided in Section 2.8, WMATA shall manage and coordinate the Arts-in-Transit program for Phase 2.

2.7.A(1)(f) Non-Revenue Vehicles, Equipment and Furniture. WMATA shall manage the procurements for all non-revenue vehicles, equipment and furniture required for Phase 2 of the Project, and schedule the delivery of the equipment prior to the Acceptance Date, or if needed for operational readiness testing, by the Operational Readiness Date.

2.7.A(2) Funding for the acquisition and installation of the equipment, systems and hardware/software described above in Section 2.7.A(1) shall be provided by MWAA in advance and in a timely manner and in accordance with the approved Capital Equipment Budget to ensure that the provision of the equipment, systems and hardware/software is coordinated with and accomplished in accordance with the Project Schedule and that the design interface information, equipment supply, equipment installation, hardware and software modifications at the Rail Operations Control Center and the commissioning of the WMATA-supplied capital equipment are coordinated with the Project Schedule and the Contractor's work.

2.7.B Technical Advisor to MWAA.

WMATA shall provide technical services and support to MWAA during Phase 2 of the Project as described below:

2.7.B(1) Provide timely notification to MWAA of any issue that, if not resolved, could affect the acceptance of Phase 2 into the ARS. WMATA staff shall conduct periodic visits to the Phase 2 Work to verify that design, construction and testing activities are being executed in conformance with the requirements of the Contracts and this Agreement. WMATA shall use its best efforts to participate in witnessing the testing activities of the Transit-Related Facilities and related equipment under the Phase 2 Contracts. Any such visit or participation by WMATA shall not relieve the Contractor of the responsibility of providing quality measures to assure that the work strictly complies with the Contract requirements. No such visit or participation by WMATA shall be construed as constituting or implying acceptance.

2.7.B(2) During the period prior to the award of any of the Contract(s), WMATA shall:

2.7.B(2)(a) Review and provide comments to MWAA regarding proposed Contract terms and conditions and technical requirements. WMATA will provide MWAA with a baseline list of system testing that WMATA believes must be completed to enable ORD to occur.

2.7.B(2)(b) Participate as an advisory member of the MWAA evaluation committee in the evaluation of technical proposals submitted by potential contractors in response

to the solicitation documents and advise MWAA regarding deficiencies in the proposals.

2.7.B(2)(c) Participate in meetings, if any, with potential contractors following issuance of the solicitation document in which the technical requirements of the document is discussed, and make technical comments and recommendations regarding any technical issues arising and any informal suggestions or proposals made during the meetings.

2.7.B(2)(d) Provide comments on the technical qualifications of subcontractors proposed for train control, communications, traction power, and other vital systems by offerors seeking the Phase 2 Design-Build Contract and Phase 2 Yard Contract.

2.7.B(3) In connection with the design work performed under the Contracts, WMATA shall:

2.7.B(3)(a) Review and provide comments on all Transit-Related Facility design submittals made by the Contractors under the Contracts, as follows:

- (i) Transit-Related Facility submittals made under the Phase 2 Design-Build Contract exclude documents pertaining to permits, schedules, maintenance of traffic plans and project controls/contract compliance submittals.
- (ii) Transit-Related Facility submittals (including, where applicable, construction submittals and shop drawings approved by the Contractor/Designer of Record) will be made available to WMATA by MWAA, or the Contractor at MWAA's direction, simultaneously with receipt by MWAA.
- (iii) WMATA's review response shall be provided to MWAA within 21 days after WMATA's receipt of compliant submittal documents and will conform to the procedure for completing such reviews as defined in the then most current revision of the Dulles Corridor Metrorail Project Management Procedure agreed upon by MWAA and WMATA.
- (iv) Prior to advising the applicable Contractor that MWAA accepts any Transit-Related Facility design submittal, MWAA will obtain WMATA's acceptance of the submittal.
- (v) WMATA's response to submittals shall indicate acceptance, acceptance with comments, or non-acceptance, based upon WMATA's determination whether the submittals:

(A) comply with WMATA Design Criteria and Requirements (which are defined to include Approved Deviations), and

(B) conform to the Approved PE Design, and if the response indicates any non-conformity, whether the non-conformity materially and adversely affects the appearance, functionality, or durability of the Transit-Related Facility.

- (vi) In the case of all Transit-Related Facility design submittals which constitute a 100% submittal, if WMATA responds that it accepts the submittal (or responds that it accepts the submittal with comments that are later resolved as required by WMATA), then WMATA shall have “approved” such submittal. The effect of approval of a 100% submittal shall be that WMATA will not object to Contract work in conformance with the approved submittal, except to the extent (A) the objection relies on new or additional information, or (B) WMATA reasonably determines that changes have been made to a previously “approved” 100% design submittal that materially and adversely affect the appearance, functionality, or durability of the Transit-Related Facility.

No approval of a submittal shall constitute a waiver of any of the ARS Incorporation Conditions or of the requirements of the WMATA Design Criteria and Requirements. A waiver of WMATA Design Criteria and Requirements requires an Approved Deviation as described in this Agreement.

- (vii) In the event of a design dispute (*e.g.*, a disagreement between WMATA and MWAA as to a submittal’s compliance with WMATA Design Criteria and Requirements), MWAA will obtain a resolution of the dispute through the Expedited Disputes Procedures in Article 11. If MWAA proceeds with construction of disputed work prior to resolution of this dispute, MWAA assumes the risk of having to remove the disputed work and other related work as necessary and replacing that work in accordance with the dispute resolution.

2.7.B(3)(b) Review and provide comments on the Contractor’s Baseline Schedule to ensure coordination with system acceptance and testing, WMATA-performed activities, and delivery of WMATA-supplied equipment, such as fare collection, railcars, and ROCS upgrade.

2.7.B(3)(c) Participate in Transit-Related Facility design review meetings, coordination meetings, and workshops. MWAA will distribute minutes of meetings to WMATA contemporaneously with the distribution to other participants for review and comment. WMATA will timely respond to those action items assigned in the minutes to WMATA by MWAA.

2.7.B(3)(d) Review and timely resolve requests for deviations from WMATA Design Criteria and Requirements. MWAA acknowledges that requests for deviations from

WMATA Design Criteria and Requirements must be accepted by WMATA's Design Control Board (DCB) which meets monthly, and a prerequisite of action by the DCB is development of recommendations by the constituent WMATA Offices and Departments. WMATA acknowledges that deviations are an expected part of the design-build process for the Project, and that time is of the essence in WMATA's response to requests for deviations. MWA and WMATA shall use diligent efforts to resolve all requests for deviations within ninety (90) days.

2.7.B(3)(e) Coordinate, through MWA, the provision of all technical interface information for the WMATA-provided equipment, systems and hardware/software that the Contractor requires to perform its design responsibilities and to provide this information by the dates identified in the applicable Project Schedule. MWA shall cause the Contractor to promptly respond to requests by WMATA for information needed by WMATA to develop technical interface information.

2.7.B(3)(f) Pursuant to the spare parts provisions in Division 1 of the Phase 2 Design-Build Contract, review the Contractor's proposed listing for spare parts, special tools, test equipment, consumables and personnel training, and provide MWA with WMATA's selections for parts, tools and training not more than 21 days after WMATA's receipt of the proposed listing.

2.7.B(3)(g) Review CIL and SCIL and support MWA in verification of design checklist sign-offs.

2.7.B(3)(h) Perform a Threat and Vulnerability Assessment ("TVA") of the Phase 2 Work based on the WMATA-approved 100% design submittals for Phase 2.

2.7.B(3)(i) Sign off on a Design Conformance Check List prior to WMATA approval of any 100% Transit-Related Facility design submittal.

2.7.B(3)(j) Participate as a member of Safety Certification Working Group with MWA to review and approve resolutions of hazards and vulnerabilities.

2.7.B(3)(k) Participate with MWA in development of requirements for documenting the acquisition, by permit, license, easement, and/or deed, of the necessary right of way for the Project to enable transit operation and maintenance (the "**Right-of-Way Plan**").

2.7.B(4) In connection with the applicable Contractor's construction work under the Contracts, WMATA shall:

2.7.B(4)(a) Participate in coordination, pre-activity and progress and schedule update meetings and receive meeting minutes of all such meetings contemporaneously with the distribution to other participants. Respond to those items of action assigned to WMATA by MWA.

2.7.B(4)(b) Review and respond as described Section 2.7.B(3) to design issues arising in the course of construction.

2.7.B(4)(c) Participate with MWAA in its oversight of the Contractor's Quality Control/Assurance Program. WMATA may participate in quality audits of the Contractor that are performed by MWAA, subject to prior notification to WMATA to allow for proper scheduling and coordination. The tracking and management of non-conformance audit matters shall be undertaken by MWAA. WMATA shall have access to all deficiency and non-conformance reports prepared by or for MWAA and shall, if requested by MWAA, assist MWAA in reaching a final disposition of items raised in the report. WMATA shall approve the final disposition of any item in such a report that describes the non-conformance of a Transit-Related Facility, or a part of such facility, with either (i) the WMATA Design Criteria and Requirements (which are defined to include Approved Deviations) or (ii) a 100% design submittal approved by WMATA.

2.7.B(4)(d) Review, provide comments on and, where applicable, approve test and inspection procedures submitted by the Contractor under the Contracts for acceptance testing of all Transit-Related Facilities. Review comments on such procedures shall be provided to MWAA within 21 days after receipt and will conform to the MWAA procedure for completing such reviews as defined in the then most current revision of the Dulles Corridor Metrorail Project Management Procedure, No. PM-5.06.

2.7.B(4)(e) Participate in witnessing the qualification and acceptance testing of the Transit-Related Facilities and related equipment, including qualification testing, factory acceptance testing, PICO inspections and tests, integration tests, and system performance tests. Review and approve the test results submitted by the Contractor under the Contracts for all tests of the Transit-Related Facilities and related equipment, to the extent the test results may affect acceptance of Phase 2. MWAA will obtain WMATA's concurrence that the approved acceptance test results demonstrate satisfactory performance of the tested facilities for ultimate acceptance into the ARS. In the event of a dispute between WMATA and MWAA over the validity of the test results or the conclusions to be drawn from them, MWAA will obtain a resolution of the dispute through the Expedited Disputes Procedures in Article 11. If MWAA proceeds with construction of disputed work prior to resolution of the dispute, MWAA assumes the risk of having to remove/retest the disputed work and other related work as necessary and replacing that work in accordance with the dispute resolution.

2.7.B(4)(f) Participate in field inspections conducted jointly by MWAA and WMATA to audit Safety Certifiable items as described in the SSCP.

2.7.B(4)(g) Approve the applicable Construction Conformance Checklist prior to commencement of any testing of a Transit-Related Facility. In addition, before

testing a Transit-Related Facility, the Contractor and WMATA must have confirmed completion of the items on the Safety Critical Items List applicable to such facility.

2.7.B(4)(h) Review and approve the Site Specific Work Plans (SSWPs) submitted by the Contractor under the Phase 2 Design-Build Contract for all work on WMATA right-of-way in the WES. If the SSWP is deficient as initially submitted, identify specific problems and required remedies so that a revised SSWP will comply with WMATA's requirements. WMATA's approval shall be subject to the SSWP's conformance to WMATA's SSCP (see **Exhibit 5**).

2.7.B(5) In connection with the Contractor's testing activities under the Phase 2 Design-Build Contract (e.g., Dynamic Testing and System Performance Testing) and in preparation for Substantial Completion, WMATA shall:

2.7.B(5)(a) At least nine months prior to the projected date of Substantial Completion, develop and provide to MWAA a Rail Activation Plan for Phase 2 that is substantially similar to the Rail Activation Plan for Phase 1 attached hereto as **Exhibit 8**. The Phase 2 Rail Activation Plan shall identify all operational readiness testing and other operational readiness activities that WMATA requires prior to ORD. The Work under the Phase 2 Design-Build Contract includes certain testing that MWAA and WMATA have thus far identified as needed to achieve ORD. MWAA and WMATA recognize, however, that additional operational readiness testing ("**Additional OR Testing**"), not included in such Work, may be identified by WMATA, and listed in the Phase 2 Rail Activation Plan, as necessary prior to ORD. In addition, WMATA may revise the list of Additional OR Testing at any time prior to ORD based upon information obtained while undertaking its operational readiness activities under the Rail Activation Plan. Because the Additional OR Testing is not part of the Work under the Phase 2 Design-Build Contract, the completion of the Additional OR Testing will not be a condition to Substantial Completion. Nevertheless, MWAA and WMATA desire to enable ORD to occur at the same time as Substantial Completion, or as soon as practical thereafter. Therefore, WMATA will make a good faith effort (i) to work with the Contractor and MWAA to develop a schedule for completing, and (ii) to actually complete, all Additional OR Testing prior to the date of Substantial Completion, without impeding the work of the Contractor or delaying Substantial Completion. WMATA acknowledges that both prior to Substantial Completion and during the period, if any, after Substantial Completion and before ORD, WMATA will need to conduct its Additional OR Testing and other operational readiness activities in coordination with and subject to the rules and procedures of the Contractor or other party then responsible for the care, custody and control of Phase 2.

2.7.B(5)(b) Participate in coordination, progress and schedule update meetings. MWAA will distribute meeting minutes of all such meetings to WMATA contemporaneously with the distribution to other participants for review and

comment. WMATA will respond to those items of action assigned to WMATA by MWAA.

2.7.B(5)(c) Prior to the release of any “issued for construction drawings” for Transit-Related Facilities, or any specifications, test plans or procedures, or testing reports, review and comment on the Contractor’s System Integration Program Plan, including all test procedures submitted by the Contractor for Integration and System Performance Demonstration Testing. Such comments shall be provided to MWAA within 21 days after receipt by WMATA and will conform to the MWAA procedure for completing such reviews as defined in the most current revision of the Dulles Corridor Metrorail Project Management Procedure, No. PM-5.06. Before accepting the Contractor’s System Integration Program Plan, MWAA will obtain WMATA’s concurrence that the Plan adequately addresses applicable WMATA requirements. In the event of a dispute over the System Integration Program Plan, MWAA will obtain a resolution of the dispute through the Expedited Disputes Procedures in Article 11. If MWAA proceeds with the construction of work affected by the dispute prior to its resolution, MWAA assumes the risk of having to remove the disputed work and other related work as necessary and replacing that work in accordance with the dispute resolution.

2.7.B(5)(d) Witness all integration and system performance demonstration testing relating to Transit-Related Facilities and related equipment.

2.7.B(5)(e) Review and provide comments on the results of integration and system performance demonstration testing conducted by the Contractor for the Transit-Related Facilities and related equipment. Promptly notify MWAA of any discrepancies within the test results that should be resolved prior to acceptance of the results. Prior to accepting any performance test result submittals, MWAA will obtain WMATA’s concurrence that the test results reported in the submittals demonstrate satisfactory performance for ultimate acceptance of the Transit Related Facilities into the ARS. In the event of a dispute over any test result submittal, MWAA will obtain a resolution of the dispute through the Expedited Disputes Procedures in Article 11. If MWAA proceeds prior to resolution of the dispute, MWAA assumes the risk of having either to retest the disputed work or to remove the work and replace it in accordance with the dispute resolution.

2.7.B(5)(f) Review and resolve requests for deviations from the WMATA Design Criteria and Requirements arising during the testing phase of the Project.

2.7.B(5)(g) When all pre-requisites for Dynamic Testing are completed and accepted, review and provide comments on the Contractor’s request for Dynamic Testing Readiness Certification.

2.7.B(5)(h) Manage the transport to the Project and the on-site utilization of WMATA railcars for Dynamic Testing and the Performance Demonstration Test by

providing vehicles, operators, Operations Control Center (“OCC”) staff, and all other required support staff. WMATA will perform a Daily Safety Test (“DST”) of each railcar prior to transporting the vehicle to the site for the Contractor’s Dynamic Testing. Within 72 hours of notification by MWAA of the need for safe braking tests, WMATA will modify the requested number of married pair vehicles to meet the Dynamic Test requirements in accordance with the approved safe brake test procedure. WMATA will not be responsible for the daily vehicles calibration, power inverters for test equipment, test fixtures or circuit board modifications to extract vehicle data for Contractor test equipment or similar needs to support dynamic testing and data gathering. WMATA agrees to provide the vehicles, operators and other necessary personnel, but only to the extent budgeted in the WMATA Support Budget. In the event that MWAA or the Contractor require additional hours of testing not budgeted in the WMATA Support Budget, MWAA will be required to reimburse WMATA for those additional hours of railcar and personnel time and such additional hours shall not be subject to the overrun provisions in Article 4 below. MWAA shall provide 72 hours of advance notice to WMATA and comply with established WMATA procedures when requesting this support for the Project. WMATA shall make reasonable efforts to timely provide the railcars, other equipment and personnel for the tests. MWAA agrees that the operation of WMATA’s system shall take priority over providing railcars and operations personnel, and, in the event of a conflict between the tests and WMATA’s operational requirements, if WMATA, in its reasonable discretion, determines that such railcars or personnel are required to support operation of the WMATA system, WMATA shall have the right to cancel, postpone, or reschedule the tests without incurring liability

2.7.B(5)(i) Review and, within 21 days, provide comments on the Contractor’s System Safety and Security submittals.

2.7.B(5)(j) Participate in inspections performed by MWAA or the Contractor to determine whether Safety Certifiable items are functioning properly.

2.7.B(5)(k) In cooperation with MWAA, review and provide comments on the Contractor’s substantial completion certificate under the Phase 2 Design-Build or Phase 2 Yard Contract. Conduct joint inspection with the Contractor, MWAA, and others as necessary to document punch list work that does not conform to the contract documents.

2.7.B(5)(l) Complete the designs, procurements, installations and commissioning of the OCC updates to support the Project Schedule under the Phase 2 Design-Build Contract; provided that MWAA and the Contractor have timely provided any information in their possession, not otherwise available to WMATA, that is necessary to support this WMATA work.

2.7.B(5)(m) Manage the design, fabrication, installation and commissioning of AFC equipment.

2.7.B(6) During the period following Substantial Completion until WMATA Acceptance, WMATA shall:

2.7.B(6)(a) Conduct the operational tests, simulated service, and other activities needed to prepare for revenue service on Phase 2 portion of the Silver Line (the “**Operational Readiness Activities**”). MWAA will provide support to WMATA for the Operational Readiness Activities.

2.7.B(6)(b) If not completed prior to Substantial Completion, complete all testing and commissioning tasks for Project equipment that is provided by WMATA.

2.7.B(6)(c) In conformance with WMATA’s policies and procedures and the attached Right of Entry Agreement, provide access to the Contractor for the purpose of completing punch list items, warranty work, and conducting joint inspections with the Contractor, MWAA, and others as necessary to document the completion of final punch list work and warranty work. MWAA agrees that the operation of WMATA’s system shall take priority over the access by the Contractor for punch list and warranty work, and in the event of a conflict between the warranty work and punch list work and WMATA’s operational requirements, WMATA, in its reasonable discretion, shall have the right to complete the warranty work or punch list work at the expense of MWAA.

2.7.B(6)(d) Assist MWAA with the administration of applicable warranties. Upon WMATA’s Acceptance, MWAA will assign all warranties to WMATA, together with the relevant documentation and records, and, once accepted into the ARS, WMATA will be responsible for administration of the warranties. MWAA will provide reasonable assistance, without charge to WMATA, when WMATA requests such assistance in enforcing warranties and providing documentation.

2.7.B(6)(e) For the period between ORD and WMATA Acceptance, WMATA will, in its capacity as technical advisor to MWAA, assume provisional responsibility for the care, custody and control of the Transit-Related Facilities, provided that during such period (i) WMATA will not assume any risk of loss for property for which it does not already then bear the risk of loss, (ii) MWAA must provide WMATA with liability insurance coverage for such period, at no expense to WMATA, in such amounts and on such terms as WMATA shall require in its sole discretion, and (iii) such provisional responsibility does not constitute waiver of any of the ARS Incorporation Conditions.

2.7.C Intended Future Owner and Operator

WMATA must perform certain tasks in order for the WMATA Board to accept Phase 2 of the Project into the ARS (“**ARS Acceptance Tasks**”).

2.7.C(1) Design Approval.

WMATA must have approved all design submittals for all Transit-Related Facilities pursuant to Section 2.7.B(3)(a) (i) through (vi) and determined that they comply with the WMATA Design Criteria and Requirements (including through the issuance of Approved Deviations). For design submittals as to which there was a dispute over compliance with such standards, the dispute must be resolved through the Expedited Disputes Procedures in Article 11. WMATA has, prior to the date hereof, approved the 100% Preliminary Engineering design for Phase 2.

2.7.C(2) Dynamic Readiness Certificate.

WMATA must review and, in its reasonable discretion, approve and sign the Dynamic Testing Readiness Certificate. MWAA shall not issue a Certificate of Dynamic Testing Readiness pursuant to Section 17.3 of the Phase 2 Design-Build Contract until after WMATA has approved and signed the Dynamic Testing Readiness Certificate.

2.7.C(3) Conditions to Operational Readiness Date.

WMATA must determine when the Operational Readiness Date has occurred under the definition provided in this Agreement, must conduct its Operational Readiness Activities, and must advise MWAA if WMATA determines, during such testing, that the Transit Related Facilities do not to meet the standards required in Article 3 or otherwise do not comply with the Contracts.

2.7.C(3)(a) Punch list. WMATA must have, jointly with MWAA, developed a punch list prior to MWAA issuing the Certificate of Substantial Completion pursuant to Section 17.4 of the Phase 2 Design-Build Contract and the corresponding provision of the Yard Contract, and to the extent necessary, approved all Site Specific Work Plans (“SSWPs”) for all punch list-related work to be performed on WMATA right-of-way or within the WES, as required by the Right of Entry Agreement.

2.7.C(3)(b) Right-of-Way Plans. WMATA must have approved the Right-of-Way Plans, based on its reasonable determination whether such Plans provide for the minimum right-of-way necessary for transit operation and maintenance.

2.7.C(3)(c) Deviations to WMATA Design Criteria and Requirements. WMATA must have approved all deviations from WMATA Design Criteria and Requirements, except for deviations that were resolved pursuant to the applicable dispute resolution provisions of Article 11. To the extent WMATA determines that MWAA has allowed an unapproved deviation as described in this Section 2.7.C(3)(c), WMATA must determine whether to accept such deviation or require that MWAA comply with the WMATA Design Criteria and Requirements.

2.7.C(3)(d) Safety Certification. WMATA must prepare and provide to MWAA and the Contractor a Safety Certification consistent with WMATA's Safety and Security Certification process described in the SSCP attached hereto as **Exhibit 5**.

2.7.C(3)(e) ATC Room Certification. (i) Prior to Substantial Completion, WMATA's Automatic Train Control engineers and technicians shall have witnessed all necessary tests performed by the Contractor regarding the Automatic Train Control ("ATC") system. MWAA shall instruct the Contractor to ensure that WMATA has at least five (5) days notice of all such testing. (ii) After Substantial Completion, WMATA's automatic train control certification team shall have the right, if WMATA so elects, to independently validate and certify all vital train control logic as part of WMATA's final acceptance and safety certification. (iii) This certification team shall promptly notify MWAA of any nonconforming work or punch list items the team found, which were unrelated to its certification, that required corrective action. WMATA shall promptly advise MWAA whether such nonconforming work or punch list item must be completed prior to WMATA Acceptance.

2.7.C(3)(f) Rail Activation Plan Testing. WMATA shall have completed the testing described in the Rail Activation Plan, identified pursuant to Section 2.7.B(5)(a), except for the activities listed in Section 5 of the Rail Activation Plan, and any problems noted have been resolved to WMATA's reasonable satisfaction.

2.7.C(4) WMATA Acceptance Determination. WMATA shall determine when all the conditions necessary for WMATA Acceptance as set out below in Article 6 have been satisfied, and Phase 2 of the Project is ready for WMATA Acceptance. This determination is to be made regardless of whether MWAA has issued a Certificate of Final Acceptance under either or both Contracts.

2.7.D Contractor Support.

In connection with the activities of the Contractors, and avoiding or minimizing, in a manner satisfactory to WMATA in its discretion, any adverse impact to WMATA's ongoing operations, WMATA will provide support in the form of access to WMATA existing facilities, escort personnel, bus bridging, rail cars, operators, and equipment as necessary to allow the Contractors to perform work and complete testing requirements.

2.7.D(1) WMATA will provide (i) reasonable access to the WES sites for the Contractor to perform the Work and (ii) all necessary escort and work zone protection in support of the Work per existing WMATA policies and procedures. WMATA shall review and approve work and equipment proposed by the Contractor for use on WES right-of-way to assure that the equipment meets WMATA's safety standards and will not foul or damage existing facilities or equipment belonging to WMATA. If the Contractor is unable to supply equipment complying with WMATA safety standards, is using equipment that WMATA determines is not suitable for use within the WES right-of-way, or otherwise needs to use a specialized piece of equipment which WMATA owns, WMATA will undertake to make its equipment available to MWAA on a reimbursable basis for the Contractor's use. WMATA may charge the Contractor a fee for use of such equipment, provided that such fee shall be determined by WMATA, acting reasonably,

based on WMATA's estimate of the actual cost, including wear and tear, to WMATA of providing the equipment.

2.7.D(2) When all prerequisites necessary to safely complete clearance tests are satisfied under the test plan and test procedure agreed to by WMATA and MWAA, WMATA will provide the Clearance Train and witness the Clearance Test required prior to Dynamic Testing. WMATA shall participate with MWAA in the inspection and resolution of any conflicts resulting from this test.

2.7.E WMATA Proposed CPM Schedule.

With respect to its responsibilities described above in Sections 2.7.A through 2.7.C, within thirty (30) days of the submission of the Contractor's schedule, WMATA will prepare and submit for MWAA review and approval a construction project management schedule denoting the tasks to be undertaken by WMATA, the durations of those tasks, and the inter-relationship of the tasks. The approved schedule will be integrated into the Project Schedule by MWAA. WMATA and MWAA will cooperate to keep the CPM schedule up to date.

2.7.F Spare Parts List

At least eighteen (18) months prior to the projected date for Substantial Completion, WMATA shall provide MWAA a list of spare parts and special tools which are required by WMATA for Phase 2, and which WMATA and MWAA, acting reasonably, agree can be obtained within the anticipated budget of \$10,000,000 (the "Spare Parts")

Section 2.8 Arts In Transit

Phase 2 of the Project will include, in each rail station, one art installation under WMATA's Arts-In-Transit program. MWAA shall provide in the Design-Build Contract for Phase 2 that the Contractor will be responsible for installation of supporting structures (for example, a base to which a sculpture will be attached) and supplying electrical and/or communications connections needed for the installation (for example, electric power for lighting of or within an art work). WMATA will require the artist to be responsible for the design, engineering, and construction of all other aspects, including internal aspects, of the applicable piece. For example, the artist must design, supply, and install the control system for any piece that includes mechanical or electrical components. The artwork will be selected by WMATA pursuant to the WMATA Arts-In-Transit Program. Final selection will be made after consultation with MWAA. WMATA will manage the Arts-In-Transit Program as part of its Technical Advisor responsibilities under Section 2.7.A(1)(e). WMATA will ensure that sufficient information about the size, location, and nature of each piece is timely communicated to MWAA and the Contractor to avoid any delay in the Design-Build process. Supporting WMATA's efforts (i) MWAA shall ensure that the contractor adheres to milestones in the Project Schedule for provision of information that is needed by the artists to advance their work and define the size location and nature of each piece, and (ii) to include, if the necessary information is timely provided by WMATA on behalf of the artists, the artwork in applicable building permit submittals.

Article 3. APPLICABLE STANDARDS

Section 3.1 Design Criteria and Requirements.

WMATA Design Criteria and Requirements shall be used for the design of Phase 2 of the Project.

Section 3.2 Deviations from WMATA Design Criteria and Requirement.

Deviations from the WMATA Design Criteria and Requirements may be requested by the Contractors, MWAA, or WMATA.

3.2.A MWAA/Contractor Proposed Deviations.

Where the deviation is requested by MWAA or a Contractor, WMATA shall determine, in its reasonable discretion, whether such deviation is to be approved. WMATA will evaluate requested deviations from the WMATA Design Criteria and Requirements against the following conditions:

1. Will the requested deviation be equivalent in safety with the relevant standards or plans and specifications?
2. Is the requested deviation recognized as good industry practice for comparable facilities?
3. Will the requested deviation cause a material increase in operating and life cycle costs for the completed Project?
4. Is the requested deviation reasonably likely to achieve the estimated capital cost savings?

As part of any request for a deviation, MWAA or the Contractors must address the four conditions listed above. If a requested deviation is approved by WMATA, MWAA shall determine how such deviation is implemented contractually (*e.g.*, whether a change order is needed).

3.2.B WMATA-Proposed Deviations.

3.2.B(1) When deviations are initiated by WMATA from WMATA Design Criteria and Requirements, and such deviations are required by a change in law or a change in one or more governmental safety standards applicable to WMATA, or are required because necessary components are no longer obtainable, the deviations shall be incorporated into the design of the Phase 2 project and any associated cost will be a Project cost.

3.2.B(2) When such deviations are initiated by WMATA for any other reason, the deviation shall be incorporated into the design of the Phase 2 only by mutual agreement of WMATA and MWAA. MWAA may condition its agreement on WMATA's payment,

from its own funds outside the Project Budget, any increased design and construction costs caused by the deviation, as reasonably calculated by MWAA. MWAA may disapprove any such proposed deviation that it believes would delay Substantial Completion or WMATA Acceptance. If MWAA rejects a request for a deviation under this paragraph, WMATA may take the request to the Coordinating Committee, and the Committee shall decide whether to approve the deviation into the Phase 2 project, and, if it determines that it will be incorporated, shall review the reasonableness of MWAA's calculation of the additional cost, if any, that must be paid by WMATA.

Section 3.3 Order of Precedence.

In the event of any ambiguity or conflicting interpretation of the applicable standards the following order of precedence shall determine the interpretation of this Agreement:

3.3.A(1)(a) Applicable law or code/standard prescribed by law.

3.3.A(1)(b) WMATA-approved designs, which include Approved Deviations from the WMATA Design Criteria and Requirements. A design may be approved by WMATA either by express approval or by documented resolution of any WMATA comments on a design submittal.

3.3.A(1)(c) WMATA Manual of Design Criteria (Release 9, dated May 2008) as modified by Approved Deviations and WMATA requested changes that are approved by MWAA or the Coordinating Committee.

3.3.A(1)(d) Applicable WMATA Standard Drawings, including updated drawings, as shown on **Exhibit 6**, as modified by Approved Deviations and WMATA requested changes that are approved by MWAA.

3.3.A(1)(e) Applicable WMATA Standard Specifications (Release 8, various dates).

3.3.A(1)(f) The 100% preliminary engineering design approved by WMATA, including technical specifications, reports, and recorded resolutions of WMATA comments.

Article 4. FUNDING

Section 4.1 Responsibilities for Costs Arising under this Agreement.

4.1.A MWAA's Obligation to Reimburse Costs.

MWAA shall be responsible for reimbursing WMATA on a cost reimbursable basis for Eligible Costs, and only Eligible Costs, actually incurred by WMATA to:

4.1.A(1) procure and install the capital equipment listed in Section 2.7.A,

4.1.A(2) perform the technical advisory services described in Section 2.7.B,

- 4.1.A(3) perform the ARS Acceptance Tasks identified in Section 2.7.C, and
- 4.1.A(4) provide access and support as provided in Section 2.7.D.

4.1.B Costs for Capital Equipment.

WMATA and MWAA have jointly prepared an overall budget that includes budgets (collectively, the “**Capital Equipment Budget**”) for the procurement and installation of the capital equipment described in Section 2.7.A(1). WMATA shall advise MWAA of any overruns in the capital equipment budget, but MWAA shall reimburse WMATA for all Eligible Costs incurred by WMATA to procure and (where applicable) install such capital equipment. The provisions of Section 4.1.F(2) below shall not apply to WMATA’s purchase of capital equipment.

4.1.C Costs for Technical Advisory Services and ARS Acceptance Services.

WMATA shall be responsible for adhering to a budget (“**WMATA Support Budget**”), which has been approved by MWAA as part of the overall budget, for costs reimbursable under Section 4.1.A(2) (“**Technical Advisory Costs**”) and costs reimbursable under Section 4.1.A(3) (“**Acceptance Review Costs**”). MWAA shall reimburse WMATA’s actual Eligible Costs, and only Eligible Costs, expended by WMATA to perform the technical advisory services as described in Section 2.7.B, and to perform the ARS Acceptance Tasks as described in Section 2.7.C, for the line items and within the limits of the WMATA Support Budget. The WMATA Support Budget may provide for a phased mobilization of WMATA staff. The WMATA Support Budget is agreed to be preliminary, and will be revised by mutual agreement prior to the first anniversary of the date of this Agreement to reflect information about Acceptance Review Costs learned through Phase 1 acceptance.

4.1.D Costs for Force Account / Startup Support.

WMATA and MWAA have jointly prepared an overall budget that includes a budget (“**Force Account/Startup Budget**”) for providing access to WMATA existing facilities, escort personnel, bus bridging, rail cars, operators, and equipment as necessary to allow the Contractors to perform work and complete testing requirements as described in Section 2.7.D. MWAA shall reimburse WMATA for all Eligible Costs incurred by WMATA to provide the support requested by the Contractors as directed by MWAA. In the event that WMATA support costs exceed or are forecast to exceed the Force Account/Startup Budget, WMATA will assist MWAA in identifying ways to minimize or reduce the additional costs; however, WMATA shall have no obligation to provide support services until funds are available to pay for the WMATA support services.

The Capital Equipment Budget, the WMATA Support Budget, and Force Account/Startup Budget (the “**Budgets**”) are attached hereto as **Exhibit 9** and include:

- i. The Capital Equipment, WMATA Support, and Force Account/Startup Budgets, based on Year of Expenditure (YOE); and
- ii. The Capital Equipment, WMATA Support, and Force Account/Startup Budgets based on 2013 dollars.

The WMATA Support Budget shall include an estimate of WMATA Staffing Levels for

the Project.

4.1.E Timing of Payments.

It is the intent of the Parties (see Section 4.2 below) that MWAA will provide quarterly payments to WMATA in advance of the start of the quarter that represent the Eligible Costs projected to be incurred by WMATA in that upcoming quarter, so long as such costs are consistent with then-current Budgets; provided, that in the case of the Capital Equipment Budget, MWAA will fund overruns in projected actual Eligible Costs.

4.1.F Budget Tracking.

4.1.F(1) In each Budget, WMATA will provide MWAA with an estimate of the total WMATA costs in each of the three Budgets (in YOE dollars and current dollars) for each calendar year and calendar quarter beginning with the first quarter of 2013 and ending upon WMATA Acceptance. MWAA, however, shall only be responsible for payment of Eligible Costs actually incurred.

4.1.F(2) WMATA will monitor and document its costs and expenditures covered by each Budget. No later than July 1 of each year during the term of this Agreement, WMATA will provide MWAA an updated “Funding and Expenditure Projection Schedule” for each of the three Budgets. Each schedule will be based upon the level of effort that WMATA anticipates will be required for it to perform activities within the applicable Budget during the 12-month period beginning on the first full month following the date referenced above, and it will project the costs and funding obligations WMATA will actually incur in performing these activities during this upcoming 12-month period. If the costs projected for a 12-month period in a Funding and Expenditure Projection Schedule covering the WMATA Support or Force Account/Startup Budget are exceeded by 5% or more, WMATA shall provide an explanation of the overrun and propose a recovery plan to bring future overall expenditures in the area in line with the applicable Budget, or explain why that is not feasible. WMATA need not propose a recovery plan with respect to costs incurred to support a Contractor. MWAA shall, not more than thirty (30) days following its receipt of an overrun explanation, approve the payment of the overrun, with or without a plan to bring future expenditures into conformity with the Budget.

4.1.F(3) WMATA shall also provide to MWAA on the fifteenth (15) business day of every month, a statement of actual costs incurred through the end of the previous month compared to expected costs and/or budgeted costs. If staff and/or consultant/contractor costs being incurred by WMATA are such as to cause either WMATA or MWAA to project that WMATA’s Support Budget or Force Account/Startup Budget will be exceeded for the budgetary period, then WMATA and MWAA shall meet and confer as soon as practicable. In addition, WMATA shall notify MWAA of any use of

any applicable Budget contingency. After the projection of an overrun and after the meeting, MWAA shall, in not more than thirty (30) Days, either: I) approve an increased Budget, with or without a plan for recovering the overrun amount, or ii) request WMATA to develop a mutually satisfactory revised Budget and scope.

4.1.G Final Accounting.

In any final accounting by the Parties, actual Eligible Costs shall be utilized. If there is a balance of MWAA funds on deposit at WMATA after the final accounting of actual costs properly charged to the Project, WMATA shall promptly return those funds to MWAA without demand. If actual costs properly charged to the WMATA Support Budget or Force Account/Startup Budget exceed any balance of MWAA funds on deposit at WMATA, MWAA shall promptly reimburse WMATA for these costs. Any moneys to be reimbursed or paid, in accordance with this subsection, shall be forwarded by the responsible party within thirty (30) days after the issuance of the joint final reconciliation.

Section 4.2 Funds Advancement.

4.2.A(1) MWAA agrees to advance funds in accordance with the schedule set out in the approved Budgets. WMATA will not incur costs or obligations for any work enumerated hereunder, unless adequate funds are available, and MWAA has obligated or will timely obligate the necessary funds. MWAA shall not be required to make available or timely obligate funds until WMATA has complied with all conditions contained in this Agreement relating to funding, including a satisfactory accounting for its expenditures under each of the Budgets. Upon compliance with such conditions and the advancement of sufficient funds by MWAA, WMATA may incur costs or obligate funds in accordance with an approved Budget. It is the intent of the Parties that these funds are to be used to cover WMATA staff costs and other expenses. Each Budget and revisions to the Budget, if any, will include a schedule of periodic progress payments sufficient to fund the anticipated costs for the subsequent period.

4.2.A(2) WMATA shall submit periodic invoices to MWAA to support the next progress payments thirty (30) days in advance of the due dates set out in each Budget. The schedule of progress payments may be revised from time to time by WMATA with written agreement from MWAA to reflect changes in costs and/or the rate of spending.

4.2.A(3) WMATA shall draw against those amounts advanced, and submit a monthly statement of actual costs to MWAA pursuant to Section 4.1.F(2).

4.2.A(4) Suspension or termination of any part of this Agreement will not invalidate obligations properly incurred by WMATA prior to the date of suspension or termination to the extent the obligations are non-cancelable. Therefore, MWAA will remain responsible for properly incurred Eligible Costs that have been incurred by WMATA as Technical Advisor, including, but not limited to, consultant/contractor

contract close-out costs, and costs reasonably and properly incurred to finish or close out WMATA's work in accordance with this Agreement, in each case to the extent the cost is an Eligible Cost. The obligation to reimburse WMATA for its Eligible Costs will survive the suspension or termination of the Project or of this Agreement.

4.2.A(5) WMATA will place the funds advanced under this Agreement by MWAA into an interest-earning account. Interest earnings will be credited to the Budget to be used for authorized Project purposes. WMATA will provide an accounting of these earnings to MWAA along with the statement specified in Section 4.1.F(2).

Section 4.3 Financial Records and Audits.

WMATA shall retain Financial Records pertaining to its performance of this Agreement for three (3) years after completion or termination of this Agreement, and will have the right to recycle and destroy these records at that time after securing approval from MWAA. MWAA has the right to conduct an audit and WMATA shall permit MWAA, or its authorized agent(s), at MWAA's expense to conduct independent audits, make copies of pertinent records, documentation, invoices, and receipts relating to the performance of this Agreement during or at the conclusion of the Technical Advisory services. WMATA agrees, following the completion of any MWAA audit report performed in compliance with OMB Circulars A-87 and A-133 (collectively "federal guidelines"), as those circulars are amended from time to time, and which audit is acceptable to the FTA and WMATA, that it will promptly credit or refund to MWAA any costs actually paid to WMATA and determined to be disallowed under those federal guidelines, from the WMATA Reimbursable Project Reserve Funds, as approved by the WMATA Board of Directors.

Article 5. TIME IS OF THE ESSENCE

Section 5.1 WMATA Commitment.

WMATA agrees that time of performance related to its role is essential for timely completion of Phase 2 of the Project and that a failure to timely perform its Technical Advisor duties that is not otherwise excusable and results in a material delay to the Critical Path established under the Contracts may have serious financial repercussions upon MWAA and the Project. Therefore, WMATA is committed to provide timely reviews and responses on design submittals, test results, and other documentation.

Section 5.2 Exceptions.

Section 5.1 notwithstanding, WMATA shall have no obligation to (1) approve the Dynamic Readiness Certificate, (2) undertake Operational Readiness activities before satisfaction of the conditions set forth herein for such activities, or (3) provide railcars or operation personnel for testing if WMATA determines, in its reasonable discretion, that (A) the work performed under the Contracts fails, in any material respect, to comply with WMATA's Design Criteria and Requirements as provided in this Agreement, or with WMATA's operations security, and safety requirements as provided in this Agreement, or (B) that the date and/or time proposed for testing cannot reasonably be accommodated with operation of WMATA's existing system.

MWAA acknowledges that WMATA is not responsible for delays and claims associated with designs reflecting deviations from WMATA's Design Criteria and Requirements (which are defined to include Approved Deviations), or for claims by the Contractor associated with Dynamic Readiness Testing where WMATA determines, in its reasonable discretion, that the Contractor has not achieved Dynamic Readiness.

Section 5.3 Procedure.

WMATA shall provide reasonable documentation in support of any determination under Section 5.2 that work under the Contract does not comply with WMATA's Design Criteria and Requirements, in order for MWAA to correct the deficiency in the work. In an effort to mitigate costs associated with delays associated with approval of deviations to WMATA's Design Criteria and Requirements, or relating to Operational Readiness testing, MWAA and WMATA shall establish a request for resolution (RFR) mechanism to assure that the subject matter of the RFR is identified early and resolved expeditiously. The mechanism shall include, but not be limited to, a log that identifies the date of receipt of such a request, the projected time for completion, and the specific information that is needed for completion by the projected date. If the MWAA considers the response time by WMATA or request for supporting information is unreasonable in light of the potential delay costs of added project administration and management costs, MWAA and WMATA shall develop a mitigation plan to resolve the matter. If the parties are unable to develop a mitigation plan, the parties shall declare the matter to be in dispute and proceed under the Expedited Procedures of Article 11. If the Parties disagree on such a determination, the dispute will be governed by Article 11.

Article 6. CONDITIONS FOR WMATA ACCEPTANCE

Unless waived in writing by WMATA, the following are the conditions precedent for acceptance by the WMATA Board of Phase 2 of the Project into the ARS:

Section 6.1 Condition 1. Punch list

All punch list work shall have been completed to WMATA's satisfaction within the limits of the Transit-Related Facilities, including the Yard, unless completion of the punch list work for an item prior to WMATA Acceptance has been waived by WMATA. MWAA shall have ninety (90) days after WMATA's Acceptance to complete all punch list items receiving a waiver under the prior sentence. If not completed within that time, WMATA has the right to complete punch list items at the Project's expense.

Section 6.2 Condition 2. Property Transfers

MWAA shall have transferred, or caused to have been transferred, to WMATA the appropriate property interests in the Right-of-Way Plans approved by WMATA pursuant to Section 2.7.C(3)(b) of this Agreement.

Section 6.3 Condition 3. Spare Parts and Training

MWAA shall have provided, or made satisfactory arrangements to provide, to WMATA all Spare Parts, O&M Manuals (in a format acceptable to WMATA), and training necessary to accept the

Project into the ARS.

Section 6.4 Condition 4. Record Deliverables

MWAA shall have provided WMATA with all Record Deliverables.

Section 6.5 Condition 5. Assignment of Warranties

MWAA shall have obtained warranties from the Contractor and its subcontractors that comply with the technical specifications as approved as part of the Phase 2 design submittals approved by WMATA, including any subcontractor warranties described in Section 11.3.2 of the Contract. MWAA shall have assigned all continuing warranties to WMATA and provided all documentation necessary to enforce the warranties. At the time of assignment, WMATA will have all rights that MWAA had under Article 11 of the Contract.

Section 6.6 Condition 6. Permits

MWAA shall have obtained for WMATA all land use and permitting approvals from any federal, state or local regulatory agency necessary for WMATA's operation and maintenance of Phase 2 of the Project.

Section 6.7 Condition 7. Payments

MWAA shall have paid to WMATA all sums due and owing under this Agreement.

Section 6.8 Condition 8. Safety and Security

The WMATA Chief Safety officer shall have completed its independent examination of the Contractor's Safety Critical Items List documentation and be ready to certify to the WMATA General Manager that Phase 2 of the Project is ready for revenue service.

Section 6.9 Condition 9. Insurance

WMATA shall have received the certificates of insurance in accordance with Article 7.

Section 6.10 Condition 10. Storm Water Management.

If Phase 2 includes any Storm Water Management Ponds located on property to be maintained by WMATA, and those ponds serve property other than WMATA property, MWAA shall have obtained a maintenance agreement with each property owner discharging storm water into the pond, including real property covenants to ensure payment of the maintenance costs. The responsibility for maintenance costs of any pond serving both Transit-Related Facilities and other facilities shall be assessed based on the relative shares of water running into the pond. WMATA will not be responsible for maintaining Storm Water Management Ponds not located on WMATA property.

Article 7. INDEMNITY AND INSURANCE

For periods prior to WMATA Acceptance, the cost of additional insurance obtained by WMATA as described below as a result of Phase 2 of the Project shall be an Eligible Cost included in the WMATA Support Budget, or in a separate insurance budget adopted by WMATA and MWAA.

Section 7.1 Property Insurance.

7.1.A *WMATA Premises.*

WMATA shall be responsible for maintaining property insurance for WMATA-owned premises and other property that is affected by construction of Phase 2. For example, WMATA will be responsible for insuring the section of the Phase 1 railway to which the Phase 2 railway will attach. The cost of this insurance will not be an Eligible Cost, and claims by WMATA for damage to Phase 1 arising out of Phase 2 work will not be excluded under the OCIP general liability policy. WMATA and its insurer will not be required to waive subrogation for claims for such damage covered by WMATA's property insurance or self-insurance.

7.1.B *Railcars.*

WMATA is purchasing 64 new railcars as a part of Phase 2 of the Dulles Corridor Metrorail Project. It is anticipated that these railcars will arrive before completion of Phase 2. These railcars will not be used on Phase 2 prior to WMATA acceptance. MWAA expressly authorizes the use of these 64 railcars by WMATA elsewhere on the WMATA system. At all times, both prior to and after WMATA Acceptance of Phase 2, WMATA shall bear the risk of loss of or damage to these 64 railcars by including the same in WMATA's Master Property insurance program. WMATA and its insurer will not be required to waive subrogation for claims for such damage to such railcars covered by WMATA's property insurance or self-insurance.

7.1.C *Equipment.*

WMATA is supplying certain equipment, identified in Section 2.7.A.1, as part of Phase 2. WMATA will instruct its vendor to deliver equipment directly to the project site and the equipment shall be insured from delivery of such project-specific equipment to the Contractor until WMATA Acceptance, under the Contractor's Builder's Risk insurance policy. WMATA's supplier will bear the risk of loss while the equipment is in transit to its delivery point. WMATA shall not deliver, cause to be delivered or install such equipment earlier than contemplated by the Phase 2 project schedule.

7.1.D *Testing in Support of Phase 2.*

WMATA will insure its railcars and rail equipment used for testing in support of the Project under Force Account insurance which shall carry limits not less than the limits established in 7.3 below. Force Account insurance shall be carried beginning with the first use of WMATA railcars or rail equipment for testing and continuing continuously until WMATA Acceptance. The premiums associated with the purchase of the insurance described in this Section 7.1.D will be included in the Project Budget and will be reimbursed by MWAA as an Eligible Cost. WMATA will use best efforts to cause the Force Account carrier to include a Waiver of Subrogation endorsement for all Enrolled Parties. Provided, however, nothing herein shall waive WMATA employees' rights to seek recovery from any negligent party.

7.1.E *Auto Liability.*

The Parties agree and acknowledge that WMATA will self-insure its Auto Liability risks for both on-site and off-site exposures. WMATA's self insurance of this risk shall be deemed to meet the

requirements for Enrolled Parties under the OCIP.

7.1.F Phase 2 Work.

MWAA shall maintain or cause the Contractors to maintain builder's risk policies to insure against all risks of direct physical loss, damage or destruction occurring during the policy period, except as excluded, to the respective Contract work as more specifically described and insured in the policy. Each builder's risk policy shall be in the amount of the initial applicable Contract sum, plus the value of subsequent Contract modifications and cost of materials supplied or installed by others, to cover the total value for the entire Contract work. WMATA and the Owner shall each be a named insured on each Contractor's builder's risk insurance policy. Builder's Risk insurance shall be on an "all-risk" or equivalent policy form, as "all-risk" is defined and interpreted according to applicable law.

Section 7.2 Worker's Compensation and Employer's Liability.

A. For the period beginning with project inception and ending with Final Acceptance, WMATA shall procure and maintain, a project-specific Workers' Compensation Liability Policy. Such insurance shall be written on a guaranteed cost basis, include Workers' Compensation Insurance with statutory limits as required by law, including Federal Employers Liability Act, United States Longshoremen and Harbor Workers' Act & Maritime coverage, if appropriate, and Employers' Liability coverage with limits of not less than \$1,000,000 each accident/\$1,000,000 each employee/\$1,000,000 each disease. MWAA shall reimburse WMATA the premiums included in the Project Budget and paid under this Section 7.2 as Eligible Costs. WMATA will use best efforts to cause the Workers' Compensation carrier to include a Waiver of Subrogation endorsement for all Enrolled Parties. Provided, however, nothing herein shall waive WMATA employees' rights to seek recovery from any negligent party.

B. WMATA's compliance with the requirements of this Section 7.2 shall be deemed to comply with any requirements related to Workers' Compensation and Employer's Liability insurance imposed on Owner Indemnities as part of the OCIP. For the period that the project specific policy of this section 7.2 is in place, WMATA will not charge a Workers' Compensation additive to the labor costs billed and included in the Project Budget.

Section 7.3 General Liability

A. MWAA shall arrange for the OCIP as described in **Exhibit 10** for the Phase 2 Design-Build Contract, and for a similar OCIP for the Yard Contract. Any contractors engaged by WMATA to perform work in connection with Project shall be enrolled in the OCIP, provided that enrollment of contractors shall be subject to the OCIP eligibility requirements. To the extent any WMATA contractor that performs work related to the Project is not included in the OCIP, WMATA shall ensure that such contractor complies with terms outlined in **Exhibit 10**, Section 1.8. WMATA shall procure project specific Force Account insurance with limits of \$5 million per occurrence and \$10 million in the project aggregate to cover its liability from its Rail Activation Work.

B. WMATA shall be enrolled as an Owner Indemnitee under the OCIP. To the extent that the

OCIP requires enrolled parties to carry on-site or off-site insurance of any kind, WMATA will be deemed to have complied with those requirements by carrying the insurance established in this Article 7, or by self-insuring the risk. Notwithstanding WMATA's agreement to self-insure the required on-site and off-site coverages, the OCIP will respond on a primary basis to on-site general liability claims. Provided, however, nothing herein shall waive WMATA employees' rights to seek recovery from any negligent party.

Section 7.4 Indemnity, Additional Insurance.

Neither MWAA nor the Contractor are providing any indemnity to WMATA and nothing herein is to be construed to create such an indemnity *except* (i) to the extent that a specific indemnity may be provided in the Right of Entry, and (ii) WMATA shall be an Owner Indemnitee as that term is used in the Phase 2 Design-Build Contract, and subject to all of the terms and conditions of that contract. Further, WMATA shall be enrolled as an Owner Indemnitee under the OCIP. WMATA shall receive certificates of insurance and appropriate endorsements certifying that the required coverage has been provided. The insurance policies required hereunder, or comparable replacements therefor, shall be in place for the benefit of WMATA as an Owner Indemnitee from the Notice to Proceed under the Phase 2 Design-Build Contract through WMATA Acceptance. These provisions may not be amended or altered in any way that affects the coverage of WMATA required herein without the express written approval of WMATA.

Article 8. REPRESENTATIONS

Each Party hereby represents to the other that it possesses full power and authority to execute, deliver and perform this Agreement and to carry out the transactions contemplated hereby. The execution, delivery, and performance of this Agreement and the transactions contemplated hereby have been duly and validly authorized by all necessary action of MWAA and WMATA and constitutes valid and binding obligation of each. Each Party also represents that the execution and performance by of this Agreement by the party does not and will not (a) violate any requirement of law or court order applicable to the party or its ability to perform under this Agreement, (b) require consent, approval or authorization of, or notice to, or declaration, filing or registration with, any person or entity not already obtained or accomplished as of the effective date hereof, or (c) conflict with or will result in a default under or violation of the governing instruments of the party or any other instrument or agreement to which it is a party.

Article 9. CANCELLATION

Section 9.1 Right to Cancel.

In the event that the Contract does not proceed as contemplated herein, either because such contract is terminated, materially modified or otherwise not performed so that Phase II will not be adopted into the ARS, then MWAA may cancel this Agreement by providing express notice in writing to WMATA (a "**Notice of Cancellation**").

Section 9.2 Cancellation Procedures.

This Agreement will be considered cancelled on the date that is seven days after delivery by courier or overnight express of a Notice of Cancellation. Upon receipt, the Parties will institute measures to minimize and eliminate the incurring of additional costs. Eligible Costs, including any and all costs incurred after the receipt of notice, associated with cancelling the work hereunder shall be paid to WMATA. The amount outstanding, if any, shall be determined jointly by the Parties in a final accounting. The final accounting shall be concluded within twelve (12) months of cancellation, unless that time is extended by joint written agreement of the Parties. If the result of the joint final accounting for actual costs expended, including allowable and allocable cancellation costs, identifies a balance on hand, WMATA shall promptly return those funds to MWAA.

Article 10. DEFAULT

Section 10.1 Default by WMATA.

The following shall constitute an event of default by WMATA: The failure of WMATA to timely and satisfactorily perform the Technical Advisor tasks as set forth herein or any other material covenant, term or condition, not otherwise left to the reasonable discretion of WMATA, and the continued failure of WMATA to remedy such nonperformance within ten (10) days after receipt of written notice from MWAA. However, in the event of a Level 2, 3 or 4 Dispute over the alleged nonperformance, WMATA shall not be in default unless and until the dispute process is finally resolved in favor of MWAA with regard to the performance.

Section 10.2 Default by MWAA.

The following shall constitute an event of default by MWAA: (i) The failure of MWAA to pay to WMATA the sums due to WMATA for the timely performance of its obligation herein when said sums are due and owing and the continued failure of MWAA to remedy such nonpayment within ten (10) days after receipt of written notice from MWAA, (ii) MWAA's approval of a deviation from the WMATA Design Criteria and Requirements, issuance of a Dynamic Readiness Certificate, or approval of a punch list prior to Substantial Completion, in each case without WMATA's prior written approval and MWAA's failure to correct its action within 30 days, or, for actions that cannot be corrected within 30 days, commence to correct within 30 days, after notice from WMATA that the design deviation, issuance of the certificate or approval of the punch list was not approved. In the event of a Level 2, 3 or 4 Dispute over a payment, MWAA shall not be in default unless and until the dispute process is finally resolved in favor of WMATA with regard to the payment. In that event MWAA shall make the payment due to WMATA within thirty days or within the time specified in the dispute resolution, whichever is later. Upon payment, the default will be deemed cured. In the event of a Level 2, 3 or 4 Dispute over any other alleged default by MWAA, MWAA shall not be in default unless and until the dispute process is finally resolved in favor of WMATA with regard to the default.

Section 10.3 MWAA's Remedies.

MWAA's sole and exclusive remedy against WMATA for an event of default, whether arising in

contract, tort (including negligence) or other legal theory shall be the right to terminate this Agreement for default.

Section 10.4 WMATA's Remedies.

In the event of a MWAA event of default for other than non-payment, WMATA's sole remedy, whether arising in contract, tort (including negligence) or other legal theory shall be to decline to accept the Phase II into the ARS until such time as MWAA cures the breach.

Article 11. DISPUTES

Section 11.1 Dispute Resolution -- Level 1

Resolution of disputes arising in design reviews.

The respective MWAA and WMATA staffs shall make every effort to resolve design review comments that are in dispute at the conclusion of each design review conference. If the dispute is not resolved between the WMATA Dulles Director and the MWAA Project Director within three (3) work days, both parties shall immediately notify their respective Organizational level Managers, i.e., the WMATA Assistant General Manager for Transit Infrastructure & Engineering Services and MWAA Executive Project Director, and provide them a written synopsis of the issue, including all pertinent data and references, applicable drawings and documents within two (2) business days of the notification. The Organizational Managers shall make every effort to resolve the dispute within three (3) business days following receipt of the written information from their respective staffs. Upon resolution, the MWAA Executive Project Director will issue a jointly signed letter outlining their resolution and direction to the respective Project staffs. Should the Organizational Managers be unable to resolve the issue within the time specified above, both parties shall immediately notify their respective Organizational level Executives i.e., the WMATA Deputy General Manager for Operations and MWAA Vice President of Engineering. The Organizational Executives shall make every effort to resolve the dispute within three (3) business days following receipt of the written information from their respective staffs. Upon resolution, the MWAA Vice President of Engineering will issue a jointly signed letter outlining their resolution and direction to the respective Project staffs. Should the Organizational Executives be unable to resolve the issue within the time specified, the matter shall be immediately referred to the WMATA General Manager and CEO and MWAA CEO for resolution in accordance with Section 11.2.

11.1.A Disputes subject to expedited procedure:

For all disputes arising under Section 2.7.B(3)(a) (i) through (vi) regarding final design submittals, under Section 2.7.B(3)(c) regarding Transit Related Facilities submittals, Section 2.7.B(4)(e) regarding acceptance tests of Transit Related Facilities and related equipment, Section 2.7.B(5)(c) regarding the System Integration Program Plan, Section 2.7.B(5)(e) regarding acceptance test results, and Section 5.3, Time is of Essence, these procedures shall apply unless the Parties agree otherwise. The respective MWAA and WMATA staffs shall make every effort to resolve the dispute. If the dispute is not resolved between the WMATA Project Director and

MWAA Project Director within two (2) business days, both parties shall immediately notify their respective Organizational level Executives i.e., the WMATA Deputy General Manager for Operations and MWAA Vice President of Engineering, and, and simultaneously provide them a synopsis of the issue, including pertinent data and references, applicable drawings and documents. The Organizational Level Executives shall make every effort to resolve the dispute within two (2) business days following receipt of the notice of the dispute from their respective staffs. Upon resolution, the MWAA Vice President of Engineering will issue a jointly signed letter outlining their resolution and direction to the respective Project staffs. Should the Organization Level Executives be unable to resolve the issue within the time specified above, the matter shall be immediately referred to the WMATA General Manager and CEO and MWAA CEO for resolution. In the event a dispute is not resolved between the Parties within seven (7) calendar days after submission to the WMATA General Manager and CEO, and the President and CEO of MWAA, either party may proceed under Level 3 or 4.

11.1.B Resolution of Other Disputes:

For all other disputes between MWAA and WMATA arising out of this Agreement, either party to this Agreement shall, through its Project Director, provide the other party written notice of any dispute and/or default under this Agreement by identifying the Section in dispute, and/or the necessary corrective action whenever it reasonably deems that the other party is in default. The notice shall specifically state the nature of the dispute and or default and shall provide the other party a reasonable period of time within which to respond or to correct the default, but in no event less than ten (10) calendar days. Should the matter in dispute or any alleged default not be corrected to the satisfaction of the party giving notice thereof within ten (10) calendar days, either party may further, thereafter, invoke the dispute procedures.

11.1.C Exception for certain technical disputes.

Notwithstanding the foregoing, technical disputes over application of WMATA Design Criteria and Requirements that were not identified in preliminary engineering or were not discoverable by the exercise of reasonable engineering judgment during preliminary engineering, shall be resolved by WMATA's Design Control Board. If the application of WMATA Design Criteria and Requirements are not possible or are commercially impracticable, such disputes are not subject to this Article.

Section 11.2 Dispute Resolution or Default Resolution -- Level 2.

A dispute that is not resolved at Level 1 may be brought by either party within five (5) business days to Level 2 where the President and CEO of MWAA and the General Manager and CEO of WMATA, or their designees, will be responsible for reviewing and resolving disputes and/or alleged defaults between MWAA and WMATA, related to this Agreement, that are not resolved in Level 1. Resolution will be signified by a decision agreed to by both the President and CEO of MWAA and the General Manager and CEO of WMATA. In the event a dispute cannot be resolved between the Parties pursuant to Levels 1 or 2, or twenty (20) calendar days after submission to the General Manager and CEO of WMATA and the President and CEO of MWAA have passed and there is not a decision, either party may proceed under Level 3 or 4.

Section 11.3 Principals -- Level 3.

Either party may give written notice to the other that it is bringing the matter before next Principals Meeting. Each party shall provide the Principals with a summary of the issues. The Principals shall review the dispute and provide their recommendation for resolutions as soon as practicable, but not later than the next regularly scheduled Principals meeting. The recommendation of the Principals is advisory, and is a tool for further guidance to assist in resolution by the Parties. The recommendation of the Principals is not a binding resolution upon the Parties to this Agreement.

Section 11.4 Court Jurisdiction -- Level 4.

The Parties are not obligated to pursue or to complete the Level 3 dispute. In the event that the parties are not able to resolve the default or dispute after using the procedure set forth in Level 1 and 2, either party may commence a civil action to resolve the dispute in a court of competent jurisdiction in the Commonwealth of Virginia.

Article 12. NOTICES

Section 12.1 Written Notice.

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 a courier service or a national overnight delivery service, such as the U.S. Postal Service Overnight Express Mail, to any party hereunder as follows:

If to MWAA:

Project Director
Silver Line Project Office
1593 Spring Hill Road
Suite 300
Fairfax, VA 22182

And its Authorized Representative, if applicable in connection with the notice,

With a copy to the General Counsel:

Metropolitan Washington Airports Authority

General Counsel's Office
1 Aviation Circle
Washington, D.C. 20001-6000

If to WMATA:

General Manager
Washington Metropolitan Area Transit Authority
600 Fifth Street, N.W.
Washington, D.C. 20001

And its Authorized Representative, if applicable in connection with the notice,

With a copy to:

General Counsel
Washington Metropolitan Area Transit Authority
Jackson Graham Building, Second Floor
600 Fifth Street, N.W.
Washington, D.C. 20001

Article 13. AMENDMENT AND ASSIGNMENT

Section 13.1 Amendment(s).

This Agreement may be amended in writing by agreement of the Parties.

Section 13.2 Assignment.

This Agreement is binding upon both MWAA and WMATA. The rights, duties, and obligations of either party with respect to the Project may not be assigned without the written consent of the other party. It is understood that WMATA may retain consultant/contractors to perform review and administrative work consistent with the approved Budget and this shall not constitute an assignment.

Article 14. RIGHTS NON-EXCLUSIVE

Nothing herein shall be construed to grant an exclusive right to WMATA to provide Technical

Advisory Services. MWAA reserves the right to obtain technical advice and services from third parties even if such advice or services pertains to the same or similar matter about which WMATA is advising MWAA or providing services. MWAA shall not be in default or liable to WMATA in any way for seeking or using such advice or services provided that such advice is consistent with the contract requirements.

Article 15. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the Parties hereto with respect to the transactions contemplated herein related to Phase 2, and, to the extent that any prior oral or written agreements, letters of intent, commitments or understandings between the parties with respect to the matters provided herein conflict with this Agreement such conflict shall be resolved in favor of both the express language and the intent of this Agreement.

Article 16. CONSTRUCTION

Section 16.1 Liberal Construed.

This agreement is to be liberally construed to accomplish its intended purpose.

Section 16.2 Drafting Responsibility.

Each Party acknowledges that they participated equally in the negotiation and drafting of this Agreement and that, accordingly, a court construing this Agreement shall not construe it more strictly against one party or the other.

Article 17. GOVERNING LAW

This Agreement and the rights and obligations of the Parties hereto, shall be governed by and construed under the laws of the Commonwealth of Virginia.

Article 18. WAIVER

Neither the waiver by either of the Parties hereto of a breach or default of under any of the provisions of this Agreement, nor the failure of the parties, on one or more occasions, to enforce any of the provisions of this Agreement or to exercise any right or privilege hereunder shall thereafter be construed as a waiver of any subsequent breach of default of a similar nature.

Article 19. SEVERABILITY

If any provision or clause contained in this Agreement operates or would prospectively operate to invalidate this Agreement in whole or in part, then such provision or clause only shall be held ineffective, as though not contained herein, and the remainder of this Agreement shall remain operative and in full force and effect.

Article 20. COUNTERPARTS

This Agreement may be executed in two identical counterparts, and it shall not be necessary that the signatures of, or on behalf of, each party appear on each counterpart, but it shall be sufficient for the signature of, or on behalf of, each party to appear on one of the counterparts. The counterparts shall collectively constitute a single agreement.

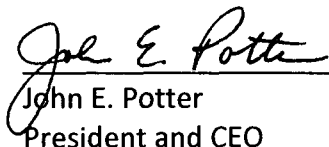
FOR THE WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY:



Richard Sarles
General Manager and CEO

DATE: August 8, 2013

FOR THE METROPOLITAN WASHINGTON AIRPORTS AUTHORITY:


John E. Potter
President and CEO

DATE: 8/7/13

EXHIBITS

1. WMATA Board Resolution 2012-24
2. WMATA's Standard Right of Entry Permit for Phase 2
3. December 2011 Memorandum of Agreement among affected jurisdictions
4. Approved Deviations
5. WMATA's Safety & Security Certification Program Plan dated March 2012
6. List of updated WMATA Standard and Design Drawings that are part of WMATA Design Criteria and Requirements (see section 1.1.AA)
7. Summary of WMATA Technological Enhancements Supplement to Design Criteria 9.0, dated March 2013 (see section 1.1.AA)
8. Rail Activation Plan for Phase 1
9. Budgets
 - a. Capital Equipment Budget
 - b. WMATA Support Budget (including insurance costs unless addressed in a separate insurance budget)
 - c. Force Account/Startup Budget
10. OCIP Description