

## **AGREEMENT**

### **REGARDING WETLAND MITIGATION FOR THE POTOMAC YARD METRO**

**Between the  
NATIONAL PARK SERVICE  
And  
THE CITY OF ALEXANDRIA**

This Agreement, made between the NATIONAL PARK SERVICE, acting through the Regional Director, National Capital Region (NPS), and the CITY OF ALEXANDRIA (COA) (together the Parties).

#### **ARTICLE I – BACKGROUND AND OBJECTIVES**

The George Washington Memorial Parkway (GWMP) is land owned by the United States, and is part of the National Park System, administered by the NPS.

Dyke Marsh Wildlife Preserve (Dyke Marsh) is a large wetland area on the Potomac River south of Alexandria, Virginia, that is part of the GWMP. The marsh is one of the few remaining tidal freshwater marshes on the Potomac River and Congress has declared in several pieces of legislation that the marsh is a valuable resource to the region, and should be preserved and restored, particularly in Public Law (P.L.) 93-251 in 1974, and most recently in the Water Resources Development Act of 2007.

The Federal Transit Administration, as the lead Federal agency, and the City of Alexandria, as the project sponsor and joint lead agency, in cooperation with the Washington Metropolitan Area Transit Authority, and the NPS, prepared an Environmental Impact Statement (EIS) and Section 4f Evaluation for the proposed new Potomac Yard Metrorail station (PYMS) and ancillary facilities located at Potomac Yard within the City of Alexandria.

Construction of a new Metrorail station is the key to transforming the Potomac Yard area of Alexandria into a transit-oriented, walkable community with a mix of office and residential uses, high-quality retail, entertainment and parks. The location of the Preferred Alternative is adjacent to the George Washington Memorial Parkway and low-lying areas of the Potomac River. The foundation for the Metrorail Station would be constructed within the 100-year floodplain of the Potomac River as well as delineated wetlands; therefore, work in the regulated floodplain and delineated wetland area(s) is required. The Preferred Alternative is not anticipated to increase the Base Flood Elevation within the study area.

The Preferred Alternative is designed to minimize impacts to wetlands and other waters of the US (WOUS) and to compensate for impacts to the delineated wetlands in accordance with the Clean Water Act, Virginia law and NPS policies. The Preferred Alternative includes the partial restoration at Dyke Marsh for permanent impacts and on-site restoration for temporary construction impacts. Temporal mitigation for temporary wetland impacts includes restoration of additional off-site wetlands in Dyke Marsh.

To comply with NPS wetlands protection and floodplain management procedures, a Statement of Findings (SOF) was prepared and will be published with the Final EIS. The SOF proposed mitigation measures that would have long-term beneficial impacts to the Dyke Marsh wetlands via improvements to flood protection, sediment and toxicant retention, nutrient removal, wildlife habitat, recreational value, scientific and educational value, and uniqueness/heritage which are consistent with the existing functions. Temporary impacts to wetland due to construction would be mitigated through on-site restoration of the existing functions and values (flood protection, sediment and toxicant retention, nutrient removal, and wildlife habitat).

Wetland mitigation includes avoidance, minimization, and compensation. Minimization was used for the Preferred Alternative by locating the station as far west as possible within its technically feasible zone to minimize and reduce impact. A wetland mitigation plan will be developed which will outline all aspects of avoiding, minimizing, and compensating any wetland impacts associated with the project.

A total area of approximately 4.37 acres of permanent wetland impacts will be compensated off-site at a 1:1 ratio in Dyke Marsh. A total area of 2.92 to 3.25 acres of temporary wetland impacts will be mitigated on-site at a 1:1 ratio to restore or reconstruct wetlands to return to as close to pre-construction conditions as possible or better. Compensation for and restoration of wetland areas impacted by the project will be funded by the City of Alexandria (project sponsor).

The COA and the NPS enter into this Agreement in order to accomplish this funding and mitigation.

## **ARTICLE II – AUTHORITY**

### **A. For NPS:**

**54 U.S.C. 100101, et seq.** –The NPS Organic Act and related laws direct the Secretary of the Interior to promote and regulate National Park System lands by such means and measures as to conform to the fundamental purpose of such lands, namely conservation of the scenery and natural and historic objects and wildlife therein, and to provide for the enjoyment of these resources in a manner and by such means as will leave them unimpaired for the enjoyment of future generations.

### **B. For COA:**

The COA is empowered to enter into this agreement by virtue of the authority expressly granted to it by the General Assembly of the Commonwealth of Virginia in the COA's Charter, including the authority set forth in Charter Sections 2.02(c) and Section 2.03. In accordance with that authority, on May 20, 2015, the COA City Council adopted Resolution No. 2676, which selected DEIS Alternative B as the "locally preferred alternative," along with Option 2 for construction.

### **ARTICLE III – DEFINITIONS**

- A. “NPS Impact Fund Account” or “Account” means the financial account established and administered by the Fund under this Agreement into which the Fund will deposit money transferred to it by public or private entities as required or negotiated by the NPS or another permitting entity to mitigate impacts to NPS-administered lands, waters, or other assets. Payments into and from the Account are to be made in accordance with the provisions of this Agreement.

### **ARTICLE IV – STATEMENT OF WORK**

**A. The NPS Agrees to:**

1. Use the funds provided by COA solely for restoration work at Dyke Marsh and shall work with The Conservation Fund to complete the work. Funds to restore Dyke marsh will be used towards the construction of containment cells that will be filled with appropriate hydraulic slurry approved by the USACE for level of contaminants, particle or grain size, and consolidation rates.

**B. The COA Agrees to:**

1. Provide up to \$1 million per impacted acre, not to exceed \$4.37 million, for the NPS Impact Fund Account, which was established by the July 10, 2015, Memorandum of Agreement between the National Park Service and The Conservation Fund. The funds will be paid into the Account and administered pursuant to the terms of that Memorandum of Agreement. The funds will be used in order to fund appropriate compensatory mitigation projects to minimize or offset the unavoidable permanent impacts to wetlands due to the construction of the Potomac Yard Metro Station. Exact cost estimates on this restoration are not available at this time, and may be adjusted at the time the NPS issues the City of Alexandria its Special Use Permit
2. In addition, the COA would fund and restore or reconstruct wetlands impacted by temporary construction activities to original grade and planted with native vegetation. A total of 2.92 to 3.25 acres of temporarily impacted wetlands are located within the Greens Scenic Area easement and adjacent portion of the GWMP. Temporary impacts will be restored as soon as practicable after construction in a particular area has stopped and in compliance with the Virginia Erosion and Sediment Control Handbook. The planted areas of emergent wetlands are anticipated to take one to two growing seasons to fill in.
3. Prepare a mitigation plan for the wetlands impacted by temporary construction activities. Details of the proposed mitigation plan will include two monitoring events each year for the first three years and one monitoring event for the fourth and fifth years. Proposed performance metrics will include success criteria which may consist of species diversity, stem density, survival, aerial cover, and invasive species cover to ensure the restored plant community is established. The mitigation plan will include

adaptive management provisions for regrading, planting, or additional work depending on unanticipated changes in site conditions (e.g., supplementation of topsoil, deer fencing, browse control, and goose control). Performance metrics for wetland restoration would be evaluated at the end of each growing season during the monitoring period, and adjustments would be made to mitigation areas using adaptive management techniques as necessary. If a monitoring event determines that major earth work or structures may be needed to meet restoration performance metrics, then the regulatory agencies would need to review and approve proposed adaptive management strategies in coordination with NPS.

#### **ARTICLE IV - EFFECTIVE DATE**

This Agreement is effective on the date of the last signature affixed.

#### **ARTICLE V - TERM OF AGREEMENT**

This Agreement shall terminate on the when the funds have been disbursed in accordance with this Agreement.

#### **ARTICLE VI – KEY OFFICIALS**

- A. Key officials are essential to ensure maximum coordination and communications between the parties. They are:

**1. For the NPS:**

Peter May  
Associate Regional Director - Lands, Planning, and Design  
National Park Service - National Capital Region  
1100 Ohio Drive SW, Washington, DC 20242  
(202) 619 7025  
pmay@nps.gov

Alexcy Romero  
Superintendent, George Washington Memorial Parkway  
700 George Washington Memorial Parkway  
c/o Turkey Run Park  
McLean, VA 22101  
(703)-289-2511  
Alex\_romero@nps.gov

**For the COA:**

Mark Jinks  
City Manager  
City of Alexandria  
301 King Street  
Alexandria, VA 22314  
703-746-4300  
Mark.Jinks@alexandriava.gov

Joanna C. Anderson  
Deputy City Attorney  
City of Alexandria  
301 King Street  
Alexandria, VA 22314  
703-746-3750  
joanna.anderson@alexandriava.gov

- B. Communications** - The COA will address any communication regarding this Agreement to the NPS contacts. The NPS will address any communication regarding this Agreement to the COA contacts.
- C. Changes in Key Officials** - Neither the NPS nor the COA may make any permanent change in a key official without written notice to the other party reasonably in advance of the proposed change. Any permanent change in key officials will be made only by modification to this Agreement.

**ARTICLE VII - DISBURSEMENT OF FUNDS**

The total amount of the cash benefits under this Agreement will not exceed the sum of \$4,370,000. The NPS will be working with The Conservation Fund to implement the stipulations of the Agreement. The funds shall be distributed to The Conservation Fund by the COA after execution of the NPS Record of Decision, but prior to issuance of any permit or NPS action. The COA shall transmit funds via wire transfer to the Conservation Fund using the following instructions:

The Conservation Fund  
1655 N. Fort Myer Dr., Suite 1300  
Arlington, VA 22209

WIRE TO: SunTrust Bank  
7818 Parham Road  
Richmond, VA 23294

CREDIT TO: The Conservation Fund  
ACCOUNT NO: 202132617  
ABA NO: 061000104

WIRE ADVICE TO: Please reference The Conservation Fund's project name and/or project number. BANK CONTACT: Deniece Garrett (202) 879-6281

#### **ARTICLE VIII – MODIFICATION AND TERMINATION**

- A. This Agreement may be modified only by a written instrument executed by the parties.
- B. Either party may terminate this Agreement by providing the other party with thirty (30) days advance written notice. In the event that one party provides the other party with notice of its intention to terminate, the parties will meet promptly

#### **ARTICLE IX – GENERAL PROVISIONS**

- A. **Non-Discrimination:** All activities pursuant to or in association with this Agreement shall be conducted without discrimination on grounds of race, color, sexual orientation, national origin, disabilities, religion, age, or sex, as well as in compliance with the requirements of any applicable federal laws, regulations, or policies prohibiting such discrimination.
- B. **NPS Appropriations:** Pursuant to 31 U.S.C. § 1341, nothing contained in this Agreement shall be construed to obligate NPS, the Department, or the United States of America to any current or future expenditure of funds in advance of the availability of appropriations from Congress and their administrative allocation for the purposes of this Agreement, nor does this Agreement obligate NPS, the Department, or the United States of America to spend funds on any particular project or purpose, even if funds are available.
- C. **Member of Congress:** Pursuant to 41 U.S.C. § 22, no Member of Congress shall be admitted to any share or part of any contract or agreement made, entered into, or adopted by or on behalf of the United States, or to any benefit to arise thereupon.
- D. **Lobbying Prohibition:** Pursuant to 18 U.S.C. § 1913, no part of the money appropriated by any enactment of Congress shall, in the absence of express authorization by Congress, be used directly or indirectly to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device, intended or designed to influence in any manner a Member of Congress, a jurisdiction, or an official of any government, to favor, adopt, or oppose, by vote or otherwise, any legislation, law, ratification, policy, or appropriation, whether before or after the introduction of any bill, measure, or resolution proposing such legislation, law, ratification, policy, or appropriation; but this shall not prevent officers or employees of the United States or of its departments or agencies from communicating to any such Members or official, at his request, or to Congress or such official, through the proper official channels, requests for legislation, law, ratification, policy, or appropriations which they deem necessary for the

efficient conduct of the public business, or from making any communication whose prohibition by this section might, in the opinion of the Attorney General, violate the Constitution or interfere with the conduct of foreign policy, counterintelligence, intelligence, or national security activities. Violations of this section shall constitute violations of section 1352(a) of title 31.


- E. **Third Parties Not to Benefit:** This Agreement does not grant rights or benefits of any nature to any third party.
- F. **Assignment, Binding Effect:** Neither party may assign any of its rights or obligations under this Agreement without the prior written consent of the other party. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns. The parties waive the defense of lack of consideration.
- G. **Non-exclusive:** This Agreement in no way restricts the parties from entering into similar agreements, or participating in similar activities or arrangements, with other public or private agencies, organizations, or individuals.
- H. **Compliance with Applicable Laws:** This Agreement and performance hereunder is subject to all applicable laws, regulations and government policies, whether now in force or hereafter enacted or promulgated. Nothing in this Agreement shall be construed as (i) in any way affecting the authority of the NPS to supervise, regulate, and administer its property under applicable laws, regulations, and management plans or policies as they may be modified from time-to-time or (ii) inconsistent with or contrary to the purpose or intent of any Act of Congress.
- I. **Merger:** This Agreement, including any attachments hereto, and/or documents incorporated by reference herein, contains the sole and entire agreement of the Partners.
- J. **Waiver:** Failure to enforce any provision of this Agreement by either party shall not constitute waiver of that provision. Waivers must be express and evidenced in writing.
- K. **Counterparts:** This Agreement may be executed in counterparts, each of which shall be deemed an original (including copies sent to a party by facsimile transmission) as against the party signing such counterpart, but which together shall constitute one and the same instrument.
- L. **Survival:** Any and all provisions that, by themselves or their nature, are reasonably expected to be performed after the expiration or earlier termination of this Agreement shall survive and be enforceable after the expiration or earlier termination of this Agreement. Any and all liabilities, actual or contingent, that have arisen during the term of this Agreement and in connection with this Agreement shall survive expiration or termination of this Agreement.

- M. Partial Invalidity: If any provision of this Agreement or the application thereof to any party or circumstance shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement or the application of such provision to the parties or circumstances other than those to which it is held invalid or unenforceable shall not be affected thereby, and each provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.
- N. Captions and Headings: The captions, headings, article numbers, and paragraph numbers and letters appearing in this Agreement are inserted only as a matter of convenience and in no way shall be construed as defining or limiting the scope or intent of the provisions of this Agreement nor in any way affecting this Agreement.


#### ARTICLE X - SIGNATURES

IN WITNESS THEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives.

For the CITY OF ALEXANDRIA:

  
\_\_\_\_\_  
Mark Jinks  
City Manager

9-4-16  
\_\_\_\_\_  
Date

Approved as to Form:   
\_\_\_\_\_  
Deputy City Attorney

For the U.S. DEPARTMENT OF THE INTERIOR, NATIONAL PARK SERVICE,  
NATIONAL CAPITAL REGION:

  
\_\_\_\_\_  
Robert A. Vogel  
Regional Director

11-1-16  
\_\_\_\_\_  
Date