

ATTACHMENT E – NET BENEFITS AGREEMENT

AGREEMENT
REGARDING POTOMAC YARD METRORAIL STATION
Between the
NATIONAL PARK SERVICE
And
THE CITY OF ALEXANDRIA

This is an Agreement, by and 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. The GWMP comprises a total of 7,146 acres and extends 38.3 miles on both sides of the Potomac River in Virginia and Maryland.

The Mount Vernon Memorial Highway (MVMH) is part of the GWMP and is nationally significant “as the first parkway constructed and maintained by the U.S. government and is the first road with a commemorative function explicit in its name and alignment.” The GWMP and the MVMH are listed in the National Register of Historic Places (NRHP).

The Green Scenic Area Easement (GSE), an easement administered by the NPS, covers 15.27 acres north of the Potomac Greens neighborhood, land owned by the COA. The purpose of the easement is to conserve and preserve the natural vegetation, topography, habitat, and other natural features within its area. The GSE is intended to provide a buffer between the GWMP and the development in Potomac Yard. The scenic easement stipulates that no improvements shall be constructed or installed within the GSE, and prohibits clearing, grading, or tree removal, except for uses such as light passive recreation and underground utilities. The GSE has been determined eligible for listing in the NRHP.

The Federal Transit Administration (FTA), 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 (WMATA), and the NPS, prepared a Draft Environmental Impact Statement (DEIS) and Draft Section 4f Evaluation (April 2015) for the proposed new Potomac Yard Metrorail station (PYMS) and ancillary facilities located at Potomac Yard within the City of Alexandria.

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. That resolution also authorized the COA to negotiate this Agreement.

Alternative B with Option 2 would require the permanent use of 0.16 acres and the temporary use of 0.55 acres of NPS-administered land from the GWMP and MVMH, and would have

substantial impacts to park natural and cultural resources. It would also require the permanent use of 1.71 acres and temporary use of 3.09 acres of the GSE.

The purpose of this Agreement is to document the mitigation measures and series of enhancements to be implemented in order to minimize harm to the GWMP as a result of the PYMS and to incorporate measures into the PYMS, so that the PYMS would have a “net-benefit” to the GWMP. A “net benefit” is achieved when (1) the transportation use, (2) the measures to minimize harm, and (3) the mitigation incorporated into the project are found to result in an overall enhancement of a Section 4(f) property when compared to both the No-Build and Avoidance alternatives and the present condition of the Section 4(f) property.

The NPS and the COA enter into this Agreement regarding the means by which to sufficiently mitigate the loss of park and easement land and the impacts to park resources. The actions set out in this agreement will be carried out after the completion of the National Environmental Policy Act process, as well as compliance with the National Historic Preservation Act and Section 4(f), are completed, if a Record of Decision is executed by FTA and the NPS to implement Alternative B Option 2.

ARTICLE II – AUTHORITY

A. For NPS:

54 U.S.C. 100101, et seq. –The NPS Organic Act directs 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.

ARTICLE III – STATEMENT OF WORK

The NPS and the COA agree:

A. Exchange of Land

1. The United States will convey to the COA in fee up to approximately 0.33 acres of land within the GWMP, and it will release its easement of up to approximately

- 1.94 acres of the GSE to the extent needed for the construction of the station. The terms of the United States easement over up to approximately 7.24 acres of the GSE will remain unchanged.
2. The COA will convey to the United States, in fee, the remaining approximately 6.32 acres of the GSE (Exhibit A), unless the Environmental Site Assessments determine that such land is contaminated and unable to be accepted by the NPS, in which case a parcel or parcels of equal appraised fair market value mutually agreeable to the COA and the NPS will be exchanged.
 3. The acreages of land in the above referenced exchange are based on what has been currently defined in the DEIS. The exact amount of land to be exchanged between the Parties will be determined through further design of the station, the completion of the FEIS and the results of Environmental Site Assessments. .
 4. By law the interests in the lands or interests in land to be exchanged by the parties must be of approximately equal appraised fair market value. By agreement of the parties, values may be equalized by subtracting land from a parcel proposed for exchange; by an equalization payment from one party to the other; or, if the value of the land or interests in land conveyed by COA to the United States is greater than the value of the land or interests in land conveyed by the United States to COA, the COA may at its own discretion donate the difference in values to the United States.
 5. Within 120 days of execution of the ROD by FTA and the ROD by NPS, assuming the decisions in those RODs are consistent with this Agreement, the Parties shall enter into a land exchange agreement that will designate the specific parcels to be exchanged, and provide the terms, conditions, and process by which the land exchange shall occur. The land exchange agreement shall provide:
 - a. Access to the new Metrorail Station across the land conveyed to the United States for maintenance and emergency response, via recorded easements in accordance with WMATA standards. The COA may also reserve necessary rights for access to and maintenance of stormwater facilities, as well as any other existing easements. In addition, the COA may reserve such temporary rights as may be necessary for staging and storage within the GSE during construction of the PYMS and related ancillary facilities. The parties will work together to minimize the amount of such staging and storage to the extent reasonably practicable.
 - b. The COA shall be responsible for the cost and expense to obtain Level I Environmental Site Assessments, surveys, title evidence or insurance, and appraisals for the land to be exchanged.

- c. Public access to the GSE, including any related infrastructure and maintenance thereof.

B. Minimization and Mitigation of Visual Impact to the GWMP

The COA shall:

1. The COA will impose limitations on height and other restrictions on items such as materials, signage, and lighting on portions of North Potomac Yard adjacent to the GWMP via ordinance. In addition, the COA will seek an agreement, if possible, with the property owner to establish the restrictions on heights, signage and lighting as legally binding covenants or easements.
2. Work to ensure that the design of the Potomac Yard Metro Station and related landscaping, including planting, plant selection and berms, will be done in a manner that mitigates the visual impact of the station on the GWMP and includes NPS as a participant in the design process.
3. Work with WMATA to develop a design-build process that enables a higher level of COA involvement with specific high-visibility elements of the station, and incorporates NPS participation into this process.
4. In cooperation with WMATA, develop alternative construction staging locations that minimize or avoid the use of the GWMP to the extent reasonably practicable.

C. Compensatory Mitigation Fund

The COA shall provide a total of \$12 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 COA shall convey the \$12 million to the NPS Impact Fund Account when the design/build contract is awarded. 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 impacts of the PYMS on natural and cultural resources within the GWMP. For purposes of this Agreement, natural and cultural resources include lands, waters, animals, plants, cultural and historic sites and objects, and other natural or human-made resources under the jurisdiction of the NPS to the GWMP. The funds shall be used and distributed as described below:

1. \$300,000 shall be reserved for the preparation of a stormwater management plan for Daingerfield Island and the adjacent section of the GWMP, where there is a known stormwater issue.

2. \$2,500,000 shall be reserved for implementation of the stormwater management plan described above for Daingerfield Island and the adjacent section of GWMP, with a maximum project area of approximately 45 acres.
3. \$325,000 shall be reserved for the preparation of a Daingerfield Island Master Plan, which will address improvements to visitor services, facilities, recreation, and park amenities. The preparation of the Plan shall be prepared in coordination with the COA with a target date of completion of no later than January 1, 2021.
4. \$6,000,000 shall be reserved for implementation of the recommendations of the Daingerfield Island Master Plan referenced herein. The target date for obligating funds of the improvements shall be no later than January 1, 2025.
5. \$1,000,000 shall be reserved for the implementation of repairs and improvements to the Mount Vernon Trail within the City of Alexandria. The target date for completing the improvements shall be no later than December 31, 2020.
6. \$200,000 shall be reserved for a vegetation survey for the south section of the GWMP (from Four Mile Run to Mount Vernon) to evaluate the number, type, size, age, and health of the existing vegetation.
7. \$200,000 shall be reserved for the preparation of a GWMP Facility Management plan that will include a drainage plan.
8. \$1,475,000 shall be reserved that may be used on some or all (to be determined solely by the NPS) of the following projects for the GWMP:
 - a. Preparation of an updated National Register of Historic Places nomination for the Mount Vernon Memorial Highway
 - b. Preparation of a Cultural Landscape Report for the GWMP south of Alexandria to include treatment recommendations.
 - c. Implementation of treatment recommendations based on the findings of the Cultural Landscape Report for the GWMP (Virginia Tech 2009) and the Cultural Landscape Report for GWMP south of Alexandria.
 - d. Invasive plant management, restoration planting, and monitoring efforts for GWMP within the vicinity of the project area and south of Alexandria.
 - e. Preparation of an Archeological Overview and Assessment of the GWMP south of Alexandria.

- f. Completion of a Viewshed Protection Plan to include a viewshed inventory and assessment of the south section George Washington Memorial Parkway north and south of Alexandria.
- g. Completion of a Visitor Use Survey and Visitor Use Management Plan for the entire GWMP.
- h. Preparation of a Resource Stewardship Strategy for the entire GWMP.

ARTICLE IV - EFFECTIVE DATE

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

ARTICLE V - TERM OF AGREEMENT

This Task Agreement will become effective on the date of final signature and will expire ten (10) years from that date.

ARTICLE VI – KEY OFFICIALS

- A. Key officials are essential to ensure maximum coordination and communications between the parties and the work being performed. 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. The notice will include a justification with sufficient detail to permit evaluation of the impact of such a change on the scope of work specified within this Agreement. 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 \$12,000,000.

The NPS may shift amounts from one project to another with written notification to the COA, as long as the amount shifted is less than 20% of the amount for any specific project. Proposed shifts that result in a change in excess of 20% to any single specific project require written notification to and approval by the COA. However, if a project on the list is completed and has a remaining surplus exceeding 20% of the allocated amount, the NPS may reallocate these remaining funds to other projects on the list solely with written notification to the COA.

The NPS will be working with The Conservation Fund to implement the stipulations of the Agreement. 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 – SCHEDULE FOR EXPENDITURE OF FUNDS

The NPS, working with the Conservation Fund, will use commercially reasonable best efforts to expend the funds described in this Agreement. Upon receipt of funds by the Conservation Fund, a schedule for expenditure of funds will be developed that will include targets for obligation, completion of planning and design, and implementation.

ARTICLE IX – REPORTING

The NPS will prepare an annual financial review and narrative status report that will be submitted to COA by June 31 of the year following each calendar year.

ARTICLE X – 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 until the Parties begin taking the actions described in Article III herein, after which neither may terminate the Agreement. In the event that one party provides the other party with notice of its intention to terminate, the parties will meet promptly to discuss the logistics of such termination.

ARTICLE XI – 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. **Disclaimers of Government Endorsement:** The Partner will not publicize or circulate materials (such as advertisements, solicitations, brochures, press releases, speeches, pictures, movies, articles, manuscripts, or other publications), suggesting, expressly or implicitly, that the that the United States of America, the Department, NPS, or any government employee endorses any business, brands, goods or services.
- J. **Public Release of Information:** The Partner must obtain prior written approval through the NPS Key Official (or his or her designate) for any public information releases (including advertisements, solicitations, brochures, and press releases) related to the Agreement that refer to the Department of the Interior, any bureau, park unit, or employee (by name or title), or to this Agreement. The specific text, layout, photographs, etc., of the proposed release must be submitted with the request for approval. The NPS will make a good-faith effort to expeditiously respond to such requests. The foregoing shall not apply to any non-substantive or incidental reference.
- K. **Merger:** This Agreement, including any attachments hereto, and/or documents incorporated by reference herein, contains the sole and entire agreement of the Partners.
- L. **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.
- M. **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.
- N. **Agency:** The COA is not an agent or representative of the United States, the Department of the Interior, or the NPS, nor will the COA represent itself as such to third parties.

- O. 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.

- P. 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.

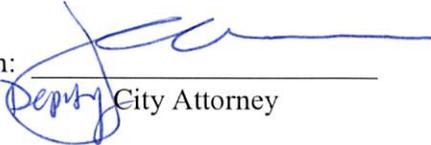
- Q. Captions and Headings: The captions, headings, article numbers, and paragraph numbers and letters appearing in this Agreement are inserted only as a matter of convenience and in no way shall be construed as defining or limiting the scope or intent of the provisions of this Agreement nor in any way affecting this Agreement.

ARTICLE XII - SIGNATURES

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

For the CITY OF ALEXANDRIA:

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<p>Mark Jinks City Manager</p>	<p>Date</p>

Approved as to Form: 

Deputy City Attorney

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

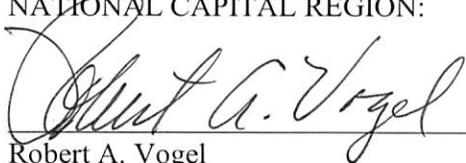
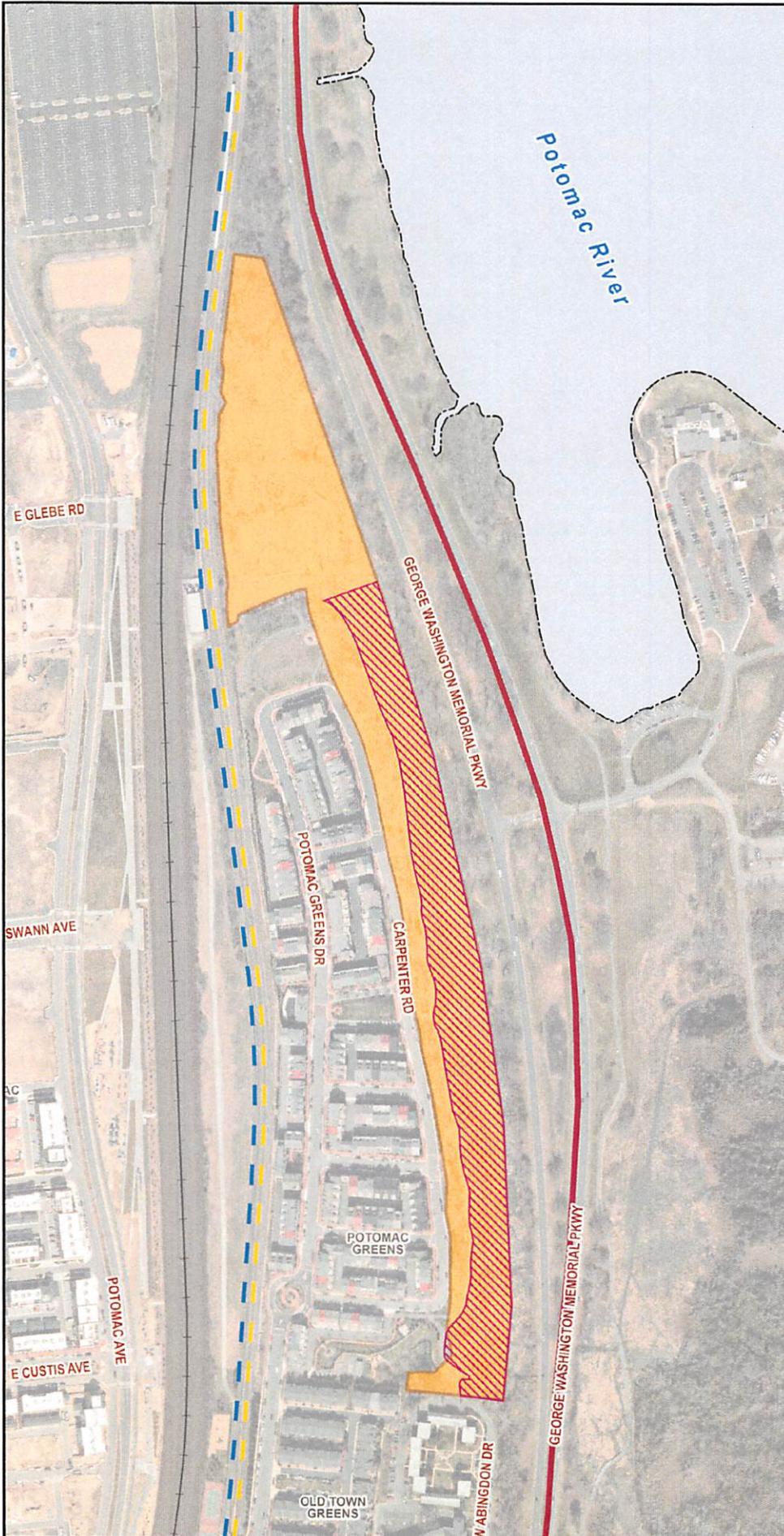
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<p>Robert A. Vogel Regional Director</p>	<p>Date</p>

Exhibit A – Green Scenic Area Parcels

Greens Scenic Area and Parcel to be included in the Net Benefits Agreement

LEGEND

- Study Area
- OLD TOWN GREENS Neighborhood
- Existing Metrorail Blue/Yellow Line
- CSXT Track
- CSXT Right-of-Way
- Greens Scenic Area Easement
- Parcel to be included in the Net Benefits Agreement



Source: City of Alexandria; Arlington County; District of Columbia



0 600 1,200 Feet



POTOMAC YARD
METRO RAIL STATION EIS