



Finance and Capital Committee

Action Item III-C

February 26, 2026

Approval of Joint Development Agreement at Congress Heights and the Bus Loop Reimbursable Project



Board Document

OVERVIEW			
PRESENTATION NAME	Congress Heights Joint Development Agreement	DOCUMENT NO.	300098
ACTION OR INFORMATION	Action		
STP GOAL	Financial and Organizational Efficiency		
RESOLUTION	Yes		
EXECUTIVE OWNER			
EXECUTIVE TEAM OWNER	Rickard, David B.		
DEPARTMENT	Finance		
DOCUMENT INITIATOR	Hughes-Cromwick, MacPherson		
OTHER INFORMATION			
COMMITTEE	FCC	COMMITTEE DATE	2/26/2026
PURPOSE/KEY HIGHLIGHTS	Request authorization to enter into a joint development agreement at the Congress Heights Metro Station.		
DISCUSSION	Joint Development maximizes the value of Metro assets by increasing transit ridership, generating new fare revenue, and supporting local economic development. In 2022, Metro received an unsolicited proposal from the District of Columbia Public Library (DCPL) to ground lease property made available from the reconfiguration of Metro’s bus loop at Congress Heights. Metro has negotiated a joint development agreement with DCPL and proposes to enter a ground lease with DCPL, who will construct a 23,000 SF mass timber library that will include a bus operator relief facility. The proposed Joint Development agreement meets the Board of Director’s joint development approval criteria:		



Board Document

	1. Maintains or enhances transit ridership, safety and/or access 2. Maintains or enhances WMATA's ability to operate transit services and/or maintain the transit system 3. Has a positive net fiscal impact for WMATA 4. Is consistent with or enhances local land use and economic development plans 5. Complies with FTA Guidelines
INTERESTED PARTIES	None
RECOMMENDATION/NEXT STEPS	Board authorization to execute a joint development agreement at the Congress Heights Metro Station. Construction of the proposed library is anticipated to begin in Summer 2026.
FUNDING IMPACT	The joint development with DCPL will positively impact ridership and fare revenue.



Board Document

OVERVIEW			
PRESENTATION NAME	Congress Heights Bus Loop Reimbursable Agreement	DOCUMENT NO.	300101
ACTION OR INFORMATION	Action		
STP GOAL	Financial and Organizational Efficiency		
RESOLUTION	Yes		
EXECUTIVE OWNER			
EXECUTIVE TEAM OWNER	Rickard, David B.		
DEPARTMENT	Finance		
DOCUMENT INITIATOR	Hughes-Cromwick, MacPherson		
OTHER INFORMATION			
COMMITTEE	FCC	COMMITTEE DATE	2/26/2026
PURPOSE/KEY HIGHLIGHTS	Requests authorization for WMATA to negotiate and execute a reimbursable agreement with the District of Columbia for transit improvements at the Congress Heights Metro Station.		
DISCUSSION	As part of the St. Elizabeths East redevelopment, the District of Columbia is investing in new transit and infrastructure improvements to support its housing and economic development goals, including replacing and reconfiguring the Congress Heights bus loop. The proposed adjustments to Metro’s transit facilities were approved by the Metro Board in 2023 (Res. 2023-40). Metro staff now recommends entering into a reimbursable agreement with the Office of the Deputy Mayor for Planning and Economic Development (DMPED) to fully fund Metro costs incurred during design and construction of the Congress Heights bus loop, except for the cost of procuring and installing new CCTV equipment, for which Metro will fund.		



Board Document

INTERESTED PARTIES	None
RECOMMENDATION/NEXT STEPS	Board authorization to execute a reimbursable funding agreement at the Congress Heights Metro Station. Construction of the reconfigured bus loop is anticipated to begin in Summer 2026.
FUNDING IMPACT	The District of Columbia will reimburse Metro for its costs, estimated to be approximately \$500,000, incurred during the design and construction of the transit improvements. Metro will provide funding for the cost of procuring and installing the CCTV system, estimated to be approximately \$725,000.

Congress Heights Joint Development Agreement & Bus Loop Reimbursable Agreement



Finance and Capital Committee

Washington Metropolitan Area Transit Authority
February 26, 2026

Delivering Your Metro, the Way Forward



Service Excellence

Deliver safe, reliable, convenient, accessible, and world-class service that customers can trust across all modes.

Objectives of Service Excellence Goal

- **Safety and Security**
- **Reliability**
- **Convenience**



Talented Teams

Attract, develop, and retain world-class talent where individuals feel valued, supported, and proud of their contribution.

Objectives of Talented Teams Goal

- **Recruitment and Retention**
- **Learning and Development**
- **Customer Service Mindset**

Focus
Today



Financial & Organizational Efficiency

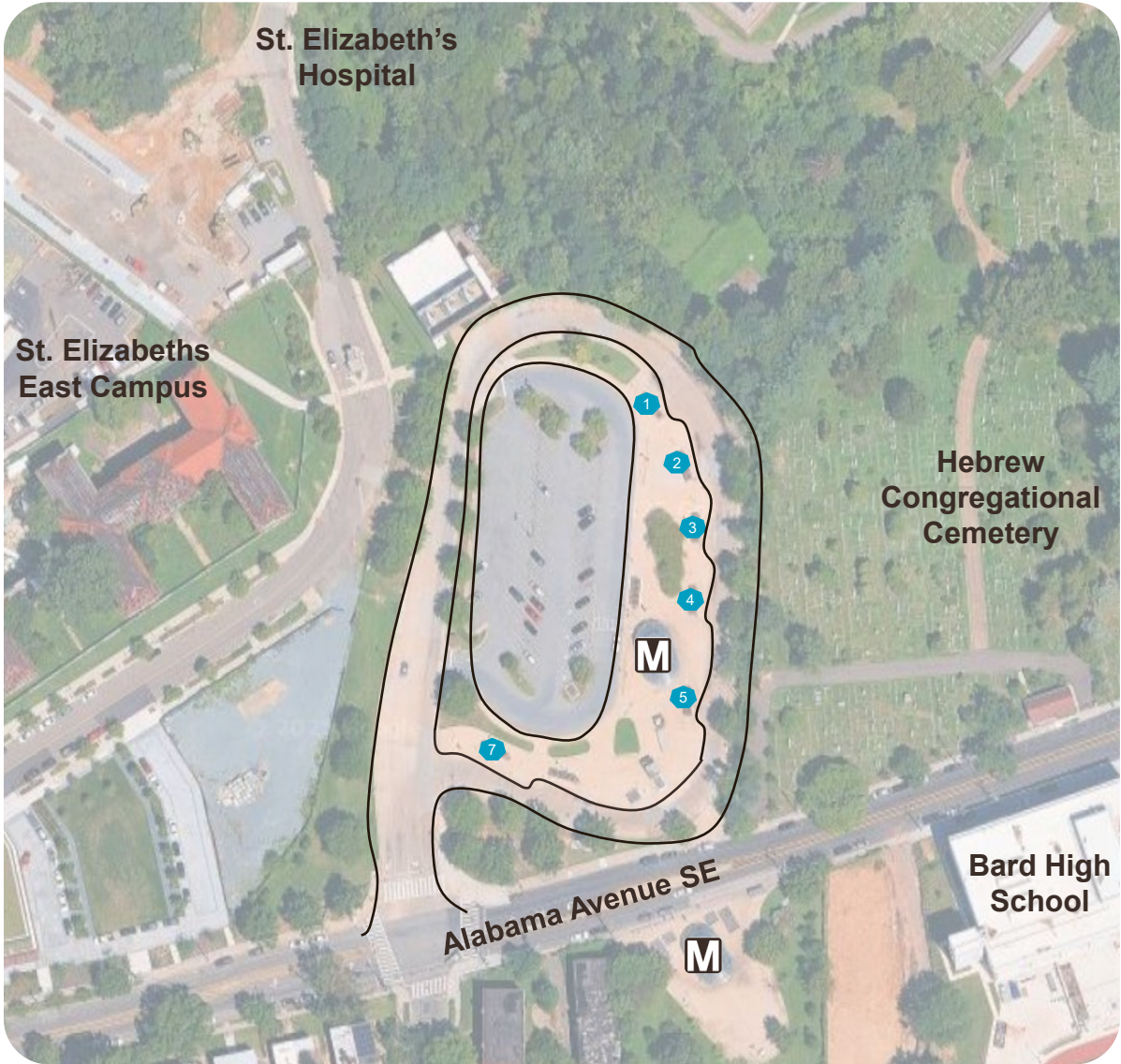
Steward public resources and efficiently allocate resources where they drive the most value, to ensure service delivery.

Objectives of Financial & Organizational Efficiency Goal

- **Financial Responsibility**
- **Organizational Efficiency**
- **Energy Management**

Background

2019	Metro and the District exchange land at Congress Heights to allow for future 13 th Street SE extension
2020	District authorizes capital funding for 13 th Street SE extension & transit facility changes
2021	St. Elizabeths East Master Plan adopted & DC Comprehensive Plan updated
2022	Metro receives unsolicited proposal from the District for a public library at Congress Heights
Sep 2023	Metro holds Compact Public Hearing on proposed changes to transit facilities
Dec 2023	Metro Board approves the final staff report and amendment to the Mass Transit Plan to reconfigure the bus loop and eliminate the Kiss & Ride lot



Congress Heights Station and St. Elizabeths East

The District is investing \$15 million in transit and infrastructure improvements to support a broader housing and economic development initiative

- Improves multimodal connections to 183-acre redevelopment and creates opportunity to anchor station with new DC Public Library
- St. Elizabeths East Campus includes housing, commercial, institutional and entertainment uses



Congress Heights Transit Improvements

- Metro to enter into reimbursable agreement with the Office of the Deputy Mayor for Planning and Economic Development, who is funding and leading the construction of the transit improvements
- Transit improvements include:
 - Reconfigured Metro bus loop (seven bus bays, two layover spaces)
 - New bus shelters, lighting, sidewalks and a new traffic signal at bus loop exit
 - Five curbside pick-up/drop-off spaces to be created on new 13th St. SE and three on Alabama Ave SE
- Metro to fund new CCTV system in the new bus loop
- Construction commencement anticipated in Summer 2026



Joint Development Agreement Summary

- Unsolicited offer from DC Public Library to construct new 23,000 SF mass timber library
- Library will include new bus operator relief facility to be funded by Metro
- 99-Year ground lease
- Construction commencement anticipated in Summer 2026



Recommendation

Committee Approval to Authorize Staff to:

- Execute a Joint Development Agreement with the District of Columbia Public Library
- Execute a reimbursable agreement with the District of Columbia



SUBJECT: AUTHORIZATION TO EXECUTE A JOINT DEVELOPMENT AGREEMENT WITH THE DISTRICT OF COLUMBIA PUBLIC LIBRARY TO LEASE LAND LOCATED AT THE CONGRESS HEIGHTS METRO STATION

RESOLUTION
OF THE
BOARD OF DIRECTORS
OF THE
WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

WHEREAS, Section 2.3 (C) of the Authority's Joint Development Policies, as amended by Resolution 2022-34, requires the Board of Directors to authorize staff to execute a joint development agreement, including in connection with an unsolicited offer; and

WHEREAS, Section 3.3 of the Authority's Joint Development Policies allows WMATA to consider unsolicited offers to lease or purchase WMATA property from a jurisdictional partner; and

WHEREAS, The District of Columbia Public Library ("DCPL") submitted to WMATA an unsolicited proposal to lease land located at Congress Heights Metro Station to construct a new library; and

WHEREAS, Staff has negotiated a joint development agreement with DCPL that meets the approval criteria for joint development set forth in Section 2.2 of the Joint Development Policies and is consistent with Metro's 10-year Strategic Plan for Joint Development;

NOW THEREFORE, be it

RESOLVED, That the Board of Directors authorizes the General Manager and Chief Executive Officer or his designee to execute a Joint Development Agreement with the District of Columbia Public Library to lease WMATA property located at the Congress Heights Metro Station; and be it finally

RESOLVED, That this Resolution shall be effective 30 days after adoption in accordance with Compact Section 8(b).

Reviewed as to form and legal sufficiency,

/s/

Patricia Y. Lee
Executive Vice President, Chief Legal Officer, and
General Counsel

WMATA File Structure No.:
21.9.4 Joint Development Agreements

PROPOSED

SUBJECT: APPROVAL OF REIMBURSABLE AGREEMENT WITH THE DISTRICT OF COLUMBIA TO RELOCATE BUS LOOP AND MAKE OTHER IMPROVEMENTS AT THE CONGRESS HEIGHTS METRO STATION

RESOLUTION
OF THE
BOARD OF DIRECTORS
OF THE
WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

WHEREAS, Resolution 2011-30, as amended, requires Board of Directors approval of reimbursable agreements over \$500,000; and

WHEREAS, Resolution 2023-40 approved the *Public Hearing Staff Report, Compact Public Hearing Staff Report, Staff Analysis of the Public Hearing and Staff Recommendations, Congress Heights 13th Street Extension Project* on the proposed relocation of the bus loop and reduction of Kiss & Ride facilities and amended the Mass Transit Plan to relocate the bus loop and reduce Kiss & Ride facilities; and

WHEREAS, The District of Columbia, through its Office of the Deputy Mayor for Planning and Economic Development (DMPED), will enter into an agreement directly with a contractor to design and construct the relocated the bus loop and make other improvements at the Congress Heights Metro Station at its sole cost and responsibility; and

WHEREAS, DMPED and WMATA are negotiating a reimbursable agreement whereby DMPED will fully fund all WMATA costs incurred during design, construction, and transfer of ownership of the relocated bus loop and other improvements at the Congress Heights Metro Station to WMATA; and

WHEREAS, For financial efficiency, WMATA will provide funding to DMPED so that DMPED's contractor can procure and install CCTV cameras in the relocated bus loop at the Congress Heights Metro Station and DMPED will transfer ownership of the CCTV cameras to WMATA during project turnover;

WHEREAS, Staff recommends entering into a reimbursable agreement with DMPED, which is currently estimated to be approximately \$500,000;

NOW THEREFORE, be it

RESOLVED, That the General Manager and Chief Executive Officer or designee is authorized to negotiate and execute a reimbursable agreement for the District of Columbia, through its Office of the Deputy Mayor for Planning and Economic Development (DMPED), to fully fund, design, construct, and transfer ownership of the relocated bus loop and other

improvements at the Congress Heights Metro Station (except WMATA will provide funding to DMPED for the cost of procuring and installing CCTV cameras and DMPED will transfer ownership of the CCTV cameras to WMATA), substantially in the form as shown in Attachment A; and be it finally

RESOLVED, That in order to ensure timely execution of the reimbursable agreement with DMPED, for relocation of the bus loop and other improvements at the Congress Heights Metro Station, this Resolution shall be effective immediately.

Reviewed as to form and legal sufficiency,

/s/

Patricia Y. Lee
Executive Vice President, Chief Legal Officer, and
General Counsel

WMATA File Structure No.:
21.9.4 Joint Development Agreements

PROJECT COORDINATION AGREEMENT
BETWEEN THE
WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
AND THE
OFFICE OF THE DEPUTY MAYOR FOR PLANNING AND ECONOMIC
DEVELOPMENT
AND THE
DEPARTMENT OF GENERAL SERVICES,
FOR THE
BUS LOOP RECONFIGURATION PROJECT AT CONGRESS HEIGHTS STATION
METRORAIL STATION PROJECT

This Project Coordination Agreement (“**Agreement**”) is made as of _____, 2026 (the “**Effective Date**”) by and between the Washington Metropolitan Area Transit Authority, an interstate compact agency and instrumentality of the District of Columbia, the State of Maryland, and the Commonwealth of Virginia, with headquarters at 300 7th Street, SW, Washington, DC 20024 (“**WMATA**”), and the Government of the District of Columbia, a municipal corporation, acting by and through the Office of the Deputy Mayor for Planning and Economic Development (“**DMPED**”) and the District of Columbia Department of General Services (“**DGS**”) (WMATA, DMPED, and DGS are each referred to herein by name or as a “Party,” or collectively, as the “**Parties**”).

WITNESSETH:

WHEREAS, the Parties desire to reconfigure the bus loop, replace bus shelters, improve pedestrian access, install a new traffic signal at the bus loop entrance at 13th Street SE and Sycamore Drive, as described on **Exhibit A**, install a new traffic signal at the bus loop exit at Alabama Ave SE, provide new access to the Traction Power Sub Station (TPSS) for maintenance purposes, and install or modify dry and wet utilities at the Congress Heights Metrorail Station (the “**Project**”).

WHEREAS, DMPED together with DGS, will develop the Design and Construction Documents for the Project;

WHEREAS, DMPED desires for WMATA to review the Design and Construction Documents, and WMATA agrees to review the same pursuant to the terms and conditions in this Agreement; and

WHEREAS, after the Design and Construction Documents are complete, the Parties intend to proceed with the Project using a design-bid-build process; and

WHEREAS, at the completion of construction of the Project in accordance with this Agreement, DMPED and DGS will transfer their respective ownership and operation and maintenance of the Project to WMATA; and

WHEREAS the Parties desire to set forth the procedures for DMPED's and DGS' coordination with WMATA for the design and construction of the Project.

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

1. DEFINITIONS.

- 1.1. Unless defined elsewhere in this Agreement, capitalized terms in this Agreement shall have the meanings set forth in this Article.

“Adjacent Construction Project Manual” means WMATA's Adjacent Construction Project Manual, Revision 5a dated September 21, 2015, as it may be amended, supplemented, or replaced from time to time.

“Agreement” is defined in the preamble and shall include any amendments, supplements, or other modifications of this Agreement from time to time.

“Applicable Law” means all present and future applicable laws, ordinances, rules, regulations, permits, authorizations, judicial decisions, orders and requirements, including, without limitation, building and zoning laws and codes, of all applicable federal, State or local governments, the departments, bureaus, commissions, authorities, boards or officers thereof, and any national or local board of fire underwriters, or any other body or bodies exercising similar functions having or acquiring jurisdiction of, and which affect or are applicable to the Project or any part thereof.

“Approved Design and Construction Documents” means the Design and Construction Documents as approved by WMATA in writing. The “Approved Design and Construction Documents” shall also include any approved changes/modifications

(including change orders, shop drawings, and/or requests for information) to these documents and shall also include any and all such documents that may also be required to be completed in connection with the issuance of any government approvals. The Approved Design and Construction Documents shall not contain, propose or constitute an acceptance of any restrictions, or the imposition of any requirements, that would or could result in any permanent adverse impact on the safety of, ingress to or egress from, the security of and/or the operations of the Metro Station or any WMATA Facilities. [The Parties acknowledge and agree that as of the Effective Date of this Agreement, the Design and Construction Documents for the Project have been approved by WMATA as Approved Design and Construction Documents.]

“As-Built Documentation” means the complete coordinated and unified set of working drawings, specifications, studies, and reports depicting the Project as constructed upon Final Completion thereof, and including, *inter alia*, the Design and Construction Documents, redlined/clouded to show all field changes (as well as a clean version of the same), and all approved shop drawings, change orders, and all RFIs. The final As-Built Documentation must comply with the Adjacent Construction Project Manual, WMATA 2014 CAD Standards, and Civil 3D Styles, as amended or replaced from time to time.

“Business Day” means a workday from Monday through Friday that is not a Federal or District of Columbia holiday.

“Calendar Day” means a consecutive day inclusive of Saturdays and Sundays.

“Certificate of Final Completion” means a written statement executed by the General Contractor certifying that the Project has achieved Final Completion in accordance with the terms herein, which Certificate of Final Completion shall be countersigned by WMATA and DGS upon their approval thereof, in the form attached hereto as **Exhibit B**.

“Certificate of Substantial Completion” means a written statement executed by General Contractor certifying that the Project has achieved Substantial Completion in accordance with the terms herein, which Certificate of Substantial Completion shall be countersigned by WMATA and DGS upon their approval thereof, in the form attached hereto as **Exhibit C**. The Certificate of Substantial Completion also shall include the Punch List.

“Commercially Reasonable Business Efforts” means the timely and diligent undertaking of all steps usually, customarily, and fiscally prudent under the circumstances that a general contractor takes to lawfully achieve the objective to which the particular effort pertains.

“Construction Mistakes and Defects” means those defects in construction arising from failure to construct the Project (i) in accordance with generally accepted practices appropriate to the activities undertaken, (ii) in accordance with this Agreement or the

Design and Construction Documents, as approved or deemed approved by WMATA, and as modified by change orders approved or deemed approved by WMATA, and (iii) in accordance with the WMATA Design and Construction Standards, but such defects shall not include defects in construction of the Project to the extent that WMATA specifically requested in writing for work to be performed in a manner, with materials or of a design that resulted in such defects and DMPED constructed the Project (or a portion thereof) in compliance with WMATA's specific instructions.

"Construction Site" means the area generally depicted on **Exhibit A**, which shall be further defined in the Design and Construction Documents.

"DGS" is defined in the Preamble.

"DGS Project Representative" is defined in **Section 7.11(a)**.

"DMPED" is defined in the Preamble.

"DMPED Project Representative" is defined in **Section 7.11(a)**.

"Design and Construction Documents" means any and all design and construction documents, drawings, for all design and construction work relating to the Project. (Disclaimer: The Design and Construction Documents shall not contain, propose or constitute an acceptance of any restrictions, or the imposition of any requirements, that would or could result in any permanent adverse impact on the safety of, ingress to or egress from, the security of and/or the operations or maintenance of the Metro Station or any WMATA Facilities.)

"District of Columbia Project Cost Cap" means the sum, not to exceed \$25,000,000.00, such amount being the total cost, in District capital dollars, to construct the Project in accordance with this Agreement.

"Effective Date" is the date on which this Agreement is fully executed by the Parties, or their designees.

"Event of Default" is defined in **Section 13.1**.

"Excess Costs" is defined in **Section 2.2**.

"Final Completion" or *"Finally Complete"* or any similar term means the final completion and operational readiness of the Project, including:

- the completion of all Punch List items;
- to the extent required, any State, County and/or municipal inspections and/or certifications have been successfully completed such that the facilities can be placed in service for their full use and function;

- the delivery to WMATA of an assignment of ownership to WMATA of all of DMPED and DGS' design and construction documents, specifications and shop drawings, together with the design and construction documents, specifications and shop drawings themselves;
- the delivery to WMATA of an as-built survey of the Project complying with the then-current standards of the American Land Title Association and the American Congress of Surveying and Mapping (or such professional organizations as may replace them from time to time to set standards for land surveys);
- the delivery to WMATA of a Certificate of Final Completion (or such other professional organization that may succeed to its role of promulgating industry-standard forms of this type) from the architect or engineer for the Project;
- the delivery to WMATA of an unconditional waiver of liens by DGS' General Contractor and from any subcontractor paid independently of the General Contractor, and from any service provider entitled to file a mechanic's or materialmen's lien under Applicable Law;
- the clearing of the appropriate area of all equipment, materials, tools and rubbish; and
- the issuance by WMATA of a Certificate of Final Completion, the decision to issue (or not) shall be determined by WMATA in its sole discretion.

"Functional Operations Test" means an operational test of the Project conducted by DGS after it has been fully installed by DGS. This test shall be conducted to determine whether individual components are installed and integrated to operate on a system level per the design intent and the manufacturer's specifications. Such test must take place with WMATA's personnel present.

"Invitation to Bid" means DGS' solicitation for a contractor to construct the Project.

"General Contractor" means the general contractor hired by DGS.

"Maintenance of Traffic Plan" means the plan for maintaining continuous safe and effective pedestrian and vehicular traffic in and around the Project site, including WMATA's access to and from all WMATA Facilities on or adjacent to the site, during construction. The Maintenance of Traffic Plan must include any interim and temporary operational measures necessary to ensure that WMATA is able to maintain existing levels of service. The Maintenance of Traffic Plan must meet the WMATA Design and Construction Standards and must be approved in writing by WMATA prior to commencement of any construction work on the Project. Any and all costs associated

with the Maintenance of Traffic Plan must be borne by DGS.

“Metro Station” means the Congress Heights Metrorail Station, including all of WMATA’s related equipment, structures, and interests.

“MOA” is defined in **Section 9.1**.

“Notice” is defined in **Section 14.1**.

“Notice to Proceed” shall mean the issuance by DGS to the General Contractor of a notice to proceed under the DGS/General Contractor construction contract.

“Payment and Performance Bonds” means bonds complying with **Section 9.4** below.

“Project”, in addition to the meaning assigned to it in the “Whereas” section of this Agreement, means (i) all design, construction, and any other work necessary for the development of the improvements related to the reconstruction and expansion of the bus loop as more particularly described in the Approved Design and Construction Documents, and (ii) any other infrastructure work relating to the foregoing, including any interim facilities necessary to maintain WMATA’s operations during the construction of the Project. The permanent location of the Project has been determined in the Approved Design and Construction Documents.

“Project Representatives” means DMPED Project Representative, DGS Project Representative and WMATA Project Representative.

“Project Schedule” is defined in **Section 6.1**.

“Punch List” means a list of minor construction deficiencies existing at the time that Substantial Completion has been achieved. Punch List items must be singular (i.e., items may not include sub-items) and may only include items capable of being completed within thirty (30) days from the date of the Certificate of Substantial Completion. Any items that could materially impede WMATA’s operations are not “minor construction deficiencies” and therefore mean that Substantial Completion has not been achieved and therefore shall not be included on the Punch List. Punch List items will be generated with the General Contractor, WMATA, and District.

“Real Estate Permit” means the form of Real Estate Permit attached hereto as **Exhibit D**.

“Request for Information” or “RFI” means a contractor’s formal request to District, WMATA or architect seeking clarification, missing details, or resolution of Project-related concerns. DMPED/DGS shall submit a copy of all RFIs to WMATA for review/comment and approval as required.

“Safety Acceptance” means a status that will be issued by the WMATA Safety

Department upon successful inspection of the proposed facilities based upon the Safety Acceptance checklist during Substantial Completion inspections.

“Safety and Security Certification Plan” means a safety and security certification plan in accordance with 49 CFR Parts 611, 633 and 659, FTA Handbook for Transit Safety and Security Certification, FTA Circular 5800.1, and the most recent update of the WMATA Safety and Security Certification Plan (further guidance is provided under WMATA Division 1 – General Requirements Specification section – 01115 Safety and Security Certification) in existence as of the Effective Date.

“Substantial Completion,” “Substantially Complete” and any similar term means that, the Project has been completed, except for Punch List items, in accordance with the Approved Design and Construction Documents and is functional and ready for its intended purposes, and each of the following has been achieved:

- the inspecting or design architect or engineer has issued and delivered to DGS and WMATA a Certificate of Substantial Completion for the Project, subject to Punch List items;
- issuance by appropriate jurisdiction of a certificate of occupancy or non-residential use permit or their equivalent for the Project, if applicable, and a copy has been delivered to WMATA;
- the delivery to WMATA of PDF format and electronic copies in AutoCAD format (or such formats as may hereafter replace the same) of the As-Built Documentation, certified by the General Contractor’s Project architect or professional engineer as accurate and compliant with the Approved Design and Construction Documents;
- WMATA and DGS shall have countersigned the Certificate of Substantial Completion after execution by the General Contractor;
- a Safety Acceptance is issued to DGS by WMATA in accordance with a Category 2 level of certification as defined in WMATA’s Safety and Security Certification Plan (SSCPP) attached hereto as **Exhibit E**;
- the delivery to WMATA of complete and legible electronic copies (PDF Searchable) of all warranties and guaranties of equipment, installation or materials, together with duly executed instruments assigning them to WMATA, together with all technical materials needed to maintain the effectiveness of such warranties and guaranties;
- the delivery to WMATA of complete and legible electronic copies (PDF Searchable) of all manufacturers’ instructions, related maintenance manuals and/or agreements, training manuals or videos or the like, replacement lists, detailed drawings, all keys (including any pass cards and access codes) and

spare parts, and any technical requirements necessary to operate and maintain such equipment;

- operating and maintenance training for the Project has been provided to and completed by WMATA personnel in accordance with then-applicable WMATA standards; and
- WMATA and DGS have entered into an Operation and Maintenance Agreement.

“*WMATA Compact*” means the interstate compact that created and organized WMATA pursuant to Public Law 89-774, 80 Stat. 1324, Maryland Acts of General Assembly Chapter 869-1965, Virginia Acts of Assembly Chapter 2-1966, and Resolution of D.C. Board of Commissioners adopted November 15, 1966, as the same may be amended from time to time.

“*WMATA Design and Construction Standards*” means all documents included in **Exhibit F** attached hereto and incorporated herein by this reference. In the event that the 100% Design and Construction Documents for the Project are not completed within two (2) years of January 6, 2025, then WMATA may require DMPED or DGS, as applicable, to update the design to the then current versions of the Adjacent Construction Project Manual and/or WMATA Design Criteria and Standards in accordance with **Section 4.2(g)**.

“*WMATA Facilities*” or “*WMATA Facility*” means the Metro Station, adjoining tracks, entrances/exits, passageways (surface and subsurface), ramps, retaining walls, and other facilities for the Metro Station and any adjacent support facilities, including all improvements, infrastructure components, tangible property, structures and supports, access, curbing, guttering, drains, storm water facilities, utilities, parking (including lots, garages, spaces, meters, gates and revenue-collection facilities) located on property owned or used by WMATA; and all improvements, facilities, equipment, structures and other tangible property used in the operation, access to and from, maintenance, repair, servicing, removal and/or replacement of WMATA’s train, bus or other transit operations, wherever located, including all rail stations, rails, tunnels, tracks, bus bays, bus lay-over bays, bus transfer areas, supervisor kiosks, employee bathrooms, electric substations, conduits and lines, pedestrian walkways, waiting and shelter areas, facilities serving persons with disabilities, cooling towers, chiller plants, vent and fan shafts, bicycle rack and locker areas, Bike & Ride facilities, parking lots and parking garages, Kiss & Ride facilities, storage and maintenance yards and facilities, and all other associated facilities notwithstanding that some of the facilities may have been constructed by or at the expense of DMPED, DGS, or another third party. The WMATA Facilities are and shall be owned by WMATA and shall not be conveyed or leased to DMPED or DGS. WMATA reserves all rights relating thereto, including making additions or other alterations, demolishing all or any part of them, changing the nature of their use, changing the name of the Metro Station, and

determining the use (or non-use) thereof, all in WMATA's sole and absolute discretion.

"*WMATA Project Costs*" are defined in **Section 9.1**.

"*WMATA Project Representative*" is defined in **Section 7.11(a)**.

"*Work List*" is defined in **Section 7.6(a)**.

2. DMPED AND DGS OBLIGATIONS AND RESPONSIBILITIES.

- 2.1. *Design, Construct and Complete.* DMPED hereby covenants to design with DGS the Project, and DGS hereby covenants to construct and complete, or cause to be completed, the Project, at DMPED's sole cost and expense, subject to the District of Columbia Project Cost Cap, and in accordance with the terms and conditions of this Agreement. DMPED and/or DGS, as stated herein, will be responsible for all the design and construction work associated with the Project, including solicitation of a bid-build contractor, obtaining all approvals for the Project (including but not limited to all necessary approvals from all governmental authorities having jurisdiction over the Project, obtaining any further zoning, site plan and conceptual plan approvals, obtaining all building permits and other approvals required in order to commence construction and obtaining all final inspections and approvals once construction has been completed), conducting any necessary public hearings (provided, however, that WMATA has conducted the Compact public hearing at DMPED's sole cost and expense), and ensuring all environmental requirements are satisfied.
- (a) *Best Practices.* DMPED, together with DGS, has designed and DGS shall construct the Project in accordance with current Applicable Law as well as applicable best engineering practices and standards.
 - (b) *WMATA Standards.* DGS shall build the Project in compliance with this Agreement, the Approved Design and Construction Documents, the WMATA Design and Construction Standards, and Applicable Law. The foregoing notwithstanding, WMATA shall have the right, at its sole cost and expense, to require specific standards and technology for the Project if the Project is not substantially complete within two (2) years of commencement of construction on the Project.
 - (c) *Correction of Mistakes.* DGS hereby covenants to correct or cause to be corrected, at no cost or expense to WMATA, all Construction Mistakes and Defects.
 - (d) *No Binding WMATA.* Neither DMPED nor DGS have the right or authority, express or implied, to commit or otherwise obligate WMATA in any manner whatsoever except to the extent expressly authorized in a separate writing by WMATA.

- (e) *Books and Records.* From the Effective Date to the date that is three (3) years following Final Completion of the Project, DGS shall maintain records relating to the design and construction of the Project including all supporting documentation. Such books and records shall be maintained at DGS' offices. WMATA may, but is not required to, audit and make copies of all of DGS' documents, books, and records related to the design, construction, and budgeting for the Project for the purpose of verifying compliance with this Agreement; WMATA shall be given access to such documents, books and records upon ten (10) Business Days' Notice. This subsection shall survive the expiration or termination of this Agreement.
- (f) [intentionally omitted]
- (g) [intentionally omitted]
- (h) DMPED shall complete the Design and Construction Documents in accordance with WMATA's Adjacent Construction Project Manual and the current WMATA Design Criteria and Standards in effect on the date that WMATA approves of the Design and Construction Documents (Approved Design and Construction Documents); provided, however, if a construction contract is not awarded within two (2) years of such date, then WMATA may require DMPED to update the Approved Design and Construction Documents to comply with the then current versions of the Adjacent Construction Project Manual and WMATA Design Criteria and Standards and DMPED must update its design and submit such updated design for WMATA's acceptance. DMPED shall promptly update its design, even within the two (2) years after issuing notice proceed to its design contractor, unless the construction contract has already been awarded, to comply with any updates to the Adjacent Construction Project Manual and/or WMATA Design Criteria and Standards that relate to safety issues and/or any legal issue that WMATA will be required to comply with in its ownership of the completed Project. DMPED shall submit such updated design for WMATA's approval in accordance with **Section 4.2(g)**.
- (i) DMPED shall complete the Design and Construction Documents, to include the technical specifications. WMATA will provide a baseline set of technical specifications which will be updated/adapted by DMPED or DGS, as applicable, as required, to accommodate specific Project requirements. The specifications will be agreed upon throughout the Design and Construction Documents process.
- (j) DMPED, together with DGS, shall design the Project in compliance with the current Americans with Disabilities Act Standards for Transportation Facilities adopted by the U.S. Department of Transportation (2006) (as updated and amended from time to time) and the U.S. Department of Justice's 2010 Americans with Disabilities Act Standard (as updated and amended from time to time).

- (k) DMPED, together with DGS, will provide documentation and other support as necessary for WMATA staff to complete the Compact Public Hearing process.
- (l) As a part of this Project, DMPED will be procuring, constructing and installing seven bus shelters at the Congress Heights Metrorail station site per the Approved Design and Construction Documents.

2.2 *District of Columbia Project Cost Cap.* In the event that any costs associated with the construction (including any construction related change orders or variations) of the Project reach eighty percent (80%) of the District of Columbia Cost Cap, DMPED and/or DGS shall notify WMATA of the same and determine whether the remaining work for the Project can be completed within the District of Columbia Cost Cap or will result in costs that exceed the District of Columbia Project Cost Cap (“**Excess Costs**”). If DMPED and/or DGS, as applicable, determines that such work cannot be completed without incurring Excess Costs, DMPED and/or DGS, as applicable, shall notify WMATA of any such Excess Costs. DGS and/or DMPED, as applicable, shall use reasonable efforts to determine how to address such Excess Costs, which may include finding cost savings or requesting additional funding, subject to the approval of the Council of the District of Columbia. For the avoidance of doubt, in no event will WMATA be responsible for any Excess Costs.

3. PROJECT SCOPE.

The existing bus loop is located at the Metro Station, located at 1290 Alabama Avenue SE, as shown on **Exhibit A**. The bus loop surrounds the Metro Kiss & Ride parking lot that services the Metro Station. The Project will reconfigure the bus loop and replace the bus bays in an arrangement that removes the Metro Kiss & Ride lot and relocates the Metro Kiss & Ride spaces on-street in the DDOT right-of-way. The Project will add a traffic signal at the bus loop entrance at Sycamore Drive and 13th Street SE and at the bus loop exit on Alabama Avenue SE and will include pedestrian access improvements from the Station to the St. Elizabeths East Campus site. The Project will also include upgrading and rerouting the underground infrastructure including the sanitary sewer lines and electrical lines. The Project also shall include security systems at the bus loop (as described in Exhibit ____ and shown in the Approved Design and Construction Documents). The cost for the security systems, not to exceed \$720,620.32, will be paid from District Department of Transportation funds currently held by WMATA.

4. WMATA’S REVIEW OF DESIGN AND CONSTRUCTION DOCUMENTS.

4.1. *Coordination of WMATA’s Review.*

- (a) DMPED, DGS and WMATA acknowledge that the Project will be performed utilizing a design-bid-build process.
- (b) DMPED will forward each submission of the Design and Construction

Documents to WMATA for review with a design review log or matrix for recording WMATA responses.

- (c) DMPED will respond within thirty (30) Calendar Days to WMATA's comments in the Parties' design review log after receiving WMATA's comment on the Design and Construction Documents.
 - (d) After DMPED has provided said responses to WMATA, DMPED and WMATA may schedule an in-person meeting to discuss; provided however, WMATA must be given at least fifteen (15) Business Days to distribute and review District's responses before any such meeting may take place.
- 4.2 *Submissions to WMATA for Approval.* To obtain WMATA's written approval of the Design and Construction Documents, DMPED must submit to WMATA an electronic (.pdf searchable) copy of the Design and Construction Documents. DMPED shall submit such electronic copies for review using WMATA's electronic data management system (currently called "*Procore*").
- (a) Final Submission Must Be Signed and Stamped by the Licensed Engineer of Record. Prior to submission to WMATA of the final Design and Construction Documents, DMPED shall cause its licensed engineer of record (who may be the designer of record) to sign and stamp that the submission complies with the terms of this Agreement.
 - (b) WMATA Facilities. All submissions to WMATA must clearly show all existing WMATA Facilities.
 - (c) Submission Compliance. All submissions to WMATA shall comply with the WMATA Design Criteria and Standards and the Adjacent Construction Project Manual, as set forth in **Section 2.1(b)**, and all Applicable Laws.
 - (d) If DMPED or DGS, as applicable, knows that portions of the Design and Construction Documents are at variance with the WMATA Design Criteria and Standards, the Adjacent Construction Project Manual, or any Applicable Laws, DMPED or DGS, as applicable, shall inform WMATA in writing upon discovery of the variance and in all events effect corrections in a manner satisfactory to WMATA. WMATA will inform DMPED and DGS if it knows of any portions of the Design and Construction Documents that are at variance with the WMATA Design Criteria and Standards, the Adjacent Construction Project Manual, or any Applicable Laws.
 - (e) If DMPED and DGS wish to design and construct any portion of the Project at variance from the WMATA Design Criteria and Standards and/or the Adjacent Construction Project Manual, DMPED must submit such request by the means identified above and obtain WMATA's prior written approval of each variance. WMATA will respond to such request within fifteen (15) Business Days, or such other period as mutually agreed upon by the parties.

- (f) WMATA Time for Review. WMATA shall have thirty (30) Calendar Days to review each submission of the Design and Construction Documents. WMATA's time for review shall not begin to toll until the complete comprehensive set of documents in sufficient detail, as determined by WMATA, has been submitted. If the Design and Construction Documents are received after 2:00 p.m., then WMATA's allotted time for review will not begin to run until the following Business Day. WMATA shall provide its acceptance or rejection of the Design and Construction Documents. In the event WMATA rejects the Design and Construction Documents, WMATA shall include the nature of WMATA's objections or qualifications. DMPED or DGS, as applicable, will address comments into the next design submission (e.g., WMATA's comments on the draft design submission will be incorporated into DMPED's, or DGS', as applicable, revised design submission).
- (g) Changes to Design and Construction Documents. If a construction contract is not awarded within two (2) years after WMATA approval of the Design and Construction Documents (Approved Design and Construction Documents), WMATA may require DMPED to update the Approved Design and Construction Documents to comply with the then current versions of the Adjacent Construction Project Manual and WMATA Design Criteria and Standards or to accommodate joint development plans. Otherwise, once WMATA has accepted the Design and Construction Documents, WMATA may not require changes to the Approved Design and Construction Documents unless related solely to safety issues and/or any legal issue that WMATA will be required to comply with in its ownership, operation and maintenance of the completed Project, subject to the District of Columbia Cost Cap; and DMPED and DGS shall not change the Approved Design and Construction Documents without WMATA's prior written consent. DMPED shall submit any proposed change(s) to the Approved Design and Construction Documents, including but not limited to change orders and shop drawings, to WMATA for review. To ensure that WMATA is able to evaluate how the proposed change is incorporated into the Project, DMPED or DGS, as applicable, shall submit a complete and comprehensive change proposal package (which must include all parts of the Project and/or WMATA Facilities to be impacted by such proposed change) when seeking a change under this Section. WMATA shall review and provide written acceptance or rejection of the proposed change in accordance with the procedures described in **Section 4.2**. WMATA's review rights shall be limited to matters not previously reviewed by WMATA; provided, however, WMATA acceptance of the Design and Construction Documents is conditional and subject to WMATA's receipt of additional information, enhanced detail provided at subsequent stages of design or development, and/or changes to the Project which change the matter previously accepted.
- (h) Purpose of WMATA's Review. WMATA's review shall be for its own purposes only (and may not be relied upon by any other Party for any purpose) in order to ensure that WMATA's operations and the WMATA Facilities are properly protected.
- (i) Design and Construction Documents. The Design and Construction Documents shall include, but not be limited to, the items set forth in **Section 6.2(b)**.

5. QUALITY ASSURANCE AND QUALITY CONTROL.

- 5.1 *Quality Control and Quality Assurance.* DGS shall cause its General Contractor to implement a quality control plan and a quality assurance plan in the execution of the Project in accordance with this **Section 5**. The quality control and quality assurance managers shall be distinct and separate.
- 5.2 *Quality Control and Quality Assurance Plan.* The quality control and quality assurance plans shall address quality assurance in organization, oversight, design, development, installation, inspection, review, and record keeping. The quality control and quality assurance plans shall be consistent with the FTA-IT-90-5001-02.1 and ISO 9001:2008 standards or any update thereto. The same person(s) may not have roles in either design, construction/production, quality control and quality assurance on any portion of the work performed under this Agreement. The quality control and quality assurance plans shall be provided to and approved by WMATA in writing sixty (60) calendar days prior to the start of construction and, after which, shall become a part of the Approved Design and Construction Documents.
- 5.3 *Quality Control Manager.* DGS shall cause its General Contractor to name one individual as quality control manager for the Project within thirty (30) Calendar Days of the Notice to Proceed under this Agreement. The quality control manager's sole duties on the Project shall be to have a quality control plan that provides quality control management independent of design, construction and profit. The quality control manager shall be responsible for all quality control activities and act as the primary contact on quality control issues. The quality control manager must report directly to someone at least one level above DGS' project manager. The quality control manager must be a professional engineer with sufficient experience and expertise to perform the duties required of such a role.
- 5.4 *Quality Assurance Manager.* DGS shall hire an independent third party to perform as the quality assurance manager for the Project. Hiring of this position shall be subject to WMATA approval. The quality assurance manager shall have a quality assurance plan that assures that the quality control plan is followed. The quality assurance manager will be responsible for ensuring quality controls are integrated with quality assurance activities and requirements. The Quality Assurance Manager shall ensure that all submittals to WMATA are complete, reviewed by DGS, and are in accordance with the construction contract, the Approved Design and Construction Documents and this Agreement. The Quality Assurance Manager shall ensure that the Safety and Security Certification Plan is properly executed. The quality assurance manager must be a professional engineer with sufficient experience and expertise to perform the duties required of such a role and approved in writing by WMATA. Replacement of this position is also subject to WMATA's written approval.
- 5.5 *Quality Control Testing.* DGS shall hire an independent qualified/accredited third

party to perform industry standard inspection and testing on the Project, or as otherwise required by the WMATA Design and Construction Standards or by the governing jurisdiction(s).

- 5.6 *Quality Control and Assurance Reports.* WMATA shall be copied on all quality control and quality assurance documents and test results related to the Project. WMATA may, but is not required to, audit and review quality control and quality assurance documents to ensure compliance with this Agreement.
- 5.6 *Quality Oversight Activities by WMATA.* WMATA's personnel may, but are not required to, perform quality oversight at any time on the Project, including (but not limited to) site visits, initiating meetings with DMPED and DGS, testing, and accompanying all of DGS' quality control or quality assurance designees during the quality control and quality assurance activities and audits performed on the Project. The presence of WMATA's personnel shall not relieve DGS of any of its quality assurance and quality control responsibilities hereunder.

6. CONSTRUCTION SCHEDULE AND PLANS.

6.1 *Project Schedule.*

- (a) Project Schedule. DGS will create and maintain a project schedule setting forth the commencement, milestone, and completion activities for the construction of the Project ("**Project Schedule**"). The Project Schedule must delineate all submittals and activities involving WMATA, including, but not limited to, all testing and commissioning. These submittals and activities must be tied to the appropriate predecessor and successor items that comprise the overall Project Schedule. DGS shall regularly submit the Project Schedule and any updates thereto to WMATA in the source format.
- (b) No Changes Without WMATA Approval. Dates shown on the approved Project Schedule that relate to the WMATA Facilities and/or operations shall not be changed unless the change is reviewed and approved in writing by WMATA, such approval not to be unreasonably withheld, conditioned or delayed.
- (c) Notification of Changes. DGS shall promptly send Notice of any changes to the Project Schedule to DMPED and WMATA, including any anticipated delays to the Project Schedule and will also provide a complete up-to-date Project Schedule to WMATA monthly.

6.2 *Design and Construction Documents.*

- (a) WMATA Approval Predicate. Prior to engaging in any construction work related to the Project, DGS shall obtain WMATA's written approval of the

Design and Construction Documents. In the event that DGS or the General Contractor perform any Project construction work prior to such time as WMATA approves the Design and Construction Documents, such work shall be at DGS' risk. Upon WMATA's written request, DGS shall pay all costs for any rework required by WMATA, subject to the District of Columbia Project Cost Cap. WMATA shall have the right to issue a stop work order at WMATA's discretion if the work is suspected or in fact is impacting any WMATA Facilities and/or or is not in compliance with WMATA Design and Construction Specifications, and/or Approved Design and Construction Documents.

- 6.3 *Submissions to WMATA for Approval.* To obtain WMATA's written approval of any construction submittal, DGS shall submit such electronic copies for review using WMATA's electronic data management system (currently called "Procore"). The licensed engineer of record shall review all documents, submittals, RFI's etc. prior to submitting to WMATA.
- 6.4 *Final Submissions Must Be Signed and Stamped by the Licensed Engineer of Record.* Prior to submission to WMATA of the final Design and Construction Documents, DMPED shall cause its licensed engineer of record (who may be the designer of record) to sign and stamp their approval on such submission to certify that the submission complies with the terms of this Agreement.
- 6.5 *Quality Assurance Manager Review and Approval.* Prior to submission to WMATA DGS shall cause its Quality Assurance Manager to review and approve such submission confirming that the submission is complete and complies with the terms of this Agreement.
- 6.6 *Submission Compliance.* All submissions to WMATA shall comply with the WMATA Design and Construction Standards, as set forth in **Section 2.1(b)**, and all Applicable Laws.
- (a) If such a proposed submission is not approved after its third (3rd) iteration is submitted to WMATA for approval, the Parties and the General Contractor shall meet and use Commercially Reasonable Business Efforts to determinate whether a mutually acceptable version of the proposed submission can be agreed to.
 - (b) If no agreement is reached within thirty (30) Calendar Days after the third (3rd) submission, then the Project Representatives shall be the first level of dispute resolution.
 - (c) Any dispute that cannot be resolved by the Project Representatives shall be formally presented in writing to the Project's second level reviewers, who shall be (i) the Vice President, Project and Design Management Office/Project Delivery Office or designee for WMATA and (ii) the Real Estate Director for

DMPED. Any resolution of the dispute shall be reduced to writing and signed by the second level reviewers.

(d) If the dispute cannot be resolved by the second level of review, then the matter shall be presented to the Deputy Mayor for DMPED and the Senior Vice President for the Office of Project Delivery of WMATA for a final determination.

(e) WMATA shall not be subject to financial penalties due to construction delays caused by excessive review times resulting from incomplete submittals during construction of the Project, and additional budget for WMATA reviews may be required above the estimate provided herein.

i. *Additional Information.* DMPED, together with DGS, shall provide WMATA with any additional information in its possession or control that WMATA may reasonably request to assist WMATA in evaluating any submission.

ii. *Changes to Approved Submissions.* Once WMATA has approved a submission, WMATA may require changes solely to comply with a safety issue and/or legal or regulatory mandate. Neither DMPED nor DGS shall change an approved submission without WMATA's prior written consent, which shall not be unreasonably withheld. DGS shall submit any proposed change(s) to the approved submission, including but not limited to change orders and shop drawings, to WMATA for review. To ensure that WMATA is able to evaluate how the proposed change is incorporated into the Project, DGS shall submit a complete and comprehensive change proposal package (which must include all parts of the Project and/or WMATA Facilities to be impacted by such proposed change) when seeking a change under this Section. WMATA shall review and provide written approval or rejection of the proposed change. When a previously approved submission is being re-submitted because of a change thereto, WMATA's approval rights shall be limited to only matters not previously approved by WMATA; provided, however, all previous approvals are conditional and subject to WMATA's receipt of additional information, enhanced detail provided at subsequent stages of design or development, and/or changes to the Project which change the matter previously approved.

iii. *Other WMATA-Requested Changes.* In the event that WMATA desires to propose a change to the approved Design and Construction Documents other than the changes permitted by Section 6.6(e)(ii) above: A) such proposed change must be submitted by WMATA to DGS in writing; B) such proposed change shall be subject to DGS approval, not to be unreasonably withheld, conditioned or delayed; C) DGS shall provide WMATA with a cost estimate for such changes, which shall be subject to WMATA approval; and D) once the cost estimate is approved by WMATA, such costs shall be at WMATA's expense.

7. CONSTRUCTION OF THE PROJECT.

7.1 *Cause Construction.* DGS shall cause the construction of the Project in accordance with the Approved Design and Construction Documents and the other provisions of this Agreement.

7.2 *WMATA Facilities.*

- (a) WMATA Real Estate Permit. Access to WMATA's property for purposes of constructing the Project shall be governed by the terms of a separate Real Estate Permit executed by WMATA and the party seeking to access WMATA's property.
- (b) Work on WMATA Facilities. DMPED and DGS shall cause each person on its development team physically working on WMATA Facilities (e.g., employees of the General Contractor, subcontractors, and on-site service providers and consultants) to obtain a WMATA badge from the JDAC Construction Engineer prior to working on WMATA Facilities and, if required by WMATA, to successfully complete WMATA's right-of-way safety training course. DMPED and DGS acknowledge that WMATA will require a background check to be provided to WMATA on each person applying for a WMATA badge.
- (c) DGS shall cause its General Contractor to provide its staff and subcontractors and DMPED and WMATA staff with appropriate facilities to include, but not be limited to, parking, bathrooms, work areas and breakroom areas. DGS also shall cause its General Contractor to provide the appropriate utilities to service these facilities and construction activities. DGS shall require its General Contractor and its subcontractors to not use WMATA facilities and utilities without prior approval.
- (d) SSWP/GOTRS. Any work within WMATA's right of way or other operational areas will require WMATA approval of a "Site Specific Work Plan" (SSWP) and/or a "General Orders and Track Rights" (GOTRS) before such work can begin. Such work includes, but is not limited to, any work that requires operational adjustments (e.g., shutdowns, bus bridges, or single-tracking), access to WMATA's track area, or reconfiguration of power or other similar operational systems. DGS acknowledges that WMATA's approval of SSWP and/or GOTRS requests may take in excess of ninety (90) Calendar Days, depending on which areas will be affected and complexities of the work.
- (e) WMATA cannot guarantee access to WMATA Facilities; WMATA operations, maintenance and emergencies take priority.

7.3 *Coordination Meetings, Progress Reports.*

- (a) *DGS Coordination.* DGS shall coordinate and schedule pre-construction meetings at least ten (10) Calendar Days prior to commencing all major construction operations of the Project; during construction, DGS shall coordinate and schedule progress meetings not less frequently than monthly. At such meetings, DGS shall cause its construction team to be prepared, among other things, to review the Project Schedule and to review safety and security compliance matters. At the preconstruction meeting, DMPED, DGS, the General Contractor and WMATA will discuss and determine a meeting schedule, which shall at least include bi-weekly joint progress and “look-ahead” meetings.
- (b) *Progress and Look-Ahead Meetings.* DGS shall conduct bi-weekly joint progress and “look-ahead” meetings to discuss all aspects of the Project relevant to the next two weeks, and any applicable status updates on the Project Budget. DGS Project Representative and representatives from the General Contractor and any material subcontractors relevant to that work, and DMPED shall attend such meetings.
- (c) *Presence at Meetings.* WMATA shall have the right to be present at all meetings the subject of which is the Project. DGS shall provide WMATA at least five (5) Business Days’ Notice before holding any meeting related to the Project. All meeting Notices must include a meeting agenda for that proposed meeting. If WMATA gives Notice that it is unable to attend any such meeting, and it is possible and reasonable to reschedule that meeting, the meeting shall be rescheduled to such time as may be convenient for WMATA.
- (d) *Meetings Scheduled by WMATA.* WMATA has the right to schedule meetings on five (5) Business Days’ Notice to DMPED and DGS. At such meetings, DGS shall cause its construction team to be prepared, among other things, to review the Project Schedule and to review safety and security compliance matters.
- (e) *Meeting Minutes.* DGS shall provide meeting minutes to WMATA and DMPED within five (5) Calendar Days after any meeting relating to the Project or two days before the next meeting, whichever occurs first.
- (f) *Progress Reports.* DGS shall provide WMATA with a written monthly status report regarding matters covered by this Agreement. The status report shall summarize the progress of the Project, compare the state of the Project to the Project Schedule (including any explanation of any delays), and provide such other information as may be customarily reported on projects of similar size and scope.

7.4 *Site Review and Assessment.*

- (a) Access. During construction of the Project, WMATA's personnel shall have: (1) reasonable daily access to such Project for the purpose of determining whether such construction operations pose a safety risk to the public or to any other Project or WMATA Facilities, and to confirm that the construction of the Project conforms with the WMATA Design and Construction Standards and the Approved Design and Construction Documents, including relevant architectural, structural, electrical, mechanical, sheeting and shoring, excavation and utility drawings and (2) uninterrupted access to WMATA Facilities (other than the Project being constructed) including but not limited to the TPSS, station entrance, elevator, etc.
- (b) Stop Work Order. WMATA's inspector(s) shall have the absolute authority to stop DGS' construction of the Project if in his/her reasonable opinion, the General Contractor or any subcontractor(s) is/are working (1) in a manner that interferes with WMATA's operations, (2) in a dangerous or unsafe manner that could affect WMATA Facilities, WMATA's operations, WMATA's customers or the general public, (3) not in conformance with the WMATA Design and Construction Standards or the WMATA-Approved Design and Construction Documents, or (4) in a manner that is not consistent with the terms of this Agreement. Such inspector(s) shall also have the right to issue corrective notices to DGS for work that is dangerous or unsafe or that is not in conformance with the above referenced documents, and DGS shall promptly undertake and complete the corrective action identified in such notice. The authority of WMATA's inspector shall be incorporated into the construction contract between DGS and its General Contractor.
- i. In the event of an emergency, as determined by WMATA in its sole discretion, WMATA shall have the immediate right to issue a "*stop work order.*" DGS shall comply, and shall cause the General Contractor, subcontractors and other service providers to comply with any such stop work order.
- ii. In the event of a non-emergency, as determined by WMATA in its sole discretion, WMATA shall first provide DGS and DMPED with Notice of noncompliance. DGS shall have five (5) Business Days to cure such noncompliance before WMATA may issue a "*stop work order.*" DGS shall comply, and shall cause the General Contractor, subcontractors and other service providers to comply with any such stop work order.
- iii. WMATA shall further have the right to seek a court injunction, directive, or similar relief in order to enforce WMATA's rights described in this Section.
- (c) Remedial Action. Upon WMATA issuing a stop work order, the Parties shall meet promptly to remedy the issue. DGS shall execute such agreed upon

remedy at its sole cost, subject to the District of Columbia Cost Cap.

7.5 *Construction Obligations.* DGS covenants to construct the Project in accordance with the following:

- (a) No Adverse Effects to WMATA. DGS shall plan, schedule, and perform their respective obligations under this Agreement so as to integrate the Project with the existing WMATA Facilities and so as to not adversely affect the operations, safety, or security of any WMATA Facilities in any respect.
- (b) Diligent Completion. DGS shall diligently work to complete all its work related to the construction of the Project in accordance with the Approved Design and Construction Documents and as otherwise provided herein.
- (c) Equipment, Material, and Articles. DGS shall ensure that all equipment and material incorporated into the Project shall be in accordance with the Approved Design and Construction Documents.
- (d) Coordination. Until Final Completion, DGS shall be responsible for coordinating construction of the Project with WMATA and DCPL, including but not limited to (i) construction of temporary bus stops and shelters (ii) controlling circulation and movement of vehicular and pedestrian traffic including bus operations on, about and around Construction Site during construction in accordance with the approved Maintenance of Traffic Plan and (iii) determining means and methods of construction access, staging and storage.
- (e) Safe Project Area. During the course of constructing the Project, DGS shall maintain the Construction Site in a safe manner and in compliance with all Applicable Laws. DGS shall take all actions and implement all protections necessary to ensure that its construction-related activities and all equipment, materials and substances used, generated or brought onto WMATA's property pose no threat to the safety of persons, the environment, or property of WMATA, including, without limitation, providing and maintaining barricades, fences, signs, lighting and other safety devices necessary for employee and public safety.
- (f) Safety and Security Certification Plan. Prior to the commencement of construction, DGS shall develop for WMATA's review and approval, and thereafter execute, a Safety and Security Certification Plan for the Project.
- (g) Monitoring. DGS shall implement a monitoring plan in accordance with the Adjacent Construction Project Manual. As part of such plan, DGS shall conduct a preconstruction survey of all WMATA Facilities on or adjacent to the Construction Site prior to the start of any construction related activity (this survey shall serve as a baseline survey) and perform monitoring of the facilities

during construction.

- (h) Damage. DGS shall repair all damage to WMATA Facilities and/or operations, and/or the property of others arising from or attributable to DGS' actions or omissions (and/or the actions or omissions of its contractors, subcontractors, consultants, employees, agents, representatives, or invitees) at no cost or expense to WMATA, excluding, however, any loss, damage or injury that results solely from the acts or omissions of WMATA, its employees, business invitees, or contractors. Any such repair work must comply with the WMATA Design and Construction Standards.
- (i) Americans with Disabilities Act. The Project shall be designed and constructed in compliance with the then applicable Americans with Disabilities Act Standards for Transportation Facilities adopted by the U.S. Department of Transportation (2006) (as updated and amended from time to time) and the U.S. Department of Justice's 2010 Americans with Disabilities Act Standards (as updated and amended from time to time).
- (j) Storm Sewer/Water/Electrical Systems. Except as may be set forth in the Approved Design and Construction Documents, DGS shall not use WMATA's storm sewer, storm water management facilities, water supply or electrical systems without the prior written permission of WMATA.
- (k) Discharge Permits. DGS shall review and comply with any applicable discharge permits so the design and construction methods chosen will avoid potential violations.
- (l) Explosives. DGS shall not use explosives for the performance of the Project without prior written approval from WMATA. Due to the proximity of WMATA Facilities, WMATA may withhold its approval in its sole and absolute discretion.
- (m) Utilities. DGS shall notify all local utility companies and hire a private utility locator (with regards to WMATA Facilities) and mark the location of any utility lines prior to commencing any work on the Construction Site or on the Project.
 - i. DGS shall pay all charges for utilities used, constructed, or modified in connection with the construction and completion (but not operation) of the Project and shall be liable for any interference, harm or disruption of any utility service to WMATA arising from or attributable to its construction-related activities.
 - ii. Existing utility services to WMATA Facilities must remain in place and shall not be utilized by DGS during the construction of the Project except and to the extent shown on the Approved Design and Construction Documents.

(n) Public Communication.

Provided that DGS/DMPED provides the Funds (as defined in Section 9.1), WMATA shall develop the Customer Communication Plan for WMATA replacement facilities only. WMATA shall design, translate, fabricate, and install all necessary customer signage per the Customer Communication Plan. WMATA shall also notify WMATA customers about construction activities in accordance with the Customer Communication Plan. All other public communication efforts related to signage and materials required by the Maintenance of Traffic (MOT) shall be funded solely by DGS, with costs identified in the approved project budget. DMPED shall maintain a dedicated project website to provide ongoing construction updates through Substantial Completion.

- (i) DMPED, in coordination with DGS, will manage all public and media inquiries related to the Project prior to Substantial Completion; and will endeavor to notify WMATA when they initiate a public communications action regarding the Project. WMATA will have sole authorization for media access to the Project site and reserves the right to deny access for failing to adhere to safety requirements as determined by WMATA in its sole and absolute discretion. A WMATA representative must accompany any media on-site.
- (ii) After Final Completion and the Project improvements have been turned over to WMATA, DMPED and DGS will, in close coordination with WMATA, assume all public outreach and community relations activities, including any events marking the bus loop opening.

(o) Fire Protection. DGS shall ensure all work complies with the latest version of NFPA 130. All fire protection system components shall be subject to the approval of WMATA's Fire Marshal.

(p) Taking WMATA Facilities Out of Service. DGS shall be required to provide interim WMATA Facilities with respect to any WMATA Facilities taken out of service during the construction of the Project, in accordance with the Approved Design and Construction Documents. Interim WMATA Facilities must conform to the WMATA Design and Construction Standards.

(q) Re-use and Disconnection of Existing WMATA Facilities. If DGS and WMATA agree to re-use any parts of the existing WMATA Facilities as part of the Project, DGS and WMATA shall conduct a joint inspection of such WMATA Facilities prior to it being disconnected. DGS must provide WMATA Notice at least sixty (60) Business Days prior to any date it desires to disconnect such WMATA Facilities, so DGS and WMATA may schedule such joint inspection. Within ten (10) Business Days after the date of such inspection, WMATA shall deliver a draft certificate of the condition of such WMATA

Facilities to DMPED and DGS which shall include, without limitation, a list of all of the WMATA Facilities parts or other components that are intended to be included in the Project and the condition of each such part or component. DGS shall review such draft certificate and DGS shall deliver to WMATA within five (5) Business Days after receipt thereof a Notice either notifying WMATA that it approves such certificate or identifying any concerns it has with the draft certificate. If DGS disapproves the certificate or identifies any concerns therewith, DGS and WMATA will work together to resolve the same until such time as the certificate is agreed upon in writing by WMATA and DGS, in their reasonable discretion. DGS shall not disconnect any such WMATA Facilities until both DGS and WMATA have signed such certificate. DGS shall be solely responsible for insuring Project components tie-in with existing WMATA Facilities. Any need for the replacement, upgrade or other changes to existing WMATA Facilities necessary to accomplish this tie-in shall be the sole responsibility of DGS subject to the District of Columbia Project Cost Cap.

- (r) Restoration of the Construction Site. DGS shall remove all construction materials, equipment and debris and restore the Construction Site, as improved by the Project, to a clean and safe condition and landscaped in accordance with the Adjacent Construction Project Manual, the Approved Design and Construction Documents, and the Maintenance of Traffic Plan promptly upon Final Completion of the Project or the earlier termination of this Agreement.
 - (s) Construction Signage. DGS shall display information signs approved by WMATA at the Construction Site clearly indicating the identity of the party responsible for the work being performed. DGS shall also install wayfinding signs, consistent with the MOT for customers to access transit facilities.
 - (t) Davis-Bacon Act. DGS shall build the Project in compliance with the Davis-Bacon Act, 40 U.S.C 276a et seq.
 - (u) Other Applicable Requirements. DGS shall comply with any other requirements of the local jurisdiction(s) applicable to the Project.
 - (v) Commercially Reasonable Business Efforts. The foregoing provisions are not intended to be exclusive. DGS shall cause the General Contractor to perform such other duties in connection with the Project as would normally be performed by a contractor working for its own account on a project of similar size, type and degree of complexity.
- 7.6 *Substantial Completion and Final Completion.* DGS shall work diligently to achieve Substantial Completion and Final Completion in accordance with the Project Schedule. Whether or not Substantial Completion or Final Completion has been achieved shall be determined by WMATA in accordance with this Agreement.
- (a) Work List. DGS shall create and maintain, or cause the General Contractor to

create and maintain, throughout the construction of the Project, a list of work items that have commenced but have not yet been completed ("Work List"). The Work List will eventually serve as a basis for the Punch List. DGS shall provide WMATA with the most up-to-date version of the Work List upon request from WMATA.

- (b) Substantial Completion. When DGS considers the Project to be nearing Substantial Completion, DGS shall have the right to so notify WMATA and DMPED, which Notice shall include copies of all materials stated in the definition of Substantial Completion, and WMATA, DMPED and DGS shall jointly schedule an inspection and testing, including a Functional Operations Test, of the Project within fifteen (15) Business Days after the giving of DGS' Notice; provided, however, that the inspection and testing may be postponed if any conditions specified in the definition of Functional Operations Test cannot be met. DGS shall bear sole responsibility for having any required governmental inspectors available at any inspection and testing (or re-inspection and testing, if applicable) of the Project. If WMATA determines that Substantial Completion has not occurred, WMATA shall, within seven (7) Business Days following the date of completion of such inspection and testing, deliver to DMPED and DGS WMATA's specific written objections to the condition of the Project which causes such Project not to be in a state of Substantial Completion, and DGS shall diligently proceed to remedy the conditions noted by WMATA at its expense; provided, however, that such remedial action by DGS shall be without prejudice to DGS' right to seek resolution of any dispute between WMATA and DMPED or DGS, as applicable, with respect to (i) whether Substantial Completion has been achieved in accordance with this Agreement, and (ii) whether WMATA was correct in requiring DGS to take such remedial action. When DGS considers the Project to be ready for re-inspection and testing, WMATA, DMPED and DGS shall jointly schedule a re-inspection and testing of the Project within five (5) Business Days following WMATA's and DMPED's receipt of written notice from DGS requesting such re-inspection and testing, and WMATA shall inform DMPED and DGS of its conclusions upon such re-inspection and testing within seven (7) Business Days following the date of completion of such re-inspection and testing. The foregoing re-inspection and testing process shall be continued until the Project has reached a state of Substantial Completion and WMATA, DMPED and DGS have agreed upon the Punch List, and WMATA has executed the Certificate of Substantial Completion. DGS shall complete all Punch List items within sixty (60) Calendar Days after WMATA has executed the Certificate of Substantial Completion.
- (c) Final Completion. Within seven (7) Business Days following the last to occur of (i) Substantial Completion, (ii) DGS remedying all items on the Punch List, and (iii) the satisfaction of all other components of the definition of Final Completion, WMATA shall deliver to DMPED and DGS a Certificate of Final Completion certifying that the Project has been accepted by WMATA. The

process for determining Final Completion shall be the same process as stated in the preceding subsection to determine Substantial Completion.

7.7 *[intentionally deleted]*

7.8 *Covenant to Correct Construction Mistakes and Defects.* DGS shall remedy or cause to be remedied, at its sole cost and expense, any Construction Mistakes and Defects of which it is given Notice within one (1) year after the Certificate of Final Completion is issued or such longer period as may be required by any specific requirement or specification in the Approved Design and Construction Documents, or, with respect to latent defects, within five (5) years after the Certificate of Final Completion is issued. DGS shall remedy the Construction Mistakes and Defects within thirty (30) days after delivery of a Notice of Construction Mistakes and Defects, provided, however, that if such remedy is not reasonably susceptible of being completed within such thirty (30) day period, DGS shall not be deemed to be in default hereunder so long as DGS has promptly commenced the remedial work within such thirty (30) day period and diligently prosecutes the same to completion within an additional ninety (90) days. Notwithstanding the foregoing, in the event of an emergency, or in the event of a condition that threatens the lives or safety of any persons or property, or the safety, security, or operational capabilities of any WMATA Facilities, DGS shall remedy the Construction Mistakes and Defects immediately. In furtherance of the foregoing, DGS shall either (i) obtain for WMATA a direct warranty from the General Contractor for the foregoing five (5)-year warranty against latent defects or (ii) if DGS does not act under preceding clause (i), DGS shall remedy or cause to be remedied latent defects in accordance with subsection (b) below. At the end of the aforesaid one (1) year or five (5) year period, as applicable, DGS' warranty shall terminate except as to claims by WMATA arising from fraud or such gross mistakes as may amount to fraud and except as to claims made prior to the expiration of the one (1) year or five (5) year period, as applicable.

- (a) WMATA's Cure Rights. Without prejudice to any other right or remedy of WMATA at law, in equity, or under the terms of this Agreement, if DGS fails to remedy or cause its (sub)contractors to remedy any Construction Mistakes and Defects in accordance with the terms of this Agreement beyond any applicable notice and cure period, WMATA may take reasonable measures to cure such failure and DGS shall reimburse WMATA for its verifiable costs related thereto, subject to the District of Columbia Project Cost Cap.
- (b) Contractor's Warranties. All warranties and guaranties of equipment, installation or materials furnished to DGS or its (sub)contractors by any manufacturer or supplier shall be deemed to run to the benefit of, and are hereby assigned by DGS to, WMATA. DGS shall render reasonable assistance to WMATA in enforcing the rights and remedies under any such assigned warranty, at no out-of-pocket cost to DGS.
- (c) Survive Termination. The terms of this Section shall survive the date of

issuance of the Certificate of Final Completion.

- 7.9 *Mechanic's Liens.* DGS shall keep the WMATA Facilities and the land thereunder and thereabout free and clear of all mechanic's, materialmen's, and other liens for or arising out of, or in connection with, work or labor done, services performed, or materials or equipment used or furnished in connection with DGS' Project. In the event, that notwithstanding the foregoing, such a lien is filed against all or any portion of the WMATA Facilities (including the Project), DGS shall take action to have such lien to be removed or bonded over within ten (10) Business Days of the filing thereof; in the event DGS fails to do so within such 10-day period, WMATA shall have the right to do so, in which event, DGS shall promptly reimburse WMATA for the costs thereof.
- 7.10 *Project Opening.* WMATA is not required to take custody or begin to operate the Project until Final Completion has been achieved but may, in WMATA's sole and absolute discretion, take custody or begin to operate earlier.
- 7.11 *Project Representatives.* Each party to this Agreement will designate an individual as its Project representative (respectively, the "WMATA Project Representative", the "DMPED Project Representative" and the "DGS Project Representative" and collectively the "Project Representatives") for purposes of coordinating the exchange of information, processing of requests, addressing solutions and otherwise implementing the terms of this Agreement and the Approved Design and Construction Documents (but not amending or otherwise altering or modifying the terms of this Agreement or the Approved Design and Construction Documents).
- (a) Initial Representatives. As of the date of this Agreement, the WMATA Project Representative shall be the Director for Adjacent and Task Order Construction, the DMPED Project Representative shall be Executive Director - St. Elizabeths East or designee and the DGS Project Representative shall be Director, Capitol Construction of the Department of General Services.
- (b) Changing Representatives. Each Party shall deliver to the other Parties Notice of any change in the identity of its Project Representative. Until a Party receives Notice of a change of designation or limitation of authority of a Project Representative, such Party shall be entitled to (1) rely upon the designations made in this Section or subsequently made and (2) rely upon the full authority of each of the Project Representatives designated in this Section (or subsequently designated) to act on behalf of the Party by which it was designated to coordinate the Project.

8. INDEMNITY AND INSURANCE.

- 8.1 *Indemnity.* DGS shall require its contractors and subcontractors to indemnify and hold harmless WMATA and WMATA's officers, officials, and employees against any liability and claims for injury, including personal injury to or death of person or

persons, and for loss or damage occurring in connection with the Project. The indemnity described herein is a contractual undertaking that is not limited by the limits of insurance provided in relation to this Agreement.

8.2 *Insurance* Prior to commencement of the Project and through the date of the Final Completion, DGS shall cause its General Contractor and any and all subcontractors to procure insurance in accordance with the requirements described in **Section 8.5**.

8.3 *General Contractor to Defend.* If any suit, action or proceeding is brought, or any other claim is made, against WMATA, its employees, or agents by reason of any such claim, DGS, upon Notice from WMATA, shall cause the General Contractor, and any and all subcontractors to defend the same with counsel reasonably satisfactory to WMATA, provided, WMATA shall have the right to engage its own counsel which shall be at the expense of WMATA unless WMATA reasonably determines that counsel for the contractor cannot adequately represent the interests of WMATA. DGS shall name WMATA as a third-party beneficiary of the contract with the General Contractor.

8.4 *Payment and Performance Bonds.*

(a) *General Requirements.* Before undertaking any construction on the Construction Site, DGS shall cause its General Contractor to secure and file with WMATA the bonds set forth in this Section (collectively, the “Payment and Performance Bonds”). The Payment and Performance Bonds must be obtained from a federally-approved surety company having sufficient assets and approved by WMATA and shall be countersigned by a resident agent of the surety in the District of Columbia with a copy of the agent’s license as issued by the relevant Commonwealth’s Department of Insurance or equivalent. The Payment and Performance Bonds may be dual obligee bonds running to the benefit of both WMATA and DGS but shall not include any provision to the effect that nonpayment or any other default by DGS or any contractor or lender shall release, reduce or otherwise affect the surety’s obligations to WMATA. Each bond shall provide that (i) the obligations of the surety shall be unconditionally activated upon the occurrence of an Event of Default or of any other event or circumstance that under this Agreement entitles WMATA to make a claim on the bond, and (ii) WMATA shall be given written notice by the surety concurrently with the surety’s notice to DGS of any default by DGS or its contractors under the construction contract, the bond or any other document relating to the Project.

(b) *Payment Bond.* DGS shall cause its General Contractor to post a payment bond equal to one hundred percent (100%) of the hard costs of the Project and naming WMATA as obligee for the benefit of laborers, subcontractors, material suppliers, and others that have or may have claims or liens against the Project, the Construction Site, or WMATA’s interest therein. The payment bond shall be substantially in the form attached hereto as **Exhibit G**. Said payment bond

shall name WMATA as obligee or a co-obligee and shall cover the lien free completion of the Project in accordance with the provisions of this Agreement.

- (c) *Performance Bond.* DGS shall cause its General Contractor to post a performance bond naming WMATA as an obligee to secure the completion of the Project in an amount equal to one hundred percent (100%) of the aggregate hard and soft costs of the Project. The performance bond shall be substantially in the form attached hereto as **Exhibit G**. Said performance bond shall name WMATA as obligee or a co-obligee for the completion of the Project by the surety if DGS and/or its contractor are determined by WMATA to be in default of this Agreement.
- (d) *Environmental Liability.* DGS shall remediate, or cause its General Contractor to remediate, at its sole cost and expense, any environmental condition required as a result of (i) DGS', General Contractors', and any and all contractors' or subcontractors' activities under this Agreement or any Real Estate Permit, or (ii) any pre-existing condition affecting any portion of the Construction Site.
- (e) *Survive Termination.* The terms of this Section shall survive the expiration or earlier termination of this Agreement.

8.5 ***General Insurance Requirements***

- (a) Compliance with these minimum insurance requirements does not relieve DGS, or their contractor(s) or subcontractors of any tier from their respective liability to WMATA should their liability exceed these minimum insurance limits or should the insurance procured under this Section fail to respond.
- (b) Upon written request from WMATA, DGS shall cause contractors and subcontractors of every tier to provide copies of any and all insurance policy(s), including all endorsement(s), within five (5) Business Days of such request. WMATA review of any insurance policy(s) does not constitute WMATA's acceptance.
- (c) DGS shall cause contractors and subcontractors of every tier, including design professionals, to have all insurance policies required by the Agreement endorsed to waive the insurance company's rights of recovery against WMATA and the WMATA Board of Directors. Coverage shall be provided on an endorsement that is acceptable to WMATA.
 - i. *Professional Liability Insurance.* DGS shall cause their contractor(s), and any subcontractor(s) of any tier, that provide design services or the services of a professional engineer, including, but not limited to stamping, sealing, or certifying blueprints or other construction-related documents, to maintain Professional Liability Insurance as follows:
 - A. Minimum Policy Limits of \$1,000,000, each claim.
 - B. Actual coverage or tail coverage must be purchased and

- maintained for a period of time equal to the statute of repose.
- C. Coverage can be written on an “Occurrence” or “Claims Made” Basis.
 - D. Coverage can be written on “Non-Admitted” paper.
- ii. *Waiver of Subrogation.* DGS shall cause contractor(s) and subcontractors of every tier to have all insurance policies required by the Agreement endorsed to waive the insurance company’s rights of recovery against WMATA and the WMATA Board of Directors. Coverage shall be provided on an endorsement that is acceptable to WMATA.
 - iii. *Certificate of Insurance (COI).* DGS shall cause contractor(s) to provide WMATA an ACORD Certificate of Insurance (COI) as evidence that the insurance requirements of this Section have been satisfied. Certificates of Insurance shall be emailed to COI@WMATA.COM. The cert holder box should read:

**Washington Metropolitan Area Transit Authority
Office of Insurance
4100 Garden City Drive, 903-01C
Hyattsville, MD 20785 600**
 - iv. *Survive Termination.* The terms of this Section shall survive the expiration or earlier termination of this Agreement.

9. WMATA’S SCOPE OF SERVICES AND COSTS.

9.1 WMATA’s Costs. DMPED shall transfer funds to WMATA for WMATA’s costs associated with the Project (“**WMATA Project Costs**”), in accordance with this Agreement and the Memorandum of Agreement (“**MOA**”) between DMPED and WMATA, dated of even date herewith. The Parties have agreed that the amount for the WMATA Project Costs is \$489,440.00. DMPED shall pay WMATA in an amount not to exceed \$489,440.00 for Fiscal Year 2026 (“**Funds**”). WMATA’s Project Costs will likely include (but not be limited to) costs of reviews and approvals, progress meetings, operational support (e.g., escorts, flagging, support services), coordinating and monitoring of construction, administrative costs, third-party consultant support (e.g., reviews, inspections, testing), construction closeout and commissioning, and the use of WMATA-provided equipment. In addition to the aforementioned costs, the WMATA Project Costs also shall include WMATA internal and overhead expenses associated with the work performed. These WMATA expenses include, but may not be limited to escort, design review/engineering review, inspection, force account, and indirect, overhead, and other burden applied to these expenses pursuant to WMATA’s standards and practices. The transfer of funds is a required precondition to the commencement of construction for the Project.

- (a) WMATA shall provide DMPED with a quarterly expenditure report that includes a progress report of work performed during the period along with an itemized accounting and description of costs incurred by WMATA. WMATA will submit expenditure reports within ninety (90) Calendar Days of the end of quarter. On each expenditure report, WMATA will certify in writing that its costs are costs incurred in connection with the Project. The quarterly expenditure reports shall be in the form of **Exhibit H** and shall also include back-up documentation for third party costs, if any.
- (b) WMATA shall provide DMPED with its costs related to the Project based on the current Project Schedule and proposed work. The WMATA Project Costs incurred for the Project are set forth in the budget attached to the MOA. Should the Project Schedule or required work change such that funding for the WMATA Project Costs is insufficient, WMATA will notify DMPED and provide a revised budget (including minimum account balance thresholds, if applicable).
- (c) WMATA will only use such personnel and resources as are reasonably necessary to perform the services under this Agreement.
- (d) Any disputes concerning a funding request shall be resolved in accordance with the Dispute Resolution provision of this Agreement.
- (e) WMATA SHALL NOT PERFORM WORK RELATED TO THE PROJECT UNLESS FUNDING FOR WMATA PROJECT COSTS ARE AVAILABLE. In the event that funding for the WMATA Project Costs are not available, all work will stop on the Project until such funds are made available in accordance with this Agreement and the MOA.

10. REPRESENTATIONS AND WARRANTIES.

10.1 *Representations and Warranties of DMPED and DGS.* DMPED and DGS each hereby represent and warrant as follows:

- i. *Organization.* DMPED and DGS are each a political subdivision of the District of Columbia Government.
- ii. *Authority.* DMPED and DGS each have the power and authority to enter into this Agreement and have taken all actions necessary to cause this Agreement to be executed and delivered, and this Agreement has in fact been duly and validly executed and delivered by District.
- iii. *Binding Obligation.* This Agreement is a legal, valid, and binding obligation of both DMPED and DGS and is enforceable against DMPED and DGS in

accordance with its terms, subject to bankruptcy or other equitable principles that may limit the rights of creditors.

- iv. *No Breach.* DMPED's and DGS' entering into this Agreement will not violate any Applicable Laws or breach any contract to which either DMPED or DGS is a party or by which either is bound or the provision of DMPED's or DGS' organizational documents.
 - v. *No Litigation.* There are no actions, suits, arbitrations, government investigations, or pending proceedings to which DMPED or DGS or any of their members, officers, or directors is a party, nor to the current, actual knowledge of DMPED and DGS, are any of the foregoing threatened, which might adversely affect DMPED's or DGS', as applicable, right or ability to enter into or perform their respective obligations under this Agreement.
 - vi. *Conflicts of Interest, Debarment.* To the knowledge of DMPED or DGS, as applicable, no officer, Board member, or employee of WMATA who deals in any way with management, real estate, construction, procurement, planning, or joint development, or any member of any such person's immediate family (which term "immediate family" shall, for the purposes of this Section, mean the parent, spouse, sibling, child, grandparent or grandchild of any of the foregoing persons), has or will have any financial or other interest in, or in common with, DMPED or DGS. For purposes of this certification, the knowledge of DMPED or DGS shall be limited to the then-current actual knowledge of the respective signatories of this Agreement.
 - vii. *Conflicts of Interest, Debarment.* DMPED and DGS will each comply, and DMPED and DGS will each contractually obligate each of its third-party contractors at any tier to comply with or contractually obligate its subcontractor(s) to comply, with the provisions of Executive Orders 12549 and 12689, "Debarment and Suspension," 31 U.S.C. § 6101, and U.S. DOT regulations on Debarment and Suspension at 49 CFR Part 29. DGS shall include the requirements of the preceding sentence in each first-tier subcontract and shall require each second- and lower-tier contractor to include them in any lower tier subcontract.
- 10.2 *Representations and Warranties of WMATA.* WMATA hereby represents and warrants to DMPED and DGS as follows:
- (a) *Organization.* WMATA is an interstate compact agency, organized and existing under the laws of the State of Maryland, the Commonwealth of Virginia and the District of Columbia, is in good standing under Federal and local laws, and has the power and authority to carry on business as contemplated by this Agreement.
 - (b) *Authority.* WMATA has power and authority to enter into this Agreement and

has taken all actions necessary to cause this Agreement to be executed and delivered, and this Agreement has in fact been duly and validly executed and delivered by WMATA.

- (c) *Binding Obligation.* This Agreement is a legal, valid, and binding obligation of WMATA, and is enforceable against WMATA in accordance with its terms, subject to bankruptcy or other equitable principles that may limit the rights of creditors.
- (d) *No Breach.* WMATA's entering into this Agreement will not violate any Laws or breach any contract to which WMATA is a party or by which it is bound or the provisions of any WMATA organizing document.
- (e) *No Litigation.* There are no actions, suits, arbitrations, governmental investigations or pending proceedings to which WMATA is a party, nor to the best of WMATA's knowledge, are any of the foregoing threatened, which might adversely affect WMATA's right or ability to enter or perform under this Agreement.
- (f) *Conflicts of Interest, Debarment.* To the knowledge of WMATA, no officer, Board member, or employee or agent of WMATA who deals in any way with management, real estate, construction, procurement, planning, or joint development, or any member of any such person's immediate family (which term "immediate family" shall, for the purposes of this Section, mean the parent, spouse, sibling, child, grandparent or grandchild of any of the foregoing persons), has or will have any financial or other interest in, or in common with, DMPED or DGS. For purposes of this certification, the knowledge of WMATA shall be limited to the then-current actual knowledge of the signatory of this Agreement.

11. DISPUTE RESOLUTION.

Any dispute that cannot be resolved by the Project Representatives shall be formally presented in writing to the Project's second level reviewers, who shall be (i) Vice President of Office of Project & Design Management re (ii) Deputy Mayor for Planning and Economic Development for DMPED and (iii) the Director of DGS. Any resolution of the dispute shall be reduced to writing and signed by the second level reviewers.

12. DEFAULT; REMEDIES.

12.1 *DMPED/DGS Default.* Subject to the procedures set forth in **Section 10.2** below, any of the following events shall constitute an "Event of Default" by DMPED or DGS, as so indicated:

- (a) *Non-construction.* DGS has discontinued material construction for a period of

more than ninety (90) consecutive Calendar Days or has abandoned construction of the Project, provided that the foregoing shall not be an Event of Default if the non-construction is due to a stop work order issued by WMATA.

- (b) *Stop Work Order.* DGS or any of its contractors, subcontractors or service providers fails to comply with a stop work order issued by WMATA.
- (c) *Transfer.* DGS permits a change in control or transfers any of its rights or obligations under this Agreement to anyone other than DMPED.
- (d) *Voluntary Bankruptcy.* DMPED or DGS voluntarily files for liquidation, reorganization, receivership, or other similar relief under any federal or state bankruptcy or insolvency law, or makes a general assignment for the benefit of creditors.
- (e) *Other Nonperformance.* DMPED breaches any term or provision, or defaults in the performance of, any of its obligations under this Agreement that is not otherwise addressed in this Section, if such default remains uncured for ten (10) Business Days from the giving of Notice to DMPED of such default, provided, however, that if cure of such default is feasible but not reasonably susceptible of being completed within such ten (10) Business Day period, such cure period shall be extended for so long as is reasonably necessary to complete said cure, not to exceed an additional ninety (90) Calendar Days, if DMPED has promptly commenced work on such cure within such ten (10) Business Day period and diligently prosecutes the same to completion with such stated longer period.

12.2 *WMATA's Remedies.* WMATA shall have the following remedies following an Event of Default:

- (a) *Self-help.* WMATA may execute contracts for and/or perform any remaining work related to the Project or otherwise cure the Event of Default or failure, all at the cost and expense of DMPED or DGS, as applicable, subject to the District of Columbia Cost Cap, and shall be entitled to legal and equitable remedies WMATA may have against DMPED and/or DGS, as applicable (and/or its DGS's contractors), or any sureties on the Payment and Performance Bonds. In the event of emergency, or in the event of a condition that threatens the lives or safety of any persons or property, or the safety, security or operational capacities of any WMATA Facilities, WMATA shall have the right to eliminate the emergency or threatening condition and to exercise the foregoing self-help remedies immediately.
- (b) *Enforce Payment and Performance Bonds.* WMATA may enforce its rights under the Payment and Performance Bonds.
- (c) *Termination.*

- i. WMATA in its sole discretion may elect to terminate this Agreement. If WMATA elects to terminate this Agreement, WMATA shall give Notice of such termination to DMPED and DGS (the date of such Notice shall be the “Termination Date”). WMATA’s remedies and DMPED’s and DGS’s respective obligations under this Article shall survive such termination.
- ii. Upon termination of this Agreement, DMPED and DGS shall deliver and assign to WMATA all Approved Design and Construction Documents for or relating to the Project. DMPED and DGS shall further deliver to WMATA copies of all contracts and subcontracts, and any other information designated by WMATA, relating to the construction of the Project in DMPED's and DGS’ possession or control.
- iii. Upon such termination, DMPED shall reimburse all outstanding WMATA Project Costs owed to WMATA under this Agreement, and WMATA shall deliver to DMPED a statement and detailed accounting of WMATA costs incurred by WMATA as of the Termination Date and return any unexpended funds within ninety (90) Calendar Days of the Termination Date.
- iv. If this Agreement is terminated prior to Final Completion for any reason, DGS shall promptly remove all debris and restore all WMATA property and WMATA Facilities, at no cost to WMATA, to a clean and safe condition, subject to the District of Columbia Project Cost Cap. If some of the WMATA Facilities have not been or cannot be placed in their intended locations for any reason, then DGS shall place or store the affected WMATA Facilities in a location and manner acceptable to WMATA in its sole and reasonable discretion and at no cost to WMATA.

12.3. *Mutual Termination.* This Agreement may be terminated by the mutual written consent of WMATA, DMPED and DGS.

12.4. *No Consequential or Punitive Damages.* Notwithstanding anything to the contrary in this Agreement or Applicable Law, no Party may recover consequential or punitive damages against the other Parties under this Agreement.

12.5. *Remedies Cumulative.* The Parties rights and remedies under this Agreement and Applicable Law shall be cumulative, and no one exercise of any of such rights or remedies shall prohibit a further exercise of that or any other such right or remedy.

13. NOTICE.

13.1 Notices. All notices, demands or requests which are required or permitted by this Agreement to be given or delivered to either Party (“Notice”) shall be in writing and shall be: (1) personally delivered; (2) sent prepaid for next business day delivery by a nationally recognized overnight courier service; or (3) sent by certified mail, return receipt required. Notices and other communications shall be deemed to have been given on the earlier of actual receipt or on the first business day upon which delivery is attempted, even if delivery cannot be made due to refusal of, or failure by the addressee to accept, such attempted delivery. Except as otherwise provided in herein, any such notice or other document shall be addressed as follows:

If to DMPED: Executive Director, St. Elizabeths East
Redevelopment
Office of the Deputy Mayor for Planning and
Economic Development
1350 Pennsylvania Avenue, NW
Washington, DC 20004

With copies to: Office of the General Counsel
Office of the Deputy Mayor for Planning and
Economic Development

If to DGS: Director,
District Department of General Services
3924 Minnesota Ave, NE
Washington, DC 20019

With copies to: Office of the General Counsel
District Department of General Services
3924 Minnesota Ave, NE
Washington, DC 20019

If to WMATA: Vice President, Office of Real Estate and
Development
Washington Metropolitan Area Transit Authority
300 7th Street, SW
Washington, DC 20024

With copies to: Executive Vice President, Chief Legal Officer and
General Counsel
Washington Metropolitan Area Transit Authority
300 7th Street, SW
Washington, DC 20024

Each Party may change its address or addresses for delivery of Notice by giving Notice of such change of address to the other Party.

14. MISCELLANEOUS.

14.1 Disclaimer of Liability.

- (a) By reviewing, approving, accepting, requiring the correction of any submissions, or having the right to do any of the same, WMATA accepts no liability for any design and/or construction defects, flaws, or mistakes, and waives none of its legal rights.
- (b) No instruction, review, approval, and/or acceptance by WMATA shall be construed to be (i) a warranty, guarantee, or assurance of the adequacy of the design of the Project or (ii) be included as part of the quality control or quality assurance for the Project.
- (c) WMATA will have no liability and waives none of its rights under this Agreement by reason of its review, approval, acceptance, and/or modification of the District's proposed schedule, which proposed schedule shall be submitted to WMATA within ninety (90) Calendar Days of the Effective Date. Reviews and inspections are conducted for WMATA's sole benefit, and not for the benefit of any other party or person.

14.2 Binding Effect. This Agreement shall be binding upon and inure to the benefit of WMATA, DMPED, and DGS and their respective successors, heirs and permitted assigns.

14.3 Parties in Interest. Nothing in this Agreement, expressly or impliedly, is intended to or shall be construed to confer upon or to give to any person or entity other than WMATA, DMPED, and/or DGS any rights, remedies, or claims under or by reason of this Agreement or any of the provisions set forth herein, and all such rights, remedies or claims shall be for the sole and exclusive benefit of the Parties hereto.

14.4 Arm's Length Transaction. This Agreement does not create any partnership, joint venture, agency, or other similar relationship among the Parties. WMATA shall not be responsible for making any payments to any contractor, subcontractor, agent, consultant, employee, or supplier of DMPED and DGS.

14.5 Entirety and Amendments. This Agreement and the Exhibits attached hereto and forming a part hereof set forth constitute the entire agreement between the Parties with respect to the matters contemplated by this Agreement and may be amended or supplemented only by an instrument in writing executed by both Parties.

14.6 No Assignments. Neither this Agreement, nor any rights or interests conferred hereunder, shall be assigned or transferred in any manner by either Party without the

- prior written consent of the other Party hereto.
- 14.7 *Time of the Essence.* Time shall be of the essence with respect to achievement of Final Completion of the Project.
- 14.8 *Approvals.* All approvals required from either Party hereto must be in writing to be effective.
- 14.9 *Non-Use of WMATA Status.* DMPED and DGS understand and agree that in no event shall DMPED, DGS, or any contractor, subcontractor, supplier, materialman, or other third-party assert or attempt to assert for its own benefit any exemption or immunity available to WMATA under the WMATA Compact.
- 14.10 *Anti-Deficiency Clause.* All obligations of the Parties under this Agreement that directly or indirectly require the expenditure by such Party of any of its funds are subject to the appropriation and availability of funding through such Party's budgetary procedures.
- 14.11 *No Waiver of Sovereign Immunity.* Nothing in this Agreement shall be deemed to waive WMATA's sovereign immunity or to limit any protections or rights WMATA enjoys under the WMATA Compact or the laws of its signatory jurisdictions.
- 14.12 *Debarment and Suspension.* No member of or delegate to Congress, or resident commissioner, shall be admitted to share a part of this Agreement, or to any benefit that may arise therefrom; but this provision shall not be construed to extend this Agreement if made with a corporation for its general benefit.
- 14.13 *Governing Law and Venue.* This Agreement shall be construed in accordance with the laws and judicial precedents in effect in the District of Columbia except to the extent that the laws of the District of Columbia conflict with the WMATA Compact, in which case WMATA shall be governed by the WMATA Compact. Any action or proceeding seeking to enforce any provision of, or based on any right arising out of, this Agreement shall be brought against any of the Parties hereto only in the U.S. District Court for the District of Columbia, and each Party irrevocably consents to the sole and exclusive jurisdiction of such federal court (and of the appropriate appellate court) in any such action or proceeding and waives any objection to venue laid therein.
- 14.14 *Counterparts.* This Agreement may be executed in counterparts, each of which shall constitute an original and all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, DMPED, DGS, and WMATA certify that this Agreement is executed by their respective authorized signatories and shall be effective as of the Effective Date.

Reviewed:

Government of the District of Columbia, by and through the Office of the Deputy Mayor for Planning and Economic Development

Office of the General Counsel
ODMPED

Nina Albert
Deputy Mayor for Planning and Economic Development

Date: _____

DC Department of General Services

Delano Hunter
Director

Date: _____

WASHINGTON METROPOLITAN AREA
TRANSIT AUTHORITY

Deputy General Manager

Date: _____

EXHIBIT A
Description of Bus Loop and Construction Site

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EXHIBIT B
Certificate of Final Completion

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EXHIBIT C
Certificate of Substantial Completion

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EXHIBIT D
Real Estate Permit

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EXHIBIT E
Safety and Security Certification Plan

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EXHIBIT F
Standard Specifications to be used for the Project

1. Adjacent Construction Project Manual Rev 5A, September 2015
2. WMATA Station Area Planning Guide, October 2017
3. WMATA Standard Drawings (included in project construction documents)
4. WMATA Standard Specifications – (included in project construction documents)
5. WMATA Manual of Design Criteria 11.0, June 2024
6. WMATA Design Directive Drawings, January 2018
7. MATA Construction Safety and Environmental Manual March 2023
8. WMATA ADA Accessibility Checklist, March 2015
9. WMATA CAD BIM Standards, 2024
10. Civil 3D Standards (Included in the CAD standards)
11. WMATA Survey Datum
12. WMATA Signage Design Manual, Winter 2025
13. WMATA Safety Rules and Procedures Handbook, Oct 2021

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EXHIBIT G
Form of Payment Bond and Performance Bond

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EXHIBIT H
Form of Quarterly Expenditure Report

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