

**JOINT DEVELOPMENT SOLICITATION
#19-02: HUNTINGTON METRO STATION**

located in Fairfax County, Virginia

PROPOSAL DUE DATE: June 7, 2019

OFFICE OF REAL ESTATE & PARKING

ISSUED ON MAY 3, 2019





May 3, 2019

Dear Prospective Master Developer:

The Washington Metropolitan Area Transit Authority (“**WMATA**” or “**Metro**”) is a national leader among U.S. transit agencies in the area of Joint Development, a public-private process that converts transit authority-owned sites into transit-oriented developments. We are pleased to continue to pursue our goals of increasing transit ridership and creating economic development opportunities for the region by offering this new Joint Development opportunity at the Huntington Metro Station.

In this Joint Development Solicitation (“**JDS**”), Metro is seeking a Master Developer to prepare and implement a mixed-use Master Plan for the entire 30-acre Huntington Metro Station Site, 12-acres of which will be available for private development (“**Private Development Parcels**”). Given specific complexities of developing the Huntington Metro Station, Metro desires to engage a developer to create the site Master Plan, entitle and subdivide the Station Site and design site and transit infrastructure. At Metro’s option and subject to availability of funds, the developer may be retained to oversee the construction of the site and transportation infrastructure.

Offerors will also elect in their Proposals whether or not they propose to act as the agent for WMATA for the disposition of the Private Development Parcels. The election to act as agent will preclude a Master Developer from competing subsequently for the rights to develop the Private Development Parcels.

The deadline for submitting Proposals is 3:00 p.m. EST on June 7, 2019.

Please review the JDS in detail and (while not a requirement) **we encourage you to attend the pre-proposal conference on May 10, 2019.** As of the date of this JDS issuance, Metro staff shall not be contacted about this solicitation and all communications and/or questions about this offering (outside of the pre-proposal conference) must be made through the following email address:

realestate@wmata.com.

We look forward to seeing you on May 10, 2019 and hope you are as interested in this opportunity as Metro is to see the Huntington Metro Station developed into a vibrant new community!

Sincerely,

Nina Albert, Vice President
Office of Real Estate and Parking

**Washington
Metropolitan Area
Transit Authority**

600 Fifth Street, NW
Washington, D.C. 20001
202/962-1234

*By Metrorail:
Judiciary Square-Red Line
Gallery Place-Chinatown
Red, Green and
Yellow Lines*

*A District of Columbia
Maryland and Virginia
Transit Partnership*

Table of Contents

Part 1: Introduction	3
1.1 Joint Development Policies.....	3
1.2 Purpose and Scope of Joint Development Solicitation.....	3
1.3 Amendments and Supplements to Joint Development Solicitation	4
Part 2: Station Site	8
2.1 Huntington Metro Station	8
2.2 WMATA Facilities	8
2.3 Private Development Parcels & Surrounding Developments.....	9
2.4 Comprehensive Plan Amendments.....	10
2.5 Environmental Conditions	11
Part 3: Joint Development Services	12
3.1 Project Assumptions	12
3.2 Project Schedule	14
3.3 Joint Development Agreement.....	14
3.4 Phase 1A: Pre-Development Services.....	16
3.5 Phase 1B: Infrastructure Development Management Services	17
3.6 Phase 2 (Offeror Election): Disposition of Private Development Parcels.....	18
Part 4: Proposal Requirements	19
4.1 Solicitation Schedule	19
4.2 General	19
4.3 Proposal Preparation	20
4.4 Proposal Format.....	21
4.5 Proposal Submission Requirements	21
4.6 Proposal Review, Evaluation, Selection and Post-Selection Process	23
4.7 Public Access to Records Policy.....	24

Part 5: Non-Negotiable Requirements and Conditions	25
5.1 WMATA Reserved Areas and Interests.....	25
5.2 WMATA Approval Rights and Adjacent Construction Requirements.....	25
5.3 Relocation or Replacement of WMATA Facilities	26
5.4 Funding of WMATA Compact Public Hearing.....	26
5.5 No Subordination of Metro’s Fee Interest.....	26
5.6 Federal Transit Administration (FTA) Requirements	26
5.7 Americans with Disabilities Act (ADA)	27
5.8 Direct Connections.....	27
5.9 Davis-Bacon Act/Fair Labor Standards Act.....	27
5.10 Other Laws, Regulations and Requirements	27
5.11 Metro’s Indemnification Policy.....	27
5.12 Metro’s Insurance Requirements.....	28
5.13 Metro’s Disclaimer of Liability	28
5.14 Guaranty.....	28
Part 6: Additional Joint Development Requirements and Procedures	29
6.1 Assignment of Proposal, Change in Offeror or Withdrawal	29
6.2 Termination of Selected Offeror Designation.....	30
6.3 Metro Station Access Roads and Interior Maintenance Roads	31
6.4 Parking.....	31
6.5 Protest Policy	31
Part 7: Definitions	33
Attachment A: Planning and Zoning	36
Attachment B1: Offeror Certifications	38
Attachment B2: Technical Information	41
Attachment B3: Financial Information	42
Attachment C: Right of Entry Agreement	43
Attachment D: Links to Metro Documents	48

Part 1: Introduction

1.1 Joint Development Policies

This Joint Development Solicitation is issued in accordance with WMATA's Joint Development Policies (see link in [Attachment D](#)). The capitalized terms used in this Joint Development Solicitation are generally defined in [Part 7: Definitions](#).

1.2 Purpose and Scope of Joint Development Solicitation

This Joint Development Solicitation seeks to identify a well-qualified real estate developer (“**Master Developer**”) to master plan, entitle and subdivide, and develop site and transit infrastructure for, Metro's 30-acre Huntington Metro Station property shown on [Figure 1](#). A total of approximately 12 acres – split between the North and the South Entrance areas of the Metro Station – can be made available for private Joint Development, as shown on [Figure 2](#).

Offerors responding to this Joint Development Solicitation should be experienced developers (or a team of firms) of large sites comparable to the Private Development Parcels in this Joint Development Solicitation.

WMATA's overarching goals and objectives for this Joint Development include:

- Improving the Metro Station with enhanced services, access and amenities;
- Through Joint Development and improved Metro Station access, increase transit ridership (and thereby fare revenue); and
- Maximize real estate revenues for WMATA.

This Joint Development is unique in that WMATA is offering property under a two-phase approach, in which:

- Phase 1A: Pre-Development Services (i.e. due diligence, master planning, entitlement, subdivision, design of site and transit infrastructure) will be funded by WMATA;
- Phase 1B (Metro's Option): Infrastructure Development Management Services (i.e. permitting and oversight of construction) may be funded by WMATA at its sole and absolute discretion and subject to funding availability; and,
- Phase 2 (Offeror's Election): Private Development Parcel Disposition may involve one or more Private Development Parcels being offered, negotiated and disposed of by the Master Developer on WMATA's behalf.

Regarding Phase 2, Offerors will identify in their Proposal whether they elect to either:

- a) Act as Metro's agent to market, negotiate and close on the ground lease disposition (or sale) of each Private Development Parcel for a fee or commission; or
- b) Complete their contractual agreement with Metro upon completion of Phase 1, in which case the Master Developer may have no further involvement in the Huntington Joint

Development or, alternatively, may submit offer(s) in response to Metro's subsequent disposition solicitation(s) for Private Development Parcels.

The services required in Phase 1 are provided in detail in Sections 3.3 through 3.5 and are summarized here:

Phase 1A: Pre-Development Services

- Conduct due diligence for the Station Site (i.e. geotechnical, environmental, ALTA survey, title, permitted land use, other to be determined);
- Prepare a Station Site plan, development program, and phasing/schedule for Joint Development and its supporting site and transit infrastructure (the "**Master Plan**");
- Obtain Fairfax County entitlements for the Master Plan, starting with the Comprehensive Plan Amendment process in 2019-2020;
- Assist WMATA in obtaining Federal Transit Administration approvals, if required, in order to use Federal funds for the construction of site and transit infrastructure;
- Create the Joint Development cost estimate and *pro forma*, to include the sources and uses of funding/financing required to deliver the Private Development Parcels;
- Subdivide the Station Site, as needed, to create the Private Development Parcels; and,
- Contract with the required architects, engineers and other Subcontractors to design to a minimum of 60% construction documents the site and transit infrastructure.

Phase 1B: Infrastructure Development Services

- At WMATA's sole and absolute option and subject to funding availability, the Master Developer may act as a fee developer for WMATA and engage Subcontractors to construct the site and transit infrastructure as outlined in Section 3.5.

1.3 Amendments and Supplements to Joint Development Solicitation

WMATA reserves the right to issue amendments and/or supplements to this Joint Development Solicitation. If an amendment or supplement is issued before the closing date for submission of Proposals, the amendment or supplement will be posted to www.wmata.com/realestate under "Current Offerings & Solicitations." If, after the deadline for submission of Proposals, WMATA issues an amendment and/or supplement, it will only be sent to Offerors who submitted responsive Proposals. Offerors will be required to acknowledge in writing the receipt of an amendment and/or supplement.

Figure 1: Huntington Station Site.



Figure 2: Huntington Private Development Parcels.

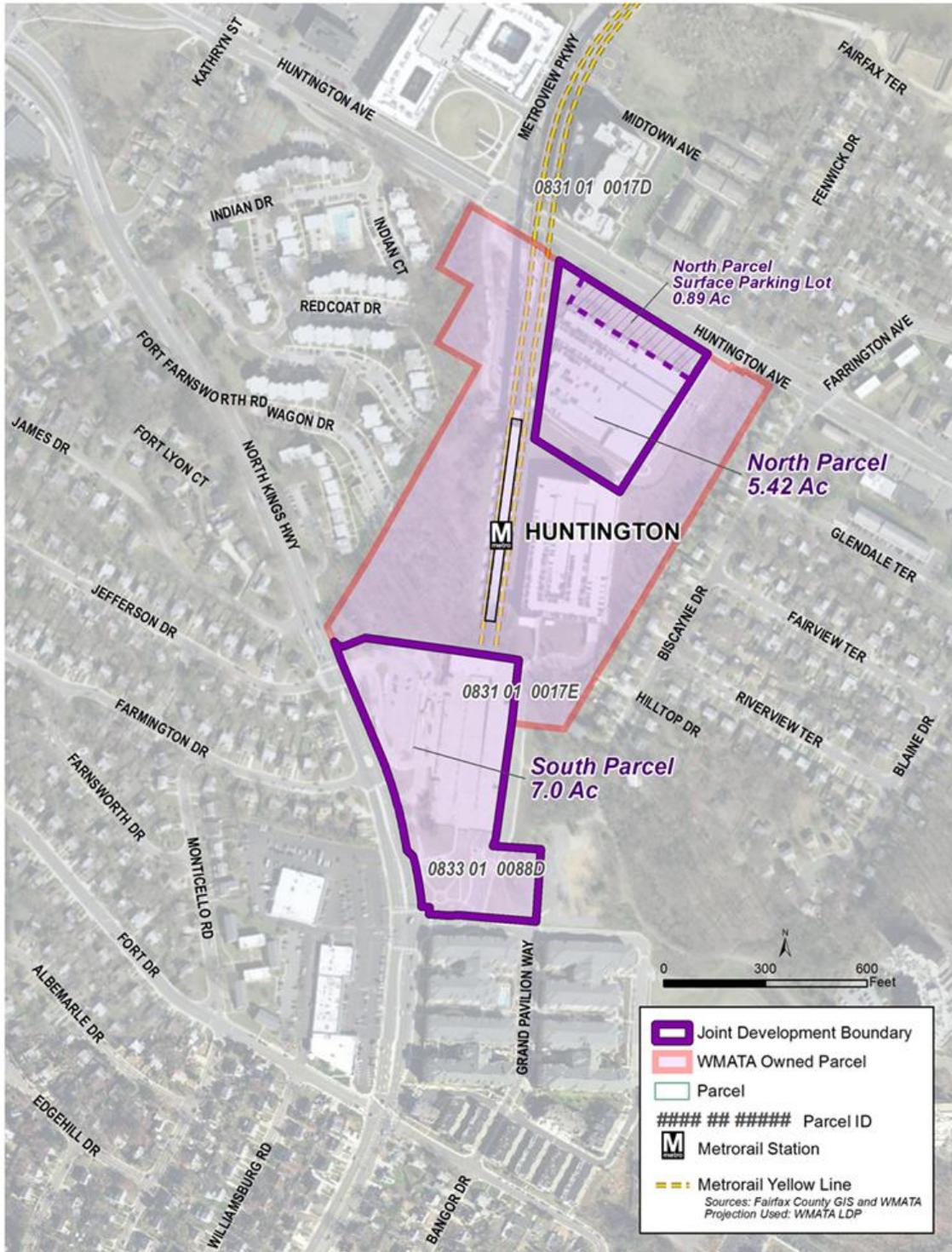
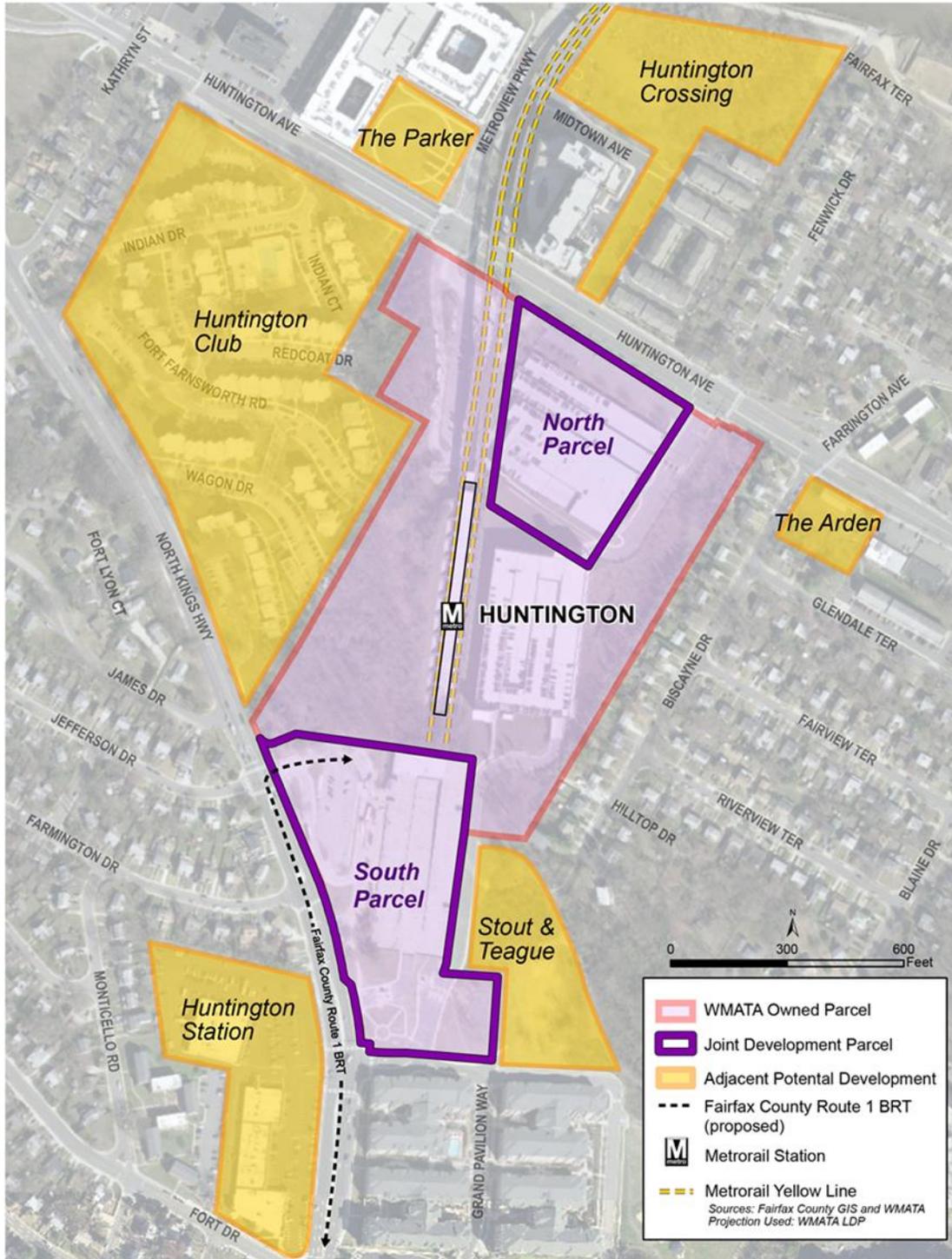


Figure 3: North Parcel and South Parcel and BRT Route.



Part 2: Station Site

The information provided below is not intended to be all-inclusive nor a representation or warranty by WMATA. Any such representation or warranty is disclaimed. The Master Developer will be required to conduct due diligence for the Station Site.

2.1 Huntington Metro Station

The Huntington Metro Station on the Metrorail Yellow Line is located in southeastern Fairfax County, Virginia, about 3/4 mile south of the Capital Beltway (I-495) and 3/4 miles west of Richmond Highway (U.S. 1). It is 0.3 miles south of Alexandria, VA and 11 miles south of Washington, DC. The station was opened for service in 1983. The Huntington Metro Station has two entrances, one located off Huntington Avenue (the “**North Entrance**”) and another located off North Kings Highway (the “**South Entrance**”).

The Station Site is bordered immediately by Huntington Avenue to the north, North Kings Highway (also, Virginia Route 241) to the west and southwest, Huntington Park Drive, Mt. Eagle Park and the Courts at Huntington Station apartment complex to the south, and the Huntington neighborhood and Biscayne Drive to the east. The Station Site includes the station platform, three (3) parking structures, two (2) bus bay areas, and two (2) Kiss & Ride surface lots.

2.2 WMATA Facilities

(a) Metro Station. The Metro Station averaged 6,659 weekday Metrorail boardings in 2018.

(b) Park & Ride Garages. The three Park & Ride Garages (see Figure 1) have a total of 3,617 parking spaces, 2,732 of which are in operation today:

Parking Garage	Year Built	# Levels	# Spaces
North Garage	1989	5	1,281
Middle Garage	2009	5	1,451
South Garage (closed)	1983	3	885
Total Spaces			3,617

The South Garage, with access off Huntington Avenue via Huntington Park Drive, was designed with 885 parking spaces. The garage was closed in August 2018 due to safety conditions, and Metro intends to demolish the garage. The South Garage is located directly above the Metrorail tail tracks (storage area for trains south of the station platform) and also has a station entrance and mezzanine embedded within its structure. Any future Joint Development plans would need to consider how to integrate the station entrance.

The North Garage off Huntington Avenue has 1,101 parking spaces plus an adjacent surface lot with 180 spaces for a total of 1,281 parking spaces. The Middle Garage has 1,451 parking spaces and can be reached from either Huntington Avenue (from the north) or via Huntington

Park Drive (from the south).

The Master Developer will be required to review all parking utilization and demand data and support Metro in determining the need to replace parking. Factors that impact Metro commuter parking include the proposed 7.5-mile Bus Rapid Transit (“BRT”) route from Fort Belvoir to a Huntington terminus (see [Figure 3](#)). Current Fairfax County plans are for the segment from Huntington to Hybla Valley to be built in 2023 to 2026 and the segment from Hybla Valley to Fort Belvoir to be constructed from 2025 to 2028. When the BRT route is constructed, it is likely to siphon off demand for parking at Huntington Metro Station since many customers would arrive at the station by bus, perhaps obviating the need for replacement of the South Garage.

(c) [Kiss & Ride Facilities](#). There are two Kiss & Ride lots at the Metro Station (see [Figure 1](#)) which accommodate automobile pickup and drop-off passengers, driver-attended waiting vehicles and motorcycles. The north Kiss & Ride lot has 270 feet of curb lane for passenger pickup/drop-off, 25 short-term spaces for waiting vehicles, including two for persons with disabilities, and 13 motorcycle/moped spaces. The south Kiss & Ride lot has 200 feet of curb lane for passenger pickup/drop-off, 27 short-term spaces for waiting vehicles, including two for persons with disabilities, and two spaces for taxis, as well as 14 motorcycle/moped spaces.

(d) [Bus Facilities](#). The Metro Station has two bus loops (see [Figure 1](#)) that serve the southern part of the County by Metrobus and the Fairfax Connector. Each bus loop has 5 bus alighting bays and two bus layover bays. Metrobuses use the north bus loop exclusively. There are four Metrobus routes: (1) a Richmond Highway Express bus that runs through eastern Alexandria and connects Huntington Metro Station with King Street Metro Station in Old Town Alexandria; (2) a Richmond Highway Express Bus that connects Huntington with Fort Belvoir to the south; (3) the 10A bus that runs through the Old Town and Del Ray sections of Alexandria and Crystal City, Arlington, before terminating at the Pentagon Metro Station; and (4) a new NH4 bus that goes to National Harbor in Prince George’s County, Maryland, via King Street. The Fairfax Connector currently provides five bus routes each from the north and the south bus loops.

(e) [Bicycle Storage](#). There are thirty-four (34) free bicycle racks and six (6) bicycle lockers at the North Entrance and six (6) bicycle lockers at the South Entrance. There are no bike-share facilities currently.

2.3 Private Development Parcels & Surrounding Developments

Potentially, multiple Private Development Parcels could be created on the South Parcel, which has approximately 7 acres, and on the North Parcel with 5.4 acres (see [Figure 2](#)). The 7-acre South Parcel contains vacant land on the east, a park on the south which is part of the Fairfax County-approved Site-Specific Plan for the Station Site, and WMATA Facilities including the South Garage, a bus loop and Kiss & Ride lot. The latter two will need to be relocated within the South Parcel if the site is reconfigured, as will the park area, if affected. The North Parcel includes Metro’s North Garage and a Park & Ride lot.

Several developments on private property are planned around the Metro Station. At the Station Site’s northwest corner lies the Huntington Club (see [Figure 3](#)), a townhouse development whose owners have agreed to sell their residences to a developer who is proposing office and

high rise and mid-rise residential development. A Comprehensive Plan Amendment approved by the Fairfax County Board of Supervisors would allow a much denser development of approximately 533 multifamily units, 1,014 condominiums and 67 townhouses, nearly 450,000 square feet of office, 18,000 square feet of retail and 120,000 hotel square feet. The plan includes 200-foot building heights adjacent to the Metro Station tapering to the south and west to 55 feet nearest the Huntington Club’s residential neighbors across North Kings Highway.

The South Parcel starts at the southern boundary of the Huntington Club. On the west side of North Kings Highway going further south, single-family housing gives way to strip retail development with potential for future redevelopment. Immediately east of the South Parcel is a property (owned by Stout & Teague) that is planned for mid-rise, multi-family housing.

The Huntington/Biscayne site is scheduled for redevelopment for 126 affordable housing units called The Arden. High-rise residential development has already occurred across Huntington Avenue from the North Garage. The Parker, Phase I, has been completed and has 360 mid-rise apartments; Phases II and III are targeted for a 150-unit hotel and a 250,000 square foot office building. Huntington Crossing has been planned for 360 residential units though development has been deferred for the time being.

Demographic data for the area surrounding the Station Site is:

Huntington Metro Demographics	1-mile radius	2-mile radius
Population	26,400	81,980
Households	12,934	37,207
Average Persons Per Household	2.01	2.18
Average Household Income	\$125,875	\$149,297
Median Household Income	\$96,412	\$109,191
Employment (Number of Jobs)	19,431	63,148

Source: ESRI Community Survey 2018

2.4 Comprehensive Plan Amendments

The Master Developer will be expected to conduct due diligence, prepare a Master Plan for the Station Site, nominate the Station Site for a Comprehensive Plan Site-Specific Plan Amendment (“SSPA”) and, if the amendment is accepted, participate in the public approval process.

The Station Site is located in Sub Unit E in the Transit Development Area of the Huntington Community Planning Sector in the Mount Vernon Planning District. Both the North Parcel and the South Parcel are in Development Area E which in large part is devoted to public facilities. The requirements for Development Area E will need to change to accommodate mixed-use development. To achieve the development proposed in its concept plans for the North Parcel and the South Parcel, the Master Developer will participate in Fairfax County’s South County Comprehensive Plan Amendment process scheduled to begin in fall 2019. Attachment A: Planning and Zoning includes current information about existing plan requirements, the amendment process and existing zoning for the Station Site.

The expected schedule, reflecting Fairfax County’s published timeline for the Comprehensive Plan Amendments, is:

Master Plan Preparation	October 30, 2019
Comprehensive Plan Amendment Nominations	November 30, 2019
Fairfax County Comprehensive Plan Amendment Approvals	February 2021

WMATA envisions a cooperative process of design with the Master Developer. WMATA will work on an expedited basis to complete a Master Plan with the Master Developer and provide guidance for and review of any plans for WMATA infrastructure designed by the Master Developer, all of which must be to WMATA standards.

2.5 Environmental Conditions

The Station Site is not within a FEMA-designated floodplain or any known wetland. The Station Site is within the Cameron Run Watershed governed by the 2007 Cameron Run Watershed Management Plan that proposes bio-retention areas on the south side of Huntington Avenue. Based on Virginia Department of Environmental Quality mapping records, there are no hazardous waste management permits or corrective action permits issued within three miles of the Station Site. There are no registered tank facilities on the Station Site. The North Parcel has minimal grade change whereas the South Parcel slopes slightly at its eastern and northern edges. There are two primary soil types on the Station Site: Class III and Class IVB. The former type is characterized by Marumsco soils which have varying concentrations of shrink-swell “marine clay”.

Part 3: Joint Development Services

3.1 Project Assumptions

(1) Ground Leasing. To the extent that it affects planning decisions, Offerors should be aware that Metro's preference is to ground lease the Private Development Parcels. Any deviation from that preference must demonstrate why a sale (e.g., for condominium development) is more advantageous to Metro than a long-term ground lease. The decision to offer property as a sale will be at Metro's sole and absolute discretion.

(2) Design Guidelines. WMATA will be looking for the Master Developer to create innovative Master Plan concepts for the Station Site, which plans must also comply with WMATA's Station Area Planning Guide (see Attachment D). Master Plans should generally promote quality development and place making, enhance the local tax base, maintain and enhance transit facilities, increase transit ridership, and provide revenue for Metro. Concept plans should emphasize the principles of Transit-Oriented Development: higher density, mixed use, and walkable and attractive communities around transit service. In any Joint Development, pedestrian and bicycle connections to the Metrorail stations and the surrounding area are essential and must be emphasized.

(3) South Parcel. An underlying requirement is that the tail tracks will remain in place. Other assumptions (but not requirements) for this Private Development Parcel are:

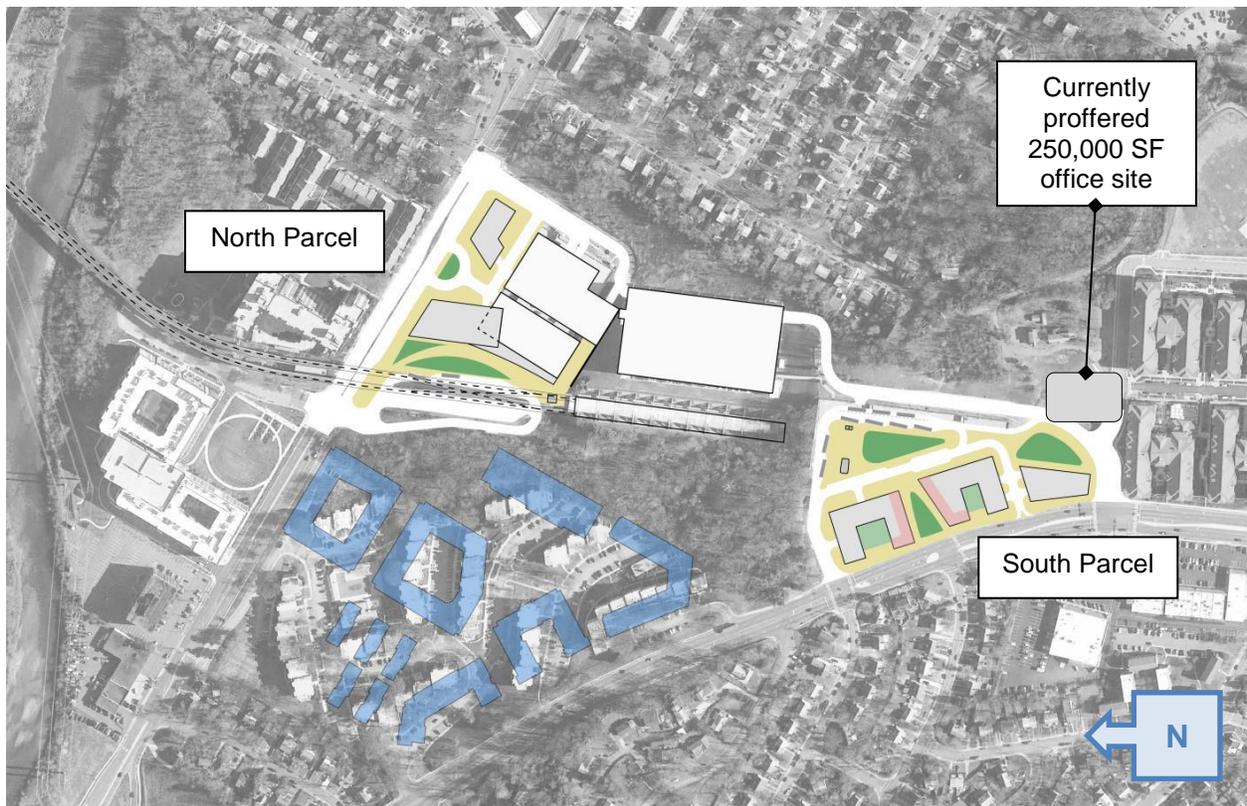
- Having evaluated potential concept plans for the South Parcel, WMATA believes that Metro and/or private parking could be constructed in a new garage which could house the bus loop on its "roof", which plan would consolidate transit infrastructure into a single area and leave more available land for private development (see Figure 4 below).
- As a working assumption for purposes of its Proposal, an Offeror should assume that the South Garage will be replaced in place with the bus loop potentially atop it on its "roof". This assumption will be confirmed with assistance from the Master Developer during the predevelopment process.
- There is a current proffer requirement in the Fairfax County Comprehensive Plan to place a 250,000 square foot office building adjacent to the South Parcel. The Master Developer shall evaluate the feasibility of this requirement and propose an alternate plan to satisfying this proffer requirement. The IDI Group's Huntington Club redevelopment site plan strategically locates offices adjacent to the North Entrance along Huntington Avenue, as does the proposed site plan for "The Parker" development. WMATA anticipates that relocating the 250,000 square foot office proffer to the North Parcel may make more sense in the long-term development plan for Huntington Metro Station and seeks the Master Developer's expert opinion on this matter.
- The BRT terminus should be incorporated in plans for the South Parcel.
- Kiss & Ride parking need not be in a separate lot but may be integrated into a replacement South Garage, in curbside parking, or other configuration to be

determined by the Master Developer and WMATA.

(4) North Parcel. The underlying assumptions (but not requirements) for this Private Development Parcel are:

- The 0.89-acre portion of the site can be entered today only by passing through the North Garage; therefore, a new curb cut would need to be allowed by VDOT should the Master Developer determine that it is developable today.
- Alternatively, it may be prudent to wait to replace the North Garage (assumed to be a decade away) to have a more cohesive and accessible Private Development Parcel of 5.42 acres.

Figure 4. Illustrative Concept Site Plan



The site plan above illustrates one of many concepts for organizing the South Parcel and assumes:

- Private development fronts on North Kings Highway.
- The bus loop (which will include the BRT stop) is relocated behind the private development, closer to the Metrorail Station entrance.
- Kiss & Ride parking can be provided curb-side.
- The proffered park is preserved (indicated in green).
- The proffered office can be moved within the South Parcel or to the North Parcel.

For the North Parcel:

- Private development fronts Huntington Avenue.
- The North Garage is reconstructed and is located in a smaller footprint behind private development.
- The configuration of the adjacent bus loop and Kiss & Ride parking remain unchanged, except for ADA access improvements which may be desired.
- The currently proffered 250,000 SF office in the South Parcel could be relocated to the North Parcel.

In completing due diligence and studying site plan options for Joint Development, the Master Developer may examine alternatives other than that shown in [Figure 4](#) and recommend Master Plans that differ from the illustrative concept site plan.

3.2 Project Schedule

WMATA's initial Project schedule is as follows, which schedule is expected to be refined with the Master Developer.

Task	Deadline
WMATA Board of Directors (Board) Approval of Joint Development Agreement	September 2019
Due Diligence and Master Plan Preparation	October 30, 2019
Fairfax County Comprehensive Plan Amendment Approvals	February 2021
Rezoning Per Approvals	TBD
If needed, Board Approval of Compact Public Hearing Final Report*	Spring 2021
Demolition of Existing South Garage	Expected Summer 2021 start
Infrastructure Plan Approvals and for Infrastructure Construction	Spring 2022
Infrastructure Construction	July 2022 start
Potential Execution of Joint Development Agreement for Disposition of Private Development Parcels	TBD
Board Approval of Sale of or Ground Lease for Private Development Parcels	From 2021 forward as feasible

*WMATA will conduct a public hearing, if required by the WMATA Compact because a change in WMATA facilities necessitates a change of WMATA's Mass Transit Plan (see [Section 5.4](#)).

3.3 Joint Development Agreement

Joint Development projects are, by nature, complex undertakings and involve numerous and often difficult-to-manage risks. By entering into a Joint Development Agreement, the Master Developer will elect to undertake the obligations and risks (including construction contracting risk and schedule, budget and delivery risk if Phase 1B proceeds) of performing the services required in this [Section 3](#). However, the Master Developer will only be responsible for horizontal (i.e. site and transit infrastructure) development and, under the Joint Development Agreement, will not assume the risks associated with vertical development.

The Joint Development Agreement resulting from this JDS will specify the Master Developer's role in providing services required under Phases 1 and under Phase 2, if applicable. Phase 1 is divided into Phase 1A (Pre-Development Services) and Phase 1B (Infrastructure Development Management Services), described in more detail in Sections 3.3 and 3.4. The purpose of engaging a Master Developer for Phase 1 is to accelerate Joint Development and create value for Metro, as well as to reduce the risk and cost of financing site and transit infrastructure. Phase 2 (Private Development Parcel Disposition) will include the Master Developer's marketing, negotiating and disposing of Development Parcels on WMATA's behalf, as well as overseeing, organizing, directing and inspecting the work being completed by selected vertical developers, as presented in Section 3.5.

The form of the Joint Development Agreement will be provided to the Selected Offeror(s) and will include WMATA's role, responsibilities and review and approval requirements, as well as the Master Developer's role, responsibilities, performance schedule, deliverables and compensation. The Joint Development Agreement will provide the terms and conditions under which the Master Developer may subcontract to complete the work required, which terms and conditions may necessitate Federal funding compliance requirements.

In its role as Master Developer throughout the term of the Joint Development Agreement, the Master Developer shall be responsible (at least) for development management and Subcontractor management.

Task 1: Development Management. The Master Developer shall manage all aspects of the work required and Subcontractors required in all phases. Throughout the duration of the Project, the Master Developer will:

- Provide sufficient organization, personnel and management as reasonably necessary to perform Phase 1A services in a timely manner;
- Advise WMATA on all matters regarding the Joint Development, including on delivery approach for infrastructure design, engineering and construction;
- Prepare and manage the approved project schedule and budget;
- Prepare and provide monthly progress reports with the project schedule and budget, open issues, action items, progress reports and other relevant project information;
- Hold and manage project meetings with Subcontractors and/or WMATA; and
- Manage and maintain a Joint Development project folder for all studies, communications and project files.

Task 2: Subcontracting. The Master Developer is expected to secure and hold Subcontracts to complete the work required in the Joint Development Agreement. The Master Developer shall be responsible for paying invoices and will then be compensated by WMATA on a monthly progress payment basis.

3.4 Phase 1A: Pre-Development Services

Task 3: Due Diligence. Using its professional judgement as to the depth of due diligence required, the Master Developer shall assess all risks associated with implementing a Joint Development:

- Applicable as-built drawing review of the Station Site;
- Land use, zoning, and other entitlement assessments;
- Geotechnical, environmental, civil assessments required to understand constructability of the Private Development Parcels, with specific attention to the Metrorail tail tracks under the South Parcel;
- Title review;
- ALTA surveys; and
- Any other recommended assessments, reviews, or studies.

Task 4: Site Planning. Prepare for WMATA's approval a Master Plan, which will include:

- Evaluation of WMATA's future parking needs recommending whether or not, and how much (number of parking spaces) of the South Garage, to replace;
- A scaled site plan showing the location of all site and transit facilities (existing and proposed) and private development by type of land use;
- A Joint Development program accompanying the site plan to show use types and amounts of proposed development, including parking;
- Building massing and elevations, with proposed heights and densities; and
- A phasing plan showing the proposed sequencing of Joint Development

Task 5: Entitlements & Public Approvals. The following set of entitlements is not comprehensive, and the Master Developer will be required to advise WMATA on any additional entitlements and public approvals that may be needed to advance the redevelopment of site infrastructure and Joint Development.

The minimum requirement for Fairfax County approvals is to pursue SSPA approval for updated zoning, site plan, and proffers for the Station Site:

- Assuming WMATA's and the Master Developer's SSPA nomination is accepted by Fairfax County, the Master Developer will be responsible for preparing all studies (including traffic studies), analyses, and documentation required for the review and approval process, as well as represent WMATA in front of the Fairfax County Planning Commission and, if required, the County Board of Supervisors.
- All plans, submissions and requested changes shall be drafted by the Master Developer for WMATA's review and approval prior to submission to Fairfax County.
- The Master Developer shall communicate with and conduct all necessary outreach to community groups and public agencies to further the adoption of the proposed changes.

WMATA may determine that Federal funds are required to design and build the

proposed site and transit infrastructure, which may trigger the need for Federal environmental assessments or other Federal Transit Administration approvals. Under this scenario, the Master Developer shall develop the studies, analyses and communication required to satisfy Federal funding requirements.

Task 6: *Planning & Design.* Upon completion of Tasks 3 through 5, WMATA and the Master Developer will assess the level of design desired and/or required for Task 6. A Notice to Proceed (NTP) mutually refining the scope below will approve the Master Developer to proceed with Task 6. The Master Developer will prepare for WMATA's approval, and in accordance with WMATA criteria and standards, all plans and design documentation to achieve a minimum of 30% (but potentially up to 100%) construction documents for the building of site and transit infrastructure required to effectuate the approved Master Plan and SSPA. The Master Developer shall:

- Oversee and manage the design process, prepare detailed budgets for infrastructure construction, and advise WMATA on the potential sources and uses of funds to pay for site and transit infrastructure;
- Create plans and construction drawings that provide for ingress/egress, interior roads for access to the Metro Station and for Joint Development, pedestrian and bicycle facilities, Metrobus, Fairfax Connector buses, BRT, Kiss & Ride parking spaces and Park & Ride facilities;
- Include in its site plans all required utilities, including storm water management, water and sewer service, power, etc.;
- Evaluate the opportunity for aggressive environmental sustainability and building performance and advise WMATA on any opportunities for on-site energy generation, water management, and green building targets;
- Create an implementation plan, which will include construction phasing, schedules and budgets; and,
- Other

Task 7: *Compact Public Hearing.* If changes to WMATA facilities necessitate a public hearing required by Article VI of the WMATA Compact, the Master Developer will assist WMATA staff in preparing analytical and visual materials for the hearing docket and for a Staff Report following the hearing.

Basis of Compensation for Phase 1A. For the services provided in Sections 3.3 and 3.4, WMATA expects to pay the Master Developer monthly progress payments based on the actual number of man-hours worked and Subcontractor costs incurred in connection with the performance of such services for this Phase. Pre-development tasks may also be proposed and performed on a lump sum basis.

3.5 Phase 1B: Infrastructure Development Management Services

Upon completion of Phase 1A, WMATA and the Master Developer will assess whether and/or the requirements to proceed with Phase 1B. A Notice to Proceed (“NTP”) will mutually define the Joint Development Agreement’s infrastructure development scope and budget, amend the Joint Development Agreement, and will approve the Master Developer to proceed with Phase 1B.

Task 8: **Construction Administration of Site & Transit Infrastructure.** Subject to the issuance of a NTP, at WMATA's sole and absolute discretion, the Master Developer shall:

- Complete design documents to 100% level, if needed, to WMATA's construction design criteria and standards, as well as any federal requirements;
- Engage a general contractor in accordance with federal requirements for federally-funded projects, and negotiate a guaranteed maximum price and any other required Subcontractors to construct the site and transit infrastructure;
- Obtain all building permits and other approvals to construct the planned site and transit infrastructure;
- Implement quality assurance and quality control protocols;
- Assume 100% open book accounting;
- Assume that Davis-Bacon wage laws are applicable; and
- Construct all infrastructure according to WMATA's construction criteria and standards, as well as federal requirements for federally-funded projects.

Basis of Compensation for Phase 1B. For the services provided in Sections 3.3 and 3.5, WMATA expects to pay the Master Developer based on its Proposal on a development management and/or construction management percentage fee basis for this Phase. An Offeror should state the precise items on which the fee will be taken.

3.6 Phase 2 (Offeror Election): Disposition of Private Development Parcels

Assuming an Offeror elects in its Proposal to support WMATA in marketing and negotiating the disposition of the Private Development Parcels created during Phase 1A and 1B, the following scope of work is expected:

Task 9: **Marketing Plan**

- Prepare a marketing plan and schedule for disposing of the Private Development Parcels and create all marketing materials, all subject to WMATA approval; and
- Establish the value of each Private Development Parcel.

Task 10: **Site Disposition**

- Market the Private Development Parcels for disposition;
- Work with WMATA to refine its form of ground lease (or sales agreement, if appropriate) for the Private Development Parcels; and, Work with WMATA and manage and evaluate all offers received and negotiate the best value for WMATA (subject to WMATA's property solicitation and approval processes).

Basis of Compensation for Phase 2. For the services provided in Sections 3.3 and 3.6, WMATA expects to compensate the Master Developer on a percentage fee basis for this Phase. In their Proposal, Developers should indicate their fee amount (i.e. their commission) and how such fee will be paid assuming both scenarios: (i) a disposition under a ground lease and (ii) a disposition under a sale.

Part 4: Proposal Requirements

4.1 Solicitation Schedule

Solicitation Milestone	Deadline
JDS Issuance Date	May 3, 2019
Pre-Proposal Conference	May 10, 2019
Deadline for Inquiries	May 17, 2019
WMATA's Posting of Answers to Inquiries	May 21, 2019
Initial Proposal Submission	June 7, 2019
Offeror Presentations	June 13-14, 2019
Final Proposals	June 24, 2019
Offeror Selection	June 30, 2019
Completion of JDA Negotiations	August 15, 2019
WMATA Board of Directors Approval of JDA	September 2019

4.2 General

(1) Acceptance of Terms and Conditions. By submitting a Proposal, the Offeror is deemed to have agreed to and accepted all terms and conditions set forth in this JDS and any amendments or supplements issued before the Final Proposal is submitted.

(2) Acceptance/Rejection of Proposals. This JDS does not commit Metro to designate a Selected Offeror or to enter into a Joint Development Agreement. Metro reserves the right to accept or reject any or all Proposals. Rejection of a Proposal need not be by an affirmative act on WMATA's part. WMATA reserves the right to reissue this JDS to any and all developers, in Metro's sole and absolute discretion.

(3) Selected Offeror Status. A designation as Selected Offeror is made by Metro staff and provides no binding rights to the Selected Offeror. Furthermore, designation as Selected Offeror does not mean Metro accepts the Proposal without further negotiation. Rather the Proposal and the designation as Selected Offeror are the foundation for further negotiation. Metro reserves the right to negotiate a Joint Development Agreement with the Selected Offeror containing benefits to Metro that exceed those set forth in the Proposal. Until such time as the Joint Development Agreement is negotiated, signed by both parties and approved by the WMATA Board of Directors and the FTA, the Selected Offeror has no vested rights by virtue of its designation as such.

(4) Approvals. The terms of a Joint Development Agreement negotiated pursuant to this JDS are subject to the approval of the WMATA Board of Directors and the FTA.

(5) Binding Agreement. An executed Joint Development Agreement approved by the WMATA Board of Directors and the FTA is the only binding commitment of and by Metro with respect to Master Developer services. Designation of a Selected Offeror, Metro's acceptance of a Final Proposal, or any conduct or oral representation by Metro shall not in any

way constitute a binding obligation or commitment by Metro. By submitting a Proposal, an Offeror acknowledges it will have no legal or equitable right to, or interest in, any Joint Development except as set forth in an executed Joint Development Agreement wherein the Selected Offeror becomes the Master Developer.

(6) Costs. Metro shall not be liable for any costs incurred by an Offeror responding to this JDS or any costs incurred with respect to their preparation of a Proposal or their negotiation of the Joint Development Agreement and related final documentation. Each Offeror shall bear all of its own costs in that regard.

(7) Site Visits. Many areas of the Station Site are open to the public in the normal course of Metro's transit operations. Those areas may be visually inspected by Offerors during the hours they are open to the public. Visits to restricted areas for non-invasive inspections are subject to Attachment C: Form of Right of Entry Agreement. All other inspections typically performed for due diligence purposes will not be authorized prior to execution of a Joint Development Agreement.

(8) Who Should and Should Not Submit a Proposal. Offerors should be developers who experienced in the development of projects comparable to this Joint Development project. WMATA will accept Proposals from a team, not just a single firm. Professional service providers, building contractors, or other non-developers should not respond to this Joint Development Solicitation on their own but may be identified as part of a Offeror's team. WMATA and the Master Developer will select the architect and general contractor, if applicable, in accordance with the procurement rules and regulations that permit WMATA to use Federal funding, if desired, for the construction of the site infrastructure.

(9) Ownership and Use of Proposals. All Proposals become the property of WMATA and may be used (subject to reasonable protection of private or proprietary information) as WMATA sees fit, whether or not that particular Proposal is selected for award.

4.3 Proposal Preparation

(1) Pre-Proposal Conference. A Pre-Proposal Conference will be held on May 10, 2019 at 2:30 p.m. in the WMATA Board of Directors Room, on the First Floor of the Jackson Graham Building located at 600 Fifth Street, NW, Washington, DC 20001. Attendance at the Pre-Proposal Conference is not required for an Offeror to submit a Proposal but is highly recommended. No conference call-in number or WebEx option will be provided. All information provided at the Pre-Proposal Conference will be posted on WMATA's website, including written answers to the questions asked by attendees.

(2) Inquiries. All inquiries about this Joint Development Solicitation will be submitted in writing by e-mail to realestate@wmata.com with the subject line of "Huntington JDS Inquiry". The deadline for receipt of written inquiries is 5:00 p.m. on May 17, 2019. WMATA will respond to every inquiry received by posting all questions and their answers on its website no later than 5:00 p.m. on May 21, 2019. Verbal explanations or responses by WMATA staff are not binding. WMATA assumes no responsibility for interpretations of this Joint Development Solicitation made by Offerors.

(3) Deadline for Submission. Four (4) hard copies of the **Proposal must be received by Metro in a sealed package not later than 3:00 p.m. on June 7, 2019** at the following address:

Office of Real Estate and Parking
Washington Metropolitan Area Transit Authority
600 Fifth Street, N.W.
Washington, DC 20001
REF: JDS #19-02: Huntington Joint Development Proposal

One electronic copy of the Proposal must also be delivered on a thumb drive with the hard copy Proposals or received at realestate@wmata.com not later than 3:00 p.m. on June 7, 2019.

Proposals may be submitted by mail, overnight courier or by hand, but in each case timely receipt by Metro is the Offeror's responsibility.

(4) Late Proposals. Any Proposal received by Metro after the deadline above will not be accepted or evaluated by Metro.

(5) Complete Response Required. To be considered, an Offeror must submit a complete response to this Joint Development Solicitation.

4.4 Proposal Format

(1) Length. Proposals should be straightforward and contain a concise delineation of the Offeror's capability to satisfy the requirements of this Joint Development Solicitation. There is no page limit for any particular part of a response unless otherwise specifically noted, but the total number of pages must not exceed thirty (30) pages front and back, including any attachments specifically required by this Joint Development Solicitation. The quality of the information is more important than the quantity. Failure to respond with the requisite information may result in an Offeror being eliminated from consideration.

(2) Format. All Proposals must be printed on standard 8-1/2" x 11" (letter size) and/or 11" x 17" (executive size) paper and bound.

4.5 Proposal Submission Requirements

Tab 1: Transmittal Letter. A transmittal letter for the Proposal should be submitted on the Offeror's official business letterhead and state that it is transmitting the Proposal, identify all materials and enclosures submitted as a response to Part 4 of this JDS, and be signed by an individual authorized to commit the Offeror to the Proposal.

Tab 2: Table of Contents and Executive Summary. A Table of Contents and Executive Summary should precede the actual content of the Proposal.

Tab 3: Offerors Certification. On the form provided in Attachment B-1: Offeror's Certification, read and sign the certification.

Tab 4: Technical Information. On the form provided in Attachment B-2: Technical Information, provide the following information:

- a. Qualifications. Submit for the proposed Master Developer (and as applicable for each team member) the following information on personnel who will perform the proposed services, relevant firm/team experience, and references:
 - i. Project personnel. Contact person for this Project: title, full contact information. Roles and resumes (with contact information) for team leader and members who will actually be working on this assignment.
 - ii. A brief history of your firm/team that addresses your historical background and growth, current organization and ownership, scope of services, business philosophy and strategy. Describe the business entity that will carry out the Project.
 - iii. Experience specifically related to each part of the requested scope of services including illustrative materials for at least three former, comparable and successful projects. Provide detail on the services or projects that are relevant including size and scope, timing, budget, completion in accordance with schedule and the team members who have participated in each.
 - iv. At least four references for the information given in response to item (iii) immediately above. At least two references should be from a financial institution with whom the Offeror has worked and that can attest to the Offeror's creditworthiness. At least two references should confirm the relevant experience cited in item (iii) above.
- b. Services. Describe your ability to provide, and your approach to providing, the requested services in Sections 3.3 through 3.6. Indicate where you have differences from or additions to those services. Specify team members that will provide the services.
- c. Schedule. Refine the schedule provided in Section 3.2 (Project Schedule), which schedule should include the tasks required by Sections 3.3 through 3.6, and assume that Phases 1A, 1B and 2 will occur sequentially without significant delay between Phases.

Tab 5: Financial Information. Fill out the form provided in Attachment B-3: Financial Information and provide the following information:

- a. Financial Capacity. Provide historic information regarding financial capacity including copies of audited financial statements pertaining to your development entity and any affiliated entities for the past year. Any information deemed "confidential" should be so marked, and will not be shared outside WMATA, subject to WMATA's Public Access to Records Policy.

- b. Proposed Compensation. State whether you are proposing to provide services for Phases 1A and 1B only or for Phases 1A, 1B and Phase 2. Accordingly:
- i. For Phase 1A, provide a budget for project management through site and transit infrastructure design including tasks and subtasks, with assigned project personnel hours and hourly rates used as a basis for providing the budget.
 - ii. For Phase 1B, state the percentage developer fee that you will require for construction and itemize precisely the cost components on which the fee will be taken.
 - iii. For Phase 2, state the percentage commission fee that you will require for disposition of Private Development Parcels and itemize precisely the revenue components on which the fee will be taken.

4.6 Proposal Review, Evaluation, Selection and Post-Selection Process

(1) Evaluation Team. WMATA shall designate an Evaluation Team composed of WMATA staff and assisted by consultants, if desired by WMATA.

(2) Non-Responsive Proposals. Proposals that in WMATA's sole and non-reviewable discretion are deemed nonresponsive or not reasonably susceptible of being selected for award will be rejected. WMATA reserves the right to accept or reject any Proposal without negotiation or discussion.

(3) Offeror Interviews. The Evaluation Team may meet with all or select Offerors for an oral presentation and specific discussions about a Proposal. If such meetings are held, they will be held on June 13 and 14, 2019, with more detail to be provided as part of the scheduling process. Such discussions will include identifying areas of the Proposal that require clarification or improvement or that do not comply with this Joint Development Solicitation.

(4) Final Proposals and Best and Final Offers. Metro may negotiate concurrently with one or more Offerors based on their Proposals. Upon completion of the negotiations, Offerors will submit their Best and Final Offer ("BAFO") to Metro, i.e., any revisions to Attachment B3, Financial Information, which together with any clarifications to Attachment B2, Technical Information submission will constitute the Offeror's Final Proposal.

(5) Negotiation of Joint Development Agreement. The Evaluation Team will rate each responsive Proposal based upon the Proposal Evaluation Factors in Section 4.6(6) below. The Evaluation Team will then designate a Selected Offeror with whom to negotiate a Joint Development Agreement. If negotiations are unsuccessful in WMATA's opinion, WMATA staff may terminate negotiations and commence negotiations with the next highest rated Offeror and those thereafter. Alternatively, WMATA staff may decide to cancel this Joint Development Solicitation.

(6) Proposal Evaluation Factors. Each Proposal will be evaluated with a view toward providing the best value for WMATA. Proposals in which the Offeror elects to represent

WMATA through Phase 2 are preferred. In arriving at its selection(s), the Evaluation Team will consider the following:

- Offeror's qualifications, experience and ability to perform
- Offeror's understanding of the requested services
- Offeror's financial standing
- Offeror's Financial Proposal
- Offeror's election to complete Phases 1 through 2

(7) Notice of Acceptance or Rejection. Notice by WMATA of acceptance of a Proposal will be deemed to have been sufficiently given when e-mailed to the Offeror at the contact address provided in the Proposal Transmittal Letter. Notice by WMATA of rejection of a Proposal will be deemed to have been sufficiently given when emailed to the Offeror at the contact address provided in the Proposal Transmittal Letter. WMATA's processing of a Right of Entry Agreement will not, in itself, constitute acceptance of a Proposal.

(8) Continuing Offers. Unless a Proposal is withdrawn in accordance with the terms of this Joint Development Solicitation, each Proposal received will be deemed to be a continuing offer good for (180) days or until the Proposal is accepted or rejected by WMATA, whichever first occurs.

(9) Waiver of Irregularities. WMATA may, at its election, waive any minor informality or irregularity in Proposals received.

(10) Post-Selection Process.

- a. Negotiation of Joint Development Agreement with WMATA Staff. WMATA staff will attempt to negotiate with the Selected Offeror a Joint Development Agreement (and other necessary final documentation such as an accompanying infrastructure development agreement) (together "Joint Development Agreement") that incorporates the provisions of the Proposal. Such Joint Development Agreement shall be completed within one hundred twenty (120) days following the WMATA staff's designation of the Selected Offeror. In the event that this schedule is not met, at WMATA's option the Selected Offeror designation expires.
- b. Approvals. WMATA staff will submit a summary of the Joint Development Agreement to the Committee of WMATA's Board of Directors that oversees real estate and to the WMATA Board of Directors and makes a recommendation for their approval.

4.7 Public Access to Records Policy

Metro staff may be required to brief its Board of Directors on any aspect of a Proposal. The proposed business terms of a Proposal will be held in confidence only until the Joint Development Agreement and all final documentation have been approved and executed. Metro's "Public Access to Records Policy" is available on the WMATA website. A link is provided in Attachment D.

Part 5: Non-Negotiable Requirements and Conditions

The following requirements and conditions are nonnegotiable and will be included in a Joint Development Agreement and other final documentation executed by the Master Developer and Metro. By submitting a Proposal in response to this Joint Development Solicitation, an Offeror is agreeing to accept and comply with these non-negotiable requirements and conditions.

5.1 WMATA Reserved Areas and Interests

The location of WMATA Reserved Areas and Interests shall be determined by Metro in its sole and absolute discretion. The conveyance or lease of any Metro property shall be subject to a reservation by Metro of a permanent, exclusive and irrevocable covenant, restriction, reserved area and/or easement for the operation and maintenance of present and future WMATA Facilities, WMATA Improvements and WMATA Reserved Areas and Interests. The nature and method of Metro's operations shall be determined from time to time by Metro in its sole and absolute discretion.

5.2 WMATA Approval Rights and Adjacent Construction Requirements

The following rights and requirements apply to all Projects:

- (1) Approval Rights. Metro shall have the right to approve in its sole and absolute discretion:
 - a. Matters that affect the integrity, functionality, efficiency, safety, operation, maintenance, legal compliance, cost or profitability of Metro's business, customers, operations or activities;
 - b. Matters that affect WMATA Facilities, WMATA Reserved Areas and Interests, ingress/egress to WMATA Facilities, etc.;
 - c. Matters that affect any of Metro's adjacent property;
 - d. The design and construction of interim and permanent WMATA Replacement Facilities; and
 - e. Matters that affect the Master Developer's obligations as they relate to timing (changes in Project schedule) and performance (changes in what will be constructed).
- (2) Metro's Comment Rights. Metro shall have the right to comment on the proposed Master Plan and on other matters concerning the Project which do not fall within the categories set forth in Section 5.2(1) above. The Master Developer shall be obligated to consider Metro's comments and to respond reasonably.
- (3) Metro's Construction Requirements. Projects must be built in compliance with Metro's adjacent construction criteria as contained in Metro's then-current *Adjacent*

Construction Project Manual and Metro's *Station Area Planning Guide*. (Weblinks to these documents are provided in [Attachment D](#)). Projects must also be built in compliance with Metro's *Manual of Design Criteria*, available upon written request. Additionally, Master Developers may need to accommodate the relocation and maintenance of operations during construction, which include the uninterrupted and unimpeded operation of WMATA Facilities. Metro will review and approve Master Developer infrastructure plans in accordance with established Metro procedures.

5.3 Relocation or Replacement of WMATA Facilities

No WMATA Facility may be taken out of service unless a permanent or interim replacement facility is already available, such that there will be no disruption to Metro operations. Any exception to this requirement with respect to permanent WMATA Facilities is subject to the specific approval of the Metro Board of Directors. Additionally, the configuration of the relocated or replaced WMATA Facility must be agreed to by Metro in writing. Metro shall operate and preferably own any permanent relocated or replaced WMATA Facility, although it is possible for WMATA Facilities to be operated by Metro via easements.

5.4 Funding of WMATA Compact Public Hearing

A change in WMATA Facilities (including bus stop relocations and parking) may trigger a public hearing requirement under the WMATA Compact. WMATA typically requires Offerors to contribute Fifty Thousand Dollars (\$50,000) towards the cost of the WMATA Compact Public Hearing. However, for Huntington, WMATA will assume that cost as part of readying the Station Site for development if it finances the infrastructure development solely.

5.5 No Subordination of Metro's Fee Interest

In the case of a ground lease, Metro will not subordinate its fee interest in its property except to the covenants, restrictions and easements evidencing the WMATA Reserved Areas and Interests. In a ground lease situation, Metro will permit *bona fide* lenders to have a leasehold security interest in the Project, which security interest will be subordinate to Metro's fee interest, to the covenants, restrictions and easements evidencing the WMATA Reserved Areas and Interests, and to Metro's right to terminate the ground lease upon a default by a developer (subject to any right to cure granted to the lender). In a sale situation, any mortgage, deed of trust or other security interest will be subordinate to the covenants, restrictions and easements evidencing the WMATA Retained Areas and Interests.

5.6 Federal Transit Administration (FTA) Requirements

Metro is subject to the requirements of the FTA. The terms of the Agreement negotiated with the Master Developer, as it pertains to Metro property, are subject to FTA review and concurrence. FTA requires, as a covenant running with the land, that projects constitute a Transit-Oriented Development as defined in the latest applicable FTA regulations. FTA also requires that a Developer comply with certain laws and regulations barring discrimination on the basis of race, color, national origin or disabilities, and further requires compliance with FTA requirements regarding conflicts of interest and debarment. FTA may impose additional

requirements which cannot be known until FTA reviews a specific Project.

5.7 Americans with Disabilities Act (ADA)

All Projects shall be constructed in compliance with Titles II and III of the Americans with Disabilities Act, 42 USCA Section 12101, et seq., as amended, and any regulations promulgated thereunder (ADA). Also relevant are Metro's *Station Area Planning Guide* (see Attachment D) and *Manual of Design Criteria* (available upon written application to Metro) for Metro's own accessibility standards. Whenever Metro's standards and the ADA differ, the more stringent standard shall apply. Master Plans must include a plan indicating how access from the Project to the Metrorail station will be provided for persons with disabilities

5.8 Direct Connections

If a direct connection to the Metrorail Station (e.g., a direct entrance into a building or a private bridge between a Metro Station and a building) is part of the overall Project, then in accordance with Section 5.6 above, FTA may determine that the National Environmental Policy Act, 42 USCA 4321, et seq., as amended, is applicable. Additionally, the following laws and their implementing regulations are also applicable to a direct connection:

- Rehabilitation Act of 1973, 29 USCA Section 794;
- Architectural Barriers Act, 42 USCA Section 4151, et seq.; and
- Planning and Design for the Elderly and Handicapped, 49 USCA Section 5301, et seq.

5.9 Davis-Bacon Act/Fair Labor Standards Act

The construction of any WMATA Replacement Facility or WMATA Improvement must comply with the Davis-Bacon Act, 40 USC Section 276a, et seq., and overtime compensation must be paid in compliance with Section 64 of the WMATA Compact and the Fair Labor Standards Act, 29 USCA Section 201, et seq. (1978), as amended. This requirement applies even if the remainder of the Project is not subject to these requirements.

5.10 Other Laws, Regulations and Requirements

Master Developers are responsible for being fully informed of and complying with the requirements of applicable federal, state, and local jurisdictional laws and regulations. Additionally, the Master Developer shall be responsible for obtaining, and expense, all requisite approvals, licenses and permits.

5.11 Metro's Indemnification Policy

The Master Developer and its contractors and subcontractors shall indemnify Metro against all claims, liabilities and costs of whatsoever kind and nature, including environmental claims, which may be imposed upon, or incurred by, or asserted against Metro in connection with the Master Developer's performance under the Joint Development Agreement or related agreements. Metro will accept financial responsibility for environmental damage to the Station Site only to the extent caused by Metro prior to the commencement of infrastructure

development by a Master Developer.

5.12 Metro's Insurance Requirements

The Master Developer and its contractors and subcontractors must procure and maintain insurance coverage in amounts determined by Metro, which *may* include but is not limited to General Liability, All Risk Property, Builder's Risk, Worker's Compensation, Automobile Liability, Contractors' Pollution Legal Liability, Railroad Protective Liability, Rental Value Insurance, Professional Errors and Omissions Liability and Boiler and Machinery (during operations only).

5.13 Metro's Disclaimer of Liability

Metro disclaims all responsibility and liability for the completeness or accuracy of any information that it provides. Any error or omission will not constitute grounds or reason for nonperformance by a Master Developer or be grounds for a claim for allowance, refund or deduction.

5.14 Guaranty

Metro may require a third party to guarantee some or all of the construction obligations of the Master Developer. The form of the guaranty may be a letter of credit issued by a bank in an amount and on terms acceptable to Metro, and/or a guaranty from a parent entity or person determined by Metro to have sufficient capital or liquidity to ensure payment, and/or a performance bond. The exact type of guarantee(s), given the nature of this Joint Development, shall be mutually agreed to by the Master Developer and WMATA.

Part 6: Additional Joint Development Requirements and Procedures

6.1 Assignment of Proposal, Change in Offeror or Withdrawal

Metro considers the designation of a Selected Offeror to be in the nature of a personal services contract requiring skill, experience, knowledge and financial standing. Until the Project is finally completed, an Offeror who submits a Proposal in response to this Joint Development Solicitation may withdraw, assign its Proposal or change its composition only as follows:

(1) Withdrawal of Proposal. At any time prior to designation as Selected Offeror, an Offeror may elect to withdraw its Proposal.

(2) Assignment of Proposal. At any time prior to designation as Selected Offeror, an Offeror may request Metro's approval to assign its Proposal to another development entity. No purported assignment is valid unless Metro has given its prior written approval. The Offeror and its proposed assignee shall submit all documents required by Metro before the request will be considered. Metro is under no obligation to approve the request and may withhold approval in its sole and absolute discretion.

At any time after the designation of the Selected Offeror, the Selected Offeror may request Metro's approval to assign its Proposal to another development entity. No purported assignment is valid unless Metro has given its prior written approval. The Selected Offeror and its proposed assignee shall submit all documents required by Metro before the request will be considered. Metro is under no obligation to approve the request and may withhold approval in its sole and absolute discretion unless (i) the assignment is to an entity designated as the anticipated Selected Offeror in the Proposal, in which case no further Metro approval is required, or (ii) the assignment is to an entity under the control of the anticipated Selected Offeror, in which case Metro shall not unreasonably withhold its approval. If Metro refuses to grant approval and the Selected Offeror does not want to proceed in accordance with its Proposal, the Offeror shall so notify Metro in writing, whereupon the Selected Offeror's rights as such shall automatically terminate.

(3) Change in Composition of Offeror. An Offeror may change its composition if it gives notice to Metro of the change at least ten (10) days before Metro's designation of the Selected Offeror. Thereafter an Offeror or Selected Offeror may change its composition only with Metro's prior written approval. Metro's approval may be withheld in Metro's sole and absolute discretion. If Metro does not approve the change and the Offeror does not want to proceed in accordance with its Proposal, the Offeror may withdraw its Proposal by giving written notice to Metro.

(4) Other Situations. An assignment or change in the composition of the Selected Offeror which is not addressed above is at the sole and absolute discretion of Metro.

For any such assignment or change to be valid, Metro's prior written approval is required. Any purported assignment or change occurring without Metro's prior written approval shall be void.

6.2 Termination of Selected Offeror Designation

Metro may terminate the Selected Offeror designation for any of the following reasons and retain any financial deposit held by Metro. Any such termination shall terminate the Selected Offeror's status as such under this Joint Development Solicitation.

(1) No Joint Development Agreement. The Selected Offeror fails to complete the negotiations of the Joint Development Agreement within one hundred twenty (120) days following the designation of the Selected Developer.

(2) Bankruptcy. The Selected Offeror or any individual or entity holding ownership in or comprising the Selected Developer files a petition in bankruptcy, a proceeding in bankruptcy is filed against any one or more of them and not dismissed within ninety (90) days after its filing or is adjudicated to be bankrupt.

(3) Change in Ownership. The ownership structure of the Selected Offeror changes in violation of Section 6.1 above. Structural changes include changes in percentages of ownership interests or changes in ownership of any entity at any tier holding a direct or indirect ownership interest in the Master Developer.

(4) Assignment of Rights. The Selected Offeror assigns its designation or transfers its rights in a Joint Development Solicitation in violation of Section 6.1 above.

(5) Fraud or Felony. The Selected Offeror or any officer, director, partner, member, manager or other principal of any person or entity constituting a member of the Selected Offeror is indicted for, or convicted of, a fraud or a felony.

(6) Integrity. The Selected Offeror or any officer, director, partner, member, manager or other principal of any person or entity constituting a member of the Selected Offeror is found not to have a satisfactory record of integrity and business ethics in Metro's sole and non-reviewable discretion.

(7) Incorrect or Incomplete Information. The Selected Offeror provided materially incorrect or incomplete information in any of its submissions to Metro, as determined in Metro's sole and non-reviewable discretion.

(8) Noncompliance. The Selected Offeror does not comply with this Joint Development Solicitation, its Proposal or the terms of the Joint Development Agreement as negotiated by the parties.

(9) Environmental Issues. The Selected Offeror conducts environmental due diligence and as a result modifies its Proposal in a manner which is unacceptable to Metro.

(10) Protest. If a protest is filed in accordance with Section 6.5 below and Metro determines that the designation of the Selected Offeror should be terminated.

(11) Metro's Best Interests. Metro determines (in its sole and non-reviewable discretion) that termination is in its best interest.

6.3 Metro Station Access Roads and Interior Maintenance Roads

The Metrorail Station's access roads and interior maintenance roads are often owned, maintained and improved by Metro. Any anticipated use of such roads by a Project must be addressed in a Master Plan. Metro reserves the right to reject shared use of its roads if detrimental to its operations.

6.4 Parking

Parking for construction personnel will not be allowed in WMATA Facilities, unless agreed to by Metro through an executed lease agreement. Contracts with contractors should specifically so state. Construction plans submitted to Metro shall show off-site locations for contractor parking.

6.5 Protest Policy

The policy and procedure for the administrative resolution of protests involving the designation of a Selected Offeror arising pursuant to this Joint Development Solicitation are as follows:

(1) Who May Protest. Only an Interested Party may submit a protest. An "Interested Party" is defined as an Offeror who submitted a Proposal pursuant to this Joint Development Solicitation.

(2) Deadline. Protests must be submitted no later than thirty (30) calendar days after Metro's designation of the Selected Offeror. Any protest submitted subsequent to this time may be deemed by Metro to be untimely and denied on that basis unless Metro concludes that the issue(s) raised by the protest involves fraud, gross abuse of the selection process, or otherwise indicates substantial prejudice to the integrity of the selection process.

(3) Form of Protest. The Interested Party wishing to file a protest shall submit a written document to Metro which contains the following:

- a. The name and address of the Interested Party;
- b. Description of the nature of the protest;
- c. Identification of the provision(s) of this Joint Development Solicitation or of the *Joint Development Policies* or laws upon which the protest is based;
- d. A statement of the specific relief requested; and
- e. Any documents relevant to the protest.

(4) Metro Review. Metro shall carefully review the protest. At the discretion of Metro, a conference may be held with the Interested Party. Metro shall have thirty (30) calendar days to render a written decision on the merits of the protest. A determination by Metro that a protest is meritorious may result in a change in the terms, conditions or format of this Joint Development Solicitation in the form of an amendment, the rejection of a Proposal, the

cancellation of this Joint Development Solicitation in whole or in part, or the termination of the designated Selected Offeror.

(5) Inapplicability. This protest policy is not applicable to actions taken by Metro in response to legal proceedings filed in the courts or to actions taken by Metro in its sole and non-reviewable discretion.

Part 7: Definitions

- **Comprehensive Plan Amendment** means a Site-Specific Plan Amendment to the Fairfax County Comprehensive Plan that is nominated within the Comprehensive Plan Amendment cycle for the South County.
- **Federal Transit Administration** or **FTA** means the federal agency within the U.S. Department of Transportation which administers the federal rules and regulations governing Joint Development and oversees other aspects of real property purchased with federal funds for transit purposes.
- **Final Proposal** means the final offer and accompanying set of documents, if requested by WMATA, submitted by an Offeror to WMATA for selection.
- **Joint Development** means a project located on Metro-controlled property that requires the coordinated development of public transportation facilities with non-transit development and complies with FTA guidelines.
- **Joint Development Agreement** or **JDA** means the legal contract (or set of contracts) by and between WMATA and a Master Developer, which provides the terms and conditions under which a Master Developer shall deliver the Joint Development requested by this JDS.
- **Joint Development Policies** means the Joint Development Policies approved by the WMATA Board of Directors which govern the Joint Development program, available at www.wmata.com/realestate.
- **Joint Development Solicitation** or **JDS** means a solicitation document encompassing preparation of a site for Joint Development.
- **Master Developer** means a Selected Offeror that executes a JDA after its Proposal is approved by Metro's Board of Directors.
- **Master Plan** means a plan for the Station Site for Joint Development.
- **Metro Station** means the Huntington Metrorail station on Metro's Yellow Line, located at 2501 Huntington Avenue in Alexandria, Virginia.
- **Offeror** means a firm submitting a Proposal in response to this Joint Development Solicitation. An Offeror should be a qualified firm with real estate development skills, experience, and access to financing sufficient to undertake the proposed Project.
- **Private Development Parcel** means the North Parcel or the South Parcel shown on [Figure 2](#), or subdivisions thereof, that will be offered for private development.

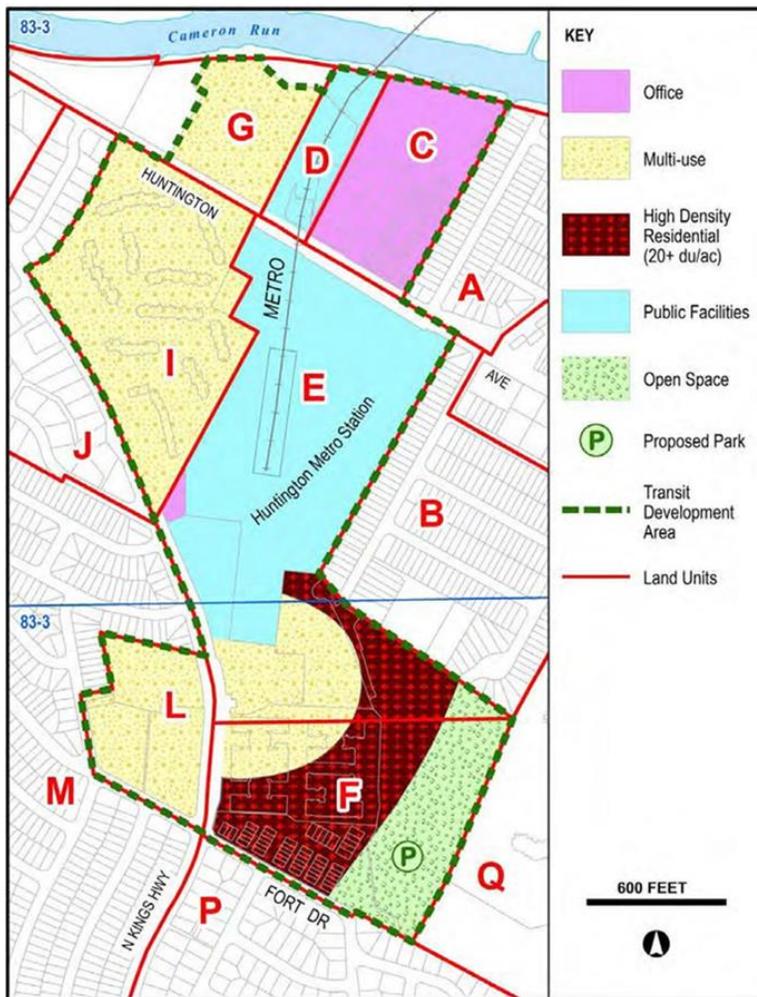
- **Project** means the Master Plan services, including infrastructure development, contemplated by this Joint Development Solicitation.
- **Proposal** means the first offer and accompanying set of documents submitted by an Offeror in response to this Joint Development Solicitation.
- **Selected Offeror** means an Offeror selected by WMATA and granted the exclusive right to negotiate a JDA with WMATA for this Project.
- **Site-Specific Plan Amendment** means an amendment to Fairfax County's Comprehensive Plan for the Station Site.
- **Station Site** means the approximately 30-acre site owned by WMATA that comprises the Huntington Metro Station.
- **Subcontractor** means any contractor or vendor (such as geotechnical, environmental, surveyor, legal, architectural, engineering, general contractor, other) procured by and contracted with the Master Developer to complete the scope of the JDA.
- **Transit-Oriented Development** or **TOD** means higher density, mixed-use development near transit services and typically includes pedestrian-friendly environments. This development may occur on WMATA property or within a half-mile of a transit station or stop.
- **WMATA Compact** means the Washington Metropolitan Area Transit Authority Compact, Public Law 89-774, 80 Stat. 1324, as it may have been and may hereafter be amended.
- **WMATA Facility** means any improvements, structures, infrastructure, tangible property and/or areas required in the judgment of WMATA for the use, operation, access, maintenance, repair, servicing, replacement or removal of structures and supports, access, parking, operating and service facilities and areas relating to WMATA's operations or activities. WMATA Facilities include, without limitation, the Metrorail stations, tunnels, rails, tracks, bus stations, bus bay areas, bus layover spaces, supervisory kiosks, employee bathrooms, electric substations, conduits and lines, communications equipment and structures, pedestrian ways and bridges, waiting and shelter areas, facilities serving people with disabilities, cooling towers, chiller plants, vent and fan shafts, bicycle rack and bicycle locker areas, Bike & Rides, storm water management facilities, landscaping, lighting, Kiss & Rides, Park & Rides, and all other associated facilities.
- **WMATA Improvement(s)** means improvements, whether an interim replacement facility or a new facility, which will be designed and/or constructed by a Master Developer for WMATA in a configuration acceptable to WMATA. Upon final acceptance by WMATA, a WMATA Improvement will become a WMATA Facility.

- **WMATA Replacement Facility** means a WMATA Improvement designed and/or constructed by a Master Developer for WMATA in a configuration acceptable to WMATA that replaces any displaced or disrupted WMATA Facility and which will be turned over to WMATA.
- **WMATA Reserved Areas and Interests** means: (a) all areas of, within or adjacent to the Joint Development Site containing any WMATA Facility; (b) all areas of, within or adjacent to the Joint Development Site relating to the use, operation, access, maintenance, repair, servicing, replacement or removal of any WMATA Facility; and (c) any and all easements and other reserved rights required by WMATA in connection with its use, operation, access, maintenance, repair, servicing, replacement or removal of any WMATA Facility or WMATA operations and business generally, whether expressly provided for or reasonably contemplated.

Attachment A: Planning and Zoning

The Fairfax County Comprehensive Plan recommended development totals for sub units E and F which have largely been achieved since the plan's adoption. However, there are approximately 200 residential units, 250,000 square feet of office space and less than 30,000 square feet of retail space that have not yet been constructed though the residential units may be partly absorbed by a proposed development immediately to the east of the South Parcel. Further, though the plan recommends the WMATA property for public facilities it does note long-term opportunity for air rights development over the station and recommends concentrated development along North Kings Highway. There are no height limits recommended for the Development Parcels. However, based on surrounding guidelines, height limits might range from 55 to 200 feet depending upon heights of nearby developed properties.

Figure 5. Comprehensive Plan Land Use Units



Existing Planned Land Use for the Site. The Fairfax County Comprehensive Plan language applicable to the property recommends maximum parameters for residential, office and retail development in Sub Unit E and Sub Unit F combined.

As noted above, development located to the south of the WMATA property in Sub Units E and F, including the Courts at Huntington Station condominiums immediately to the south of the Site, utilized most of the available residential density recommended in the current Comprehensive Plan language. For this reason and in order to more fully accomplish redevelopment in accordance with TOD principles, prior to the redevelopment efforts as outlined in the JDS, an amendment to the current Comprehensive Plan language must be pursued. The County process for such an amendment, the Site-Specific Plan Amendment process (SSPA) South County, will accept nominations for amendments from September through December 3, 2019. This process will involve the filing of a nomination for the property which must include requested Plan language revisions and the justification for the same. It is anticipated that Master Developers would engage in this process as the nominator. The process will begin with an approximately four-month nomination period, followed by review of nominations by County staff, a citizen task force and the Fairfax County Planning Commission. The current prediction for the conclusion of the South County SSPA, a decision by the Fairfax County Board of Supervisors on each nomination, lies between late Fall of 2020 and late Winter (February 2021). This prediction of timeframe is based on the SSPA North County process which is currently underway.

Existing Zoning of the Property. The property is zoned Planned Residential Mixed Use (PRM) pursuant to Rezoning RZ 2000-MV-046 approved by the Fairfax County Board of Supervisors on April 30, 2001. Thus, the property is governed by and must be developed in substantial conformance with the previously approved conceptual/final development plan and the proffers associated with the rezoning. Offerors are urged to familiarize themselves with these approved documents. Subsequent to, and assuming approval of, the above referenced Comprehensive Plan amendment, an amendment to RZ 2000-MV-046 must be filed and pursued through the appropriate Fairfax County review process and, ultimately, approved by the Board of Supervisors. It is anticipated that any development proposal would retain the PRM zoning district category and, thus, conform to PRM District regulations in the Fairfax County Zoning Ordinance. PRM zoning has a maximum floor area ratio (FAR) of 3.0 not including potential bonus density for affordable housing.

Attachment B1: Offeror Certifications

Offerors must complete the following in order to have a Proposal be deemed complete by Metro.

The Offeror hereby certifies to the best of its knowledge and belief that it and any principal of the Offeror:

1. Is/are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from an award of contracts by any governmental entity.
2. Has/have not within the past ten (10) years been convicted of or had a civil judgment rendered against it for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a contract or subcontract with any governmental entity; violation of antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violating criminal tax laws, or receiving stolen property.
3. Is/are not presently indicted for or otherwise criminally or civilly charged by a governmental entity with commission of any of the offenses enumerated in the previous paragraph.
4. Is/are not in arrears or default of payment of any money or obligation of a value greater than Three Thousand Dollars (\$3,000) to a governmental entity.
5. Has/have no adjudicated violations nor has paid penalties during the past ten (10) years relating to the housing and building laws, regulations, codes and ordinances of any governmental entity.
6. During the past ten (10) years has/have not had a license revoked that was issued in accordance with the housing, building or professional licensing laws, regulations, codes and ordinances of any governmental entity.

“Principal” means a partner, member, shareholder, officer, director, manager or other person with management or supervisory responsibilities or who is otherwise in a position to control or significantly influence the Offeror’s activities or finances.

The Offeror further certifies:

- a. The Offeror has not employed or retained any company or persons (other than a full-time, bona fide employee working solely for the Offeror) to solicit or secure a Development Agreement; and

- b. The Offeror has not paid or agreed to pay, and shall not pay or give, any company or person (other than a full-time, bona fide employee working solely for the Offeror) any fee, commission, percentage, or brokerage fee contingent upon or resulting from the award of a Joint Development Agreement; and
- c. No person or entity currently employed by Metro, or employed by Metro within the past twelve (12) months, or with material input into the matters covered by this Joint Development Solicitation and employed by Metro at any time in the past: has provided any information to the Offeror that was not also available to all other persons responding to this Joint Development Solicitation; is affiliated with or employed by the Offeror or has any financial interest in the Offeror; has provided any assistance to the Offeror in responding to this Joint Development Solicitation; or will benefit financially if the Offeror is the Selected Offeror; and
- d. Neither the Offeror nor any of its employees, representatives or agents have offered or given gratuities or will offer or give gratuities (in the form of entertainment, gifts or otherwise) to any director, officer or employee of Metro with the view toward securing favorable treatment in the designation of a Selected Offeror or in any determination made with respect to Offeror selection, or in the negotiation, amendment or performance of the Development Agreement; and
- e. The Offeror agrees to furnish information relating to the above as requested by Metro.

If the Offeror is unable to certify to the foregoing in whole or in part, the Offeror shall attach an explanation to this Proposal. An Offeror that fails to make these certifications or to provide adequate information for Metro to evaluate its inability to make these certifications may be considered to be nonresponsive to the Joint Development Solicitation.

The Offeror further certifies that:

- i. by submitting this Proposal, it is aware of and accepts all of the terms of the Joint Development Solicitation first referenced above, including (without limitation) those provisions: negating any right, title or interest in a Selected Offeror until a Joint Development Agreement is approved by the Metro Board of Directors, the Federal Transit Administration and any third party who may be offering its property as part of the Joint Development Site to which this Proposal is directed and until a Joint Development Agreement is signed by all applicable parties; disclaiming Metro's responsibility or liability for misstatements in the Joint Development Solicitation; exculpating Metro from any obligation to pay or reimburse the Offeror for any costs it incurs; and granting Metro certain design review authority; and
- ii. this Proposal is valid for a minimum of one hundred eighty (180) days from the date of submission; and
- iii. if selected, the Offeror will negotiate in good faith with Metro; and

- iv. the Offeror has the power and authority to enter into a Joint Development Agreement and all final documentation as required by Metro without the consent or joinder of any other party or authority.

These certifications are a material representation of fact upon which reliance will be placed by Metro. The Offeror shall provide immediate written notice to Metro if at any time it learns that its certification was erroneous when submitted or has become erroneous since that time. If it is later determined that the Offeror knowingly rendered an erroneous certification or failed to notify Metro if and when the Offeror gained knowledge that its certification was erroneous when submitted or has become erroneous since that time, then, in addition to any other remedies available to Metro, Metro may in its sole and absolute discretion terminate any contractual relationship relating to this solicitation with the Offeror.

The Offeror submits this Proposal Form to Metro and agrees to be bound by it.

OFFEROR:

Date: _____, 2019 By: _____

Printed Name:

Title:

Attachment B2: Technical Information

The Offeror shall submit in its Proposal package the following information organized in the following sequence:

Cover Letter	Provide the primary point of contact and his/her contact information for the Proposal, which letter will be signed by an authorized representative of the Offeror
Table of Contents	
Executive Summary	Proposal summary not to exceed two pages
Tab 1: Offeror Qualifications	
1.1 Project Personnel	Contact person (team leader) for this Project with title, full contact information. Roles and resumes (with contact information) for team leader and members who will actually be working on this assignment
1.2. Firm/Team History	Name of firm(s) that will be working on the Project, years in business, office location, current organization and ownership, and strategic contribution to Offeror's Proposal
	Master Developer entity – if different from above describe the legal entity that will carry out the Project and its status in terms of formation
	Attach a formal certificate of incorporation, limited partnership or other for each firm that will participate in this Project
1.3. Experience	Describe firm(s) experience directly related to the requested services in Parts 1A, 1B and 2 (as applicable). Provide illustrative materials for at least three former, successful projects with details on site and development size and scope, timing, budget, completion in accordance with schedule and team members who have participated in each
1.4. References	Provide at least four references for the information given in response to 1.3 above. At least two references should be from a financial institution that has worked with the Offeror and can attest to the Offeror's creditworthiness. At least two references should confirm the relevant experience cited in 1.3 above
Tab 2: Offeror Services	
2.1 Services Description	Describe your ability to provide and approach to providing all of the services requested in Sections 3.3 to 3.6 of the JDS. Including any differences from or additions to the services requested in this JDS
2.2 Team roles if applicable	If a team of firms will be involved specify the role of each
Tab 3: Schedule	Provide a detailed schedule requested in Section 4.5, Tab 4c.

Attachment B3: Financial Information

Tab 1: Financial Capacity	
1.1. Statement on financial capacity	Provide historic information in support of your firm's or firms' financial capacity to carry out the Project
1.2. Financial Statement(s)	Provide audited financial statements for the latest year
Tab 2: Proposed Compensation	
2.1. Phase 1A	Provide a proposed fixed budget including tasks and subtasks with assigned project personnel hours and hourly rates as a basis for the budget
2.2. Phase 1B	State the percentage developer fee and itemize the cost components on which the fee will be taken
2.3. Phase 2	(If applicable) State the percentage commission fee and itemize the revenue components (sale/lease) on which the fee will be taken

Attachment C: Right of Entry Agreement

THIS RIGHT OF ENTRY AGREEMENT ("Agreement") is made and entered into this ____ day of _____, 201__ by and between the WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY, a body corporate and politic, having a principal business address at 600 Fifth Street, NW, Washington, DC 20001 ("WMATA") and _____, a _____ formed under the laws of _____, having a principal business address at _____ ("Permittee").

WITNESSETH:

WHEREAS, WMATA owns the Premises (as defined below); and

WHEREAS, Permittee has requested and WMATA is willing to grant Permittee the non-exclusive right to enter the Premises for due diligence activities, subject to the terms and conditions set forth below.

NOW, THEREFORE, in consideration of the foregoing, One Dollar (\$1.00), and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

(1) Incorporation of Recitals. The Recitals set forth above are incorporated herein by this reference to the same extent and with the same force and effect as if fully hereinafter set forth.

(2) Description of Premises. The property that is the subject of this Agreement is that certain tract of land, comprising approximately _____ square feet, known as _____, located in _____ (the "Premises").

(3) Term of Agreement. This Agreement commences on the date hereof and, subject to Paragraph 10 below, terminates on _____.

(4) Use of Premises. WMATA grants unto Permittee, including, but not limited to, its officers, employees, contractors, subcontractors, guests, and agents, if any (hereinafter collectively and individually, "Permitted Users"), a non-exclusive license to enter onto the Premises for the sole purpose of conducting such non-invasive investigations, inspections, audits, analyses, surveys, tests, examinations, studies, and appraisals of the Premises as Permittee deems necessary or desirable, at Permittee's sole cost and expense, in order to determine whether the Premises are suitable for Permittee's purposes. Invasive testing, such as core drilling and soil sampling, is not permitted absent WMATA's separate express written agreement. Permittee shall provide WMATA with copies of all work plans, sampling and analytical protocols, laboratory analysis results and reports, and surveys obtained in connection with this Agreement.

(5) Coordination of Access. If the Premises are open to the public, access under this Agreement is allowed during all times the Premises are open to the public. Otherwise, access to the Premises shall be only Monday-Friday (except Federal holidays) during the hours of 9:00 am – 5:00 pm unless WMATA expressly grants Permittee written permission otherwise. Permittee shall coordinate with WMATA for entry on the Premises during hours the Premises are not open to the public and for the performance of any physical tests, investigations, analyses and/or studies of the Premises. Permittee shall give WMATA reasonable advance notice of prior to commencing any such physical tests, investigations, analyses and/or studies of the Premises. At WMATA's election, WMATA may designate a representative to accompany Permittee while on the Premises, in which event Permittee shall not enter onto the Premises unless so accompanied. Should a WMATA escort be necessary or appropriate, in WMATA's sole and absolute discretion, Permittee shall pay the charges therefor, levied in accordance with WMATA's standard rates, upon demand.

(6) Non-Interference with WMATA Activities. Pursuant to the terms of this Agreement, Permittee may only use the Premises in such manner and at such times as herein described and shall not interfere with the use, construction, maintenance, repair and/or operations of WMATA or of any tenant. Permittee or other Permitted Users shall not contact any tenant directly. Permittee shall not permit any mechanics' liens to be filed against the Premises or any part thereof. The requirements of this Paragraph shall survive the expiration or any earlier termination of this Agreement.

(7) Damage to WMATA Property. Permittee and other Permitted Users shall not materially alter or disturb the Premises. Permittee shall be responsible for, and must make good at its own expense, all damage to WMATA property caused by its acts or those of the Permitted Users and others acting on behalf of Permittee. Permittee shall carry out such repair, restoration, or replacement within fifteen (15) business days of Permittee's receipt of notice from WMATA except in the case of any emergency as determined by WMATA in its sole discretion, in which event Permittee's obligation of repair or replacement shall be immediate upon receipt of notice from WMATA. The requirements of this Paragraph shall survive the expiration or any earlier termination of this Agreement.

(8) Indemnification.

i. Permittee shall, and shall require all of its contractors and subcontractors, to indemnify and save harmless WMATA, its directors, officers, employees and agents from all liens, liabilities, obligations, damages, penalties, claims, costs, charges and expenses (including reasonable attorney's fees and court costs), of whatsoever kind and nature, occurring in connection with, or in any way arising out of any activity carried out by Permittee or other Permitted Users pursuant to this Agreement.

ii. If any action or proceeding as described in this Paragraph is brought against WMATA, then, upon written notice from WMATA to the indemnitor the indemnitor shall, at the indemnitor's expense, resist or defend such action or proceeding by counsel approved by WMATA in writing, such approval not to be unreasonably withheld, but no approval of counsel shall be required where the cause of action is resisted or defended by counsel of any insurance carrier obligated to resist or defend the same.

iii. Permittee understands and agrees that it is Permittee's responsibility to provide indemnification to WMATA pursuant to this Paragraph. The provision of insurance, while anticipated to provide a funding source for this indemnification, is in addition to any indemnification requirements. The failure of Permittee's insurance to fully fund any indemnification shall not relieve Permittee of any obligation assumed under this Agreement.

iv. The requirements of this Paragraph shall survive the expiration or any earlier termination of this Agreement.

(9) Insurance.

i. As may be required in any insurance policy carried by Permittee, this Agreement is understood and agreed to be a written contract or an insured contract between Permittee and WMATA. It is Permittee's responsibility to ensure adequate and complete coverage as contemplated in this Agreement. Permittee understands and agrees that WMATA is a self-insured governmental entity and that the insurance and indemnification provided by Permittee under the terms of this Agreement shall be primary. Permittee agrees that to the extent any endorsement contemplates issuance of a permit by a state or political subdivision, WMATA shall be considered a state or political subdivision issuing a permit for the purposes of those policies and endorsements.

ii. Permittee shall, at its own cost and expense, provide, maintain, and keep in force at all times during the term of this Agreement and any renewal or extension hereof, the following types of insurance. A certificate evidencing this coverage shall be delivered to WMATA and, upon WMATA's request from time to time, copies of the applicable insurance policy(ies) shall be delivered to WMATA at no charge or cost to WMATA.

iii. *Commercial General Liability Insurance.* A Commercial General Liability Insurance policy issued to and covering the liability for all work and operations under or in connection with this Agreement and all obligations assumed by Permittee under this Agreement. The coverage under such an insurance policy shall have at least the following limits:

Bodily Injury and Property Damage Liability	
\$1,000,000 Each Occurrence; \$2,000,000 Aggregate	
Premises Medical Payments	\$ 5,000
Fire Legal Liability (if applicable)	\$1,000,000
Personal Injury/Advertising	\$1,000,000
or Combined Single Limit not less than	\$2,000,000

WMATA shall be named as an additional insured under the coverage for Commercial General Liability Insurance with respect to all activities under this Agreement.

iv. *Automobile Liability Insurance.* A commercial auto insurance policy covering the use of all owned, non-owned, hired, rented or leased vehicles bearing valid license plates appropriate for the circumstances for which the vehicles are being used. These vehicles should bear license plates applicable to the state laws for which the vehicle(s) are registered. Liability for a contractor's mobile equipment is not subject to this coverage and therefore the

aforementioned general liability insurance is required. The coverage under such an insurance policy or policies shall include mandatory Uninsured Motorist Coverage where applicable.

The coverage under such an insurance policy or policies shall have limits not less than \$2,000,000 Combined Single Limit for Bodily Injury and Property Damage Liability and not less than \$50,000 for Uninsured Motorist Coverage.

WMATA must be named as an additional insured under the auto liability insurance coverage with respect to activities related to this Agreement.

(10) Insurance Companies. Insurance companies providing the aforesaid coverages must be rated by A.M. Best or a comparable rating company and carry at least an "A-:VII" rating. All insurance shall be procured from insurance or indemnity companies acceptable to WMATA and licensed and authorized to conduct business in the District of Columbia, the Commonwealth of Virginia and the State of Maryland.

(11) Termination of Agreement. WMATA may revoke the license granted herein at any time upon notice thereof to Permittee, in which event all rights of access granted to Permittee shall immediately terminate. Permittee's obligations pursuant to Paragraphs 6, 7 and 8 hereof shall survive any termination of this Agreement.

(12) Non-Liability of WMATA. WMATA shall have no liability for the actions or negligence of Permittee or the Permitted Users. Neither the grant of this right of entry, nor any provision thereof, shall impose upon WMATA any new or additional duty or liability or enlarge any existing duty or liability of WMATA. Nothing in this Agreement shall be deemed to waive WMATA's immunity as a sovereign entity.

(13) WMATA Compact. Permittee understands and agrees that in no event shall Permittee assert for its own benefit, or attempt to claim or assert, an exemption or immunity available to WMATA under the Washington Metropolitan Area Transit Authority Compact, Public Law 89-774, 80 Stat. 1324, as same may be amended (the "WMATA Compact").

(14) Governing Law. This Agreement shall be governed by the laws of the District of Columbia without regard to its principles of conflicts of laws, except that, to the extent that state law conflicts with the WMATA Compact, WMATA shall be governed by the WMATA Compact.

(15) Jurisdiction and Venue. Jurisdiction and venue over any suit, action or proceeding arising under or relating to this Agreement shall lie solely in the jurisdiction in which the Premises are located.

(16) Entire Agreement. This Agreement constitutes the entire agreement between the parties except to the extent that there is, or at any time during the term of this Agreement, shall be, a joint development agreement for the ground lease or sale of the Premises between WMATA and Permittee; in that event, this Agreement shall be supplementary to any such joint development agreement and, in the event of any conflict or inconsistency between them regarding the subject matter of this Agreement, the terms of this Agreement shall govern. The parties acknowledge that no representations or warranties have been made except as set forth herein. This Agreement shall not be modified or amended in any manner except by an

instrument in writing executed by the parties as an amendment to this Agreement.

(17) Counterparts. This Agreement may be signed in counterparts, each of which together shall constitute one single agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the date and year first written above.

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

By: _____
Printed Name: _____
Contracting Officer: _____

PERMITTEE:

By: _____
Printed Name: _____

Attachment D: Links to Metro Documents

- 2018 Joint Development Policies:
https://www.Metro.com/business/real-estate/upload/Joint_Development_Policies.pdf
- Public Access to Records and Privacy Policies:
<https://www.wmata.com/about/records/>
- Adjacent Construction Project Manual:
<https://www.wmata.com/business/adjacent-construction/upload/ACPM-Rev-5a-09-21-15.pdf>
- Real Estate Permit Application:
<https://www.wmata.com/business/real-estate/upload/Real-Estate-Permit-Application.pdf>
- Station Area Planning Guide
<https://www.wmata.com/business/real-estate/upload/Station-Area-Planning-Guide-October-2017.pdf>