



COMMONWEALTH of VIRGINIA

Commonwealth Transportation Board

Shannon Valentine
Chairperson

1401 East Broad Street
Richmond, Virginia 23219

(804) 786-2701
Fax: (804) 786-2940

Agenda Item # 12

RESOLUTION OF THE COMMONWEALTH TRANSPORTATION BOARD

January 19, 2021

**Made By: Ms. Hynes, Seconded By: Mr. Rucker
Action: Motion Carried, Unanimously**

Title: Authorization for the Commissioner of Highways to Enter into a Memorandum of Agreement (MOA) with the Department of the Army, as represented by Arlington National Cemetery, the Arlington County Board, and the Federal Highway Administration, Eastern Federal Lands Highway Division (FHWA- EFLHD) Relating to the Arlington National Cemetery Southern Expansion (ANCSE) Defense Access Roads (DAR) Project in Arlington County

WHEREAS, the National Defense Authorization Acts of 2016 and 2017 collectively authorize the Secretary of the Army to take actions necessary to realign and replace the road network in Arlington County, Virginia around Arlington National Cemetery to increase the amount of land available for burials, and to maintain traffic flow through the vicinity of Arlington National Cemetery, the Pentagon Reservation and Joint Base Myer-Henderson Hall, and further, to acquire all right, title and interest in certain lands sufficient for the expansion of Arlington National Cemetery; and

WHEREAS, the United States, Department of the Army and FHWA-EFLHD, have entered into an agreement (DTFH71-16- X-50032) establishing roles, responsibilities, funding, and procedures among and between the Army and FHWA-EFLHD for the execution of the Arlington National Cemetery Southern Expansion and Defense Access Roads (ANCSE DAR) Project ; and

WHEREAS, the Virginia Department of Transportation (VDOT) currently owns and maintains the interchange at South Washington Boulevard (Route 27) and Columbia Pike (Route 244), and a section of Columbia Pike between South Washington Boulevard and South Joyce Street, which are the subject of improvements necessary for the ANCSE DAR Project; and

WHEREAS, Arlington County currently owns and maintains Columbia Pike west of South Joyce Street which is the subject of improvements necessary for the ANCSE DAR project; and

Resolution of the Board

Authorization for the Commissioner of Highways to Enter into a Memorandum of Agreement relating to the Arlington National Cemetery Southern Expansion (ANCSE) Defense Access Roads (DAR) Project in Arlington County

January 19, 2021

Page Two

WHEREAS, VDOT has entered into a Federal-Aid Project Agreement (PR-2) with FHWA-EFLHD for reimbursement of VDOT expenses incurred providing coordination, design reviews and construction inspection services for the ANCSE DAR Project; and

WHEREAS, FHWA-EFLHD, in cooperation with the parties, has prepared a Memorandum of Agreement (MOA) that establishes the roles, responsibilities, funding, and procedures by which the Army, FHWA-EFLHD, VDOT, and the County of Arlington will jointly participate in the environmental planning, design, and construction of the ANCSE DAR Project (ANCSE DAR Project MOA, attached hereto as Exhibit A); and

WHEREAS, the U.S. Government, represented by the U.S. Army Corps of Engineers, and the Commonwealth of Virginia, represented by VDOT, have prepared an agreement that sets forth the terms, conditions and consideration to paid for the Army's acquisition of portions of VDOT Route 244 (Columbia Pike) and the Route 27/244 (Columbia Pike) interchange right of way that will be necessary for the expansion of Arlington National Cemetery; and

WHEREAS, The Army is authorized to enter into this Agreement pursuant to 10 U.S.C. § 7721 *et seq.* and is the agency with administrative jurisdiction, custody and control over the Arlington National Cemetery; and

WHEREAS, FHWA-EFLHD, is authorized by 23 U.S.C. § 308(a) to perform engineering and other services in connection with the survey, design, construction, and improvements of highways for other Federal or State cooperating agencies; and

WHEREAS, Section 33.2-221 of the *Code of Virginia* empowers the CTB to comply fully with federal-aid acts, to enter into all contracts or agreements with the United States government and do all other things necessary to carry out fully the cooperation contemplated and provided for by present or future acts of Congress related to transportation.

NOW, THEREFORE, BE IT RESOLVED, that the Commonwealth Transportation Board hereby authorizes the Commissioner of Highways or his designee to enter into the ANCSE DAR Project MOA between the Army, Arlington National Cemetery, the Arlington County Board, VDOT and FHWA-EFLHD relating to the Arlington National Cemetery Southern Expansion Defense Access Roads Project in Arlington County, attached hereto as Exhibit A, with such changes as the Commissioner deems necessary or appropriate. .

###

CTB Decision Brief

Title: Authorization for the Commissioner of Highways to Enter into an Memorandum of Agreement (MOA) with the Department of the Army, as represented by Arlington National Cemetery, the Arlington County Board, and the Federal Highway Administration, Eastern Federal Lands Highway Division (FHWA- EFLHD) Relating to the Arlington National Cemetery Southern Expansion (ANCSE) Defense Access Roads (DAR) Project in Arlington County

Issues: The Federal Highway Administration, Eastern Federal Lands Highway Division (FHWA-EFLHD), is developing plans for the Arlington National Cemetery Southern Expansion (ANCSE) Defense Access Roads (DAR) Project. The Project will realign and reconfigure Columbia Pike (Route 244), owned and maintained by Arlington County (County), and modify the interchange at South Washington Boulevard (Route 27) and Columbia Pike, owned and maintained by the Virginia Department of Transportation (VDOT). To accomplish this project, the parties have prepared a Memorandum of Agreement (MOA) that establishes the roles, responsibilities, funding, and procedures by which the Army, FHWA-EFLHD, Virginia Department of Transportation (VDOT), and the County of Arlington will jointly participate in the environmental planning, design, and construction of the project. (ANCSE DAR Project MOA)

Pursuant to §33.2-221 of the *Code of Virginia*, approval of the Commonwealth Transportation Board (CTB) and authorization for the Commissioner of Highways to execute the ANCSE DAR Project MOA with the Army, Arlington County, and FHWA-EFLHD is sought.

Facts:

- VDOT and/or ANC staff briefed the CTB regarding the Project on September 16, 2020 and November 24, 2020
- The National Defense Authorization Acts of 2016 and 2017 collectively authorize the Secretary of the Army to take actions necessary to realign and replace the road network in Arlington County, Virginia around Arlington National Cemetery to increase the amount of land available for burials, and to maintain traffic flow through the vicinity of Arlington National Cemetery, the Pentagon Reservation and Joint Base Myer-Henderson Hall, and further, to acquire all right, title and interest in certain lands sufficient for the southern expansion of Arlington National Cemetery.
- The United States, Department of the Army, has entered into an agreement (DTFH71-16-X-50032) with FHWA-ELFHD, establishing roles, responsibilities, funding, and procedures among and between the Army and FHWA-EFLHD for the execution of the Arlington National Cemetery Southern Expansion and Defense Access Roads Project.
- VDOT currently owns and maintains the interchange at South Washington Boulevard and Columbia Pike, and a section of Columbia Pike between South Washington Boulevard and South Joyce Street, which are the subject of improvements necessary for the Project.
- Arlington County currently owns and maintains Columbia Pike west of South Joyce Street

CTB Decision Brief

Authorization for the Commissioner of Highways to Enter into a Memorandum of Agreement relating to the Arlington National Cemetery Southern Expansion (ANCSE) Defense Access Roads (DAR) Project in Arlington County

January 19, 2021

Page Two

which is the subject of improvements necessary for the Project.

- VDOT has entered into a Federal-Aid Project Agreement (PR-2) with FHWA-EFLHD for reimbursement of VDOT expenses incurred providing coordination, design reviews and construction inspection services for the ANCSE DAR Project.
- FHWA-EFLHD, in cooperation with the parties, has prepared the ANCSE DAR Project MOA that establishes the roles, responsibilities, funding, and procedures by which Army, FHWA-EFLHD, VDOT, and the County of Arlington will jointly participate in the environmental planning, design, and construction of the Project (Exhibit A).
- The U.S. Government, represented by the U.S. Army Corps of Engineers, and the Commonwealth of Virginia, represented by VDOT, have also prepared a Relocation Agreement that sets forth the terms, conditions and consideration to be paid for the Army's acquisition of portions of VDOT Route 244 (Columbia Pike) and the Route 27/244 (Columbia Pike) interchange right of way necessary for the southern expansion of Arlington National Cemetery.
- The Army is authorized to enter into the ANCSE DAR Project MOA pursuant to 10 U.S.C. § 7721 *et seq.* and is the agency with administrative jurisdiction, custody and control over the Arlington National Cemetery.
- FHWA-EFLHD, is authorized by 23 U.S.C. § 308(a) to perform engineering and other services in connection with the survey, design, construction, and improvements of highways for other Federal or State cooperating agencies.
- Section 33.2-221 of the *Code of Virginia* empowers the CTB to comply fully with federal-aid acts, to enter into all contracts or agreements with the United States government and do all other things necessary to carry out fully the cooperation contemplated and provided for by present or future acts of Congress related to transportation.

Recommendation: VDOT recommends, pursuant to §33.2-221 of the *Code of Virginia*, that the CTB approve and authorize the Commissioner of Highways or his designee to execute the ANCSE DAR Project MOA between VDOT, the Army, Arlington County Board, and FHWA-EFLHD for the Arlington National Cemetery Southern Expansion, Defense Access Road Project, with such changes as the Commissioner deems necessary or appropriate.

Action Required by CTB: Approve by majority vote the resolution providing the authorization recommended herein.

Result, if Approved: VDOT/the Commissioner of Highways will have the requisite authority to enter into the ANCSE DAR Project MOA with the Army, Arlington County, and FHWA-EFLHD for the Arlington National Cemetery Southern Expansion Defense Access Road Project.

CTB Decision Brief

Authorization for the Commissioner of Highways to Enter into a Memorandum of Agreement relating to the Arlington National Cemetery Southern Expansion (ANCSE) Defense Access Roads (DAR) Project in Arlington County

January 19, 2021

Page Two

Options: Approve, Deny, or Defer.

Public Comments/Reactions: N/A

AGREEMENT NO. DTFH71-16-X-50009

MEMORANDUM OF AGREEMENT

AMONG

THE UNITED STATES DEPARTMENT OF THE ARMY

AND

**THE UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION
EASTERN FEDERAL LANDS HIGHWAY DIVISION**

AND

**THE COMMONWEALTH OF VIRGINIA
VIRGINIA DEPARTMENT OF TRANSPORTATION**

AND

THE COUNTY OF ARLINGTON, VIRGINIA

**FOR THE DESIGN AND
CONSTRUCTION OF TRANSPORTATION IMPROVEMENTS FOR
REALIGNMENT OF A ROAD NETWORK INCLUDING SOUTHGATE
ROAD, COLUMBIA PIKE, SOUTH JOYCE STREET, SOUTH NASH
STREET AND STATE ROUTE 27**

IN

ARLINGTON COUNTY, VIRGINIA

PURPOSE

The purpose of this Memorandum of Agreement (Agreement or MOA) is to establish the roles, responsibilities, funding, and procedures by which the Department of the Army (Army), acting by and through Arlington National Cemetery (ANC); the Commonwealth of Virginia (Commonwealth), acting by and through the Virginia Department of Transportation (VDOT); the Department of Transportation, Federal Highway Administration (FHWA), acting by and through the Eastern Federal Lands Highway Division (EFLHD); and the County of Arlington, Virginia (County) (collectively “the Parties”) will jointly participate in the environmental planning, design, and construction of a project at Arlington National Cemetery (Cemetery) in Arlington County, Virginia. The project is to realign segments of Columbia Pike, South Joyce Street, and Washington Boulevard (VA State Route 27) including: construction of a new South Nash Street; partial elimination of Southgate Road; demolition of pavements and other existing roadway features; design of a County multi-use trail (such design work to be funded and completed in accordance with the Trail MOA, as defined below); construction of pedestrian and bicycle facilities (excepting construction of the County’s multi-use trail which will be the subject of a separate agreement with EFLHD); construction of a tunnel between the Cemetery expansion site and location of a new Cemetery maintenance compound; construction of retaining walls, street lighting and landscaping; mass grading to rough grade portions of the new Cemetery maintenance compound and Cemetery expansion site; and relocation of utilities and their removal from the proposed Cemetery expansion area (hereinafter referred to as the Project).

DEFINITIONS

For the purposes of this Agreement, the following terms shall have the following meanings:

“Army Land” shall mean the real property within the boundary of the Project which is under the administrative jurisdiction of the Army as of the date that this Agreement is executed, and 1.7271 acres of land located in the infield of the North West cloverleaf currently under the administrative jurisdiction of the Department of Defense but to be transferred to the administrative jurisdiction of the Army for the Project. The Army Land is generally shown and identified on **Exhibit A-1** attached hereto and made a part hereof by this reference.

“Betterments” shall mean any improvements in design, construction, or capacity over and above what is depicted in the Design Drawings, and includes all items of expense properly chargeable thereto, including but not limited to acquisition of any necessary rights-of-way, easements or other interests in real property, labor, materials, transportation, insurance, overhead charges properly allocable to the work, supervision, surveys, permits, and rental of tools, equipment, and machinery employed in the work, together with such other items of expense as the EFHLD, after coordination with the Army, and the requesting party agree should be included in the cost of the work. The term “Betterments” will not be deemed to include more costly construction or design necessitated solely as a result of the Project, nor shall the term “Betterments” include any costs of compliance with the terms of this Agreement with respect to improvements not shown on the Design Drawings but otherwise required by this Agreement, for example compliance with the applicable design or construction standards set forth herein.

“Commonwealth Land” shall mean the portion of the existing right of way for State Route 27 and State Route 244 to be transferred to the Army that is generally shown and identified on **Exhibit A-1**.

“Condemnation Case” shall mean the eminent domain proceeding styled *United States v. 8.929 Acres of Land, More or Less, Situate in Arlington County, Virginia, et al.*, Case No. 1:20-cv-667 filed in the United States District Court for the Eastern District of Virginia (Alexandria Division). This spatial area is generally depicted on **Exhibit A-2**.

“Construction Phasing Plans” shall mean those certain plans prepared by EFLHD depicting sequentially the sections within the Project limits that will be under construction and those that will remain open for vehicular, transit, bicycle and pedestrian access. The Construction Phasing Plans are identified as Sheets 1J(1A)-1 through 1J(5B)-10, inclusive, comprising “MOT/TMP PHASE IA” through “MOT/TMP PHASE 5B” on **Exhibit C** attached hereto and incorporated herein by this reference.

“County Construction Completion Certification” shall mean concurrence and certification by the County to EFHLD of final completion of construction of the County Roadway Project, which shall occur upon (i) notification by EFLHD that the County Roadway Project work is fully completed, (ii) County inspection of the County Roadway Project, and (iii) County confirmation that all final inspection punch list items for the County Roadway Project have been addressed to the satisfaction of the County.

“County Maintenance Turnover Date” shall be the date upon which occurs the last of (i) Final Construction Completion or (ii) County receives the executed deed for the portion of the Army Land located within the County Roadway Project.

“County Roadway Project” shall mean the portion of the Project, excluding the County’s multi-use trail, generally identified on **Exhibit B** attached hereto and made a part hereof by this reference as containing the County Roadway Project.

“Design Drawings” shall mean the approved [ninety-five] percent (95%) design drawings described on **Exhibit C** attached hereto and made a part hereof by this reference.

“EFLHD Construction Contract” shall mean the construction contract entered into by EFLHD to perform construction of the Project pursuant to plans and specifications based upon the Design Drawings.

“Final Construction Completion” shall mean EFHLD’s notification to the Army, VDOT, and the County that the roadway work is complete, which shall be issued after receipt of the County Construction Completion Certification for the County Roadway Project and after the VDOT Construction Completion Certification for the VDOT Roadway Project.

“Purpose of the Project” shall mean the description of the Project contained in the “PURPOSE” section of this Agreement.

“Traffic Management Plan” shall mean that certain document to be prepared by EFLHD documenting the strategy for managing work zone impacts of the Project, including public communication, detours, traffic conditions, and traffic operations.

“VDOT Construction Completion Certification” shall mean concurrence and certification by VDOT to EFHLD of final completion of construction of the VDOT Roadway Project, which shall occur

upon (i) notification by EFLHD that the VDOT Roadway Project work is fully completed, (ii) VDOT inspection of the VDOT Roadway Project, and (iii) VDOT confirmation that all final inspection punch list items for the VDOT Roadway Project have been addressed to the satisfaction of VDOT.

“VDOT Maintenance Turnover Date” shall be the date upon which occurs the last of (i) Final Construction Completion or (ii) VDOT receives the executed deed for the VDOT Replacement Lands.

“VDOT Replacement Lands” shall mean that portion of the Army Land that the Army is transferring to VDOT pursuant to the VDOT Relocation Agreement and generally shown on **Exhibit D**.

“VDOT Roadway Project” shall mean the portion of the Project generally identified on **Exhibit B** as containing the VDOT Roadway Project and more specifically identified in the VDOT Relocation Agreement.

BACKGROUND

WHEREAS, the Army is expanding Arlington National Cemetery by approximately forty acres, including the site of the former Navy Annex, to increase the internment and inurnment space through the Southern Expansion Project (“Southern Expansion”); and

WHEREAS, the Army pursued Department of Defense Access Roadway (DAR) funding for realignment of the network of roadways to permit contiguous cemetery expansion for Southern Expansion; and

WHEREAS, appropriation of DAR funding (not to exceed \$60 million) for the design and construction of the roadway portions of the Project, \$55 million of which has been transferred with an additional \$5 million to be transferred, from the Army and authorized by the DAR Program to EFLHD to administer the Project at the request of the Army; and

WHEREAS, appropriation of Southern Expansion funding (not to exceed \$50 million) for the construction of retaining walls, and a tunnel will be transferred from the Army to EFLHD; and

WHEREAS, pursuant to Memorandum of Agreement No. 693C73-20-N-500018 between EFLHD and the County (“Trail MOA”), the County has committed \$500,000 in funding to the Project to be used for the design of a multi-use trail along Route 27, for connecting a trail network around the Cemetery that will connect to the Project pedestrian and bicycle facilities; and

WHEREAS, the Project includes improvements to eliminate a portion of Southgate Road, create South Nash Street, and realign segments of Columbia Pike, South Joyce Street, and Virginia State Route 27 as generally shown on **Exhibit E**; and

WHEREAS, the County, Army, and VDOT have agreed that EFLHD, using funds provided by the DAR, will design and construct the Project in accordance with VDOT, County, and FHWA road construction standards and specifications. County funds will be used to complete environmental documentation and design of a multi-use trail as a stand-alone project; and

WHEREAS, it is the intent of the EFLHD to award a contract to construct the Project within the timeframe established between EFLHD and the Army; and

WHEREAS, VDOT and the Army, by and through the Army Corps of Engineers (USACE), are negotiating an agreement by which the Army will acquire the Commonwealth Land from the Commonwealth of Virginia, currently operated and held by VDOT as right of way, in exchange for the VDOT Replacement Lands and the VDOT Roadway Project and conveyance of title to portions thereof owned by the Army (the “VDOT Relocation Agreement”); and

WHEREAS, EFLHD, and VDOT have agreed to cooperate in the Army’s acquisition of title to the Commonwealth Land, and upon execution of the VDOT Relocation Agreement and this MOA, VDOT shall permit EFLHD such access as needed for Project construction through acquisition of rights-of-way or rights-of-entry; and

WHEREAS, the County Roadway Project will be partially located on a portion of land acquired by the United States from the County pursuant to the Condemnation Case, and the United States has reserved to the County a temporary easement for the continued operation, maintenance, and patrol of the roads previously owned by the County, as described in the May, 6, 2020 Declaration of Taking filed in the Condemnation Case and shown on **Exhibit A-2**; and

WHEREAS, EFLHD and the Army have agreed that timely advancement of the Project is required for the Southern Expansion at the former Navy Annex site and nearby area; and have agreed to achieve this, while also maximizing viable use of the southern expansion footprint; and

WHEREAS, the Army is authorized to enter into this Agreement pursuant to 10 U.S.C. § 7721 *et seq.* and is the agency with administrative jurisdiction, custody and control over the Arlington National Cemetery; and to perform engineering and other services in connection with the Southern Expansion; and

WHEREAS, 23 U.S.C. § 308(a) authorizes the FHWA, acting through EFLHD, to perform engineering and other services in connection with the survey, design, construction, and improvements of highways for other Federal or State cooperating agencies; and

WHEREAS, the EFLHD will be the lead federal agency with administrative, financial, and project implementation and management oversight of the final design and construction of the Project and shall administer the project on behalf of the Army, VDOT and the County, and

WHEREAS, the Commissioner of Highways, acting pursuant to the decision of the Commonwealth Transportation Board, is authorized to enter into this Agreement pursuant to §§ 33.2-221 and 33.2-223 of the Code of Virginia. VDOT is the state agency with administrative oversight, operation, maintenance responsibilities, and jurisdictional authority for Virginia State Route 27 and Columbia Pike east of Joyce Street and will continue to do so once the realignment is completed and accepted into the system of state highways.

WHEREAS, the County Board of Arlington County has authorized execution of this Agreement. The County is responsible for operation, maintenance and patrol of a portion of South Joyce Street and for Columbia Pike west of Joyce Street and will similarly be responsible for the

County Roadway Project once the realignment is completed and accepted into the system of County roads.

WHEREAS, the Parties recognize that the primary objective and effect of the Project is to increase the space for interment and inurnment of Veterans at Arlington National Cemetery to ensure that those who give their life for the United States are honored in a dignified manner on the most sacred ground that the government can provide.

NOW, THEREFORE, the Parties agree as follows:

ARTICLE I: SCOPE OF WORK

A. The Army agrees to:

1. Assign and designate an individual as the Project point of contact so that all communication regarding the planning, design and construction of the Project will be coordinated through such person;
2. The designation of the Army as the lead agency for compliance with § 106 of the National Historic Preservation Act (16 U.S.C. § 470s) in accordance with 36 CFR § 800.2(a)(2) for the Project (excepting the County's multi-use trail);
3. The designation of the Army as the lead agency for National Environmental Policy Act (NEPA) environmental studies and documentation activities (excepting the County's multi-use trail), preliminary design activities, right-of-way property transfers, public involvement, and any other project activities as applicable;
4. Perform the NEPA studies and documentation activities, design activities, public involvement, and any other Project activities as applicable to meet the Army's NEPA and Section 106 documentation requirements and issue the Army's NEPA decision document;
5. To the extent authorized by law, participate in a Transportation Management Plan developed for the Northern Virginia Region by FHWA, or its designee, in cooperation with VDOT and the County, to address traffic congestion caused by the construction of transportation projects in the region;
6. Do the following:
 - a. Prior to beginning construction of the Project (excepting the County's multi-use trail) and prior to the conveyance of an interest in Arlington National Cemetery property to the Commonwealth and County:
 - i. Perform all environmental investigations, property assessments, and studies for releases of any hazardous substance on the Project right-of-way on the Army Land that are necessary to complete the Project as specified in the approved plan, or modifications thereto, as required under applicable federal and state

laws and regulations. The Army will provide the reports of these investigations, assessments, or studies to EFLHD, VDOT, and the County;

- ii. Perform environmental response to any discovery of a release or threat of a release of any hazardous substances on the Project right-of-way on Army Land as required under applicable federal and state laws and regulations as necessary for completion of design, construction, maintenance, and operation of the Project in accordance with the Project schedule; and
 - iii. If, during construction of the Project, the Army requests that EFLHD conduct a response action selected by the Army to respond to a discovery of a release or threat of a release of a hazardous substance on the Army Land, the Army shall be responsible for reimbursement for those costs attributable to a release of a hazardous substance resulting from Army activities, to include Army contracted and Army directed activities. The Army shall not be responsible for reimbursement of those costs attributable to releases caused by EFLHD or for existing right-of-way contamination caused by highway users. Any reimbursement must be based on an auditable accounting.
 - b. During construction of the Project (excepting the County's multi-use trail), or after conveyance of any interest in property to the Commonwealth and/or County, for Army releases of any hazardous substances, whether on or off Army Land:
 - i. Upon any notification of a discovery or release of any hazardous substances, the Parties agree to immediately confer with Army regarding the scope of any investigation and response action; and
 - ii. To the extent that Army has such responsibility under applicable law for releases from Army activities, the Army will perform timely response and remediation in accordance with applicable federal and state laws and regulations; or
 - iii. Should the Army deem it more feasible and practical, the EFLHD, at the request of and in coordination with the Army, may take the requested response action as required applicable federal and state laws and regulations. The Army shall bear the cost of any such response action for which the Army is financially responsible under applicable law. Reimbursement must be based on an auditable accounting.
7. Upon Final Construction Completion, convey fee title to the VDOT Replacement Lands to the Commonwealth in accordance with the VDOT Relocation Agreement, and convey fee title to the portion of the Army Land located within the County Roadway Project to the County, in each case subject to easements or other interests consistent with existing rights for certain utilities for the Project;
8. In conjunction with the EFLHD, VDOT, and the County, obtain any necessary environmental permits, regulatory clearances, or approvals the Army is required to obtain under applicable

- federal, state, or local law or regulation for the Project (excepting the County's multi-use trail);
9. Make Army-required modifications or additions to the Project in consultation with EFLHD, VDOT, and the County and in accordance with applicable American Association of State Highway and Transportation Official (AASHTO), and VDOT and County standards, regulations, specifications, and guides, where applicable per jurisdiction, as amended;
 10. Participate in decisions associated with improvements to Army Land or where Army interests are involved, including, but not limited to, the relocation and establishment of new alignments for Columbia Pike, South Joyce Street, work on and elimination of a portion of Southgate Road, construction of South Nash Street, and State Route 27, the County's multi-use trail, and utilities as necessary to implement the Project;
 11. Provide assistance to EFLHD to obtain permits and rights-of-entry for Project work (excepting the County's multi-use trail) on Army Land when necessary and required by applicable Federal, state, or local law or regulation;
 12. To the extent authorized by law, assist with the relocation of Army-owned utilities and non-Army owned utilities that are on Army Land;
 13. Participate in all design and construction field reviews and other project development activities and milestones on Army Land in accordance with the project development schedule and cooperate to maintain the project schedule and funding established for the Project, as applicable;
 14. Conduct Army-required processes and activities in accordance with this Project concurrent and in accordance with the project development schedule and cooperate to maintain the project schedule and funding established for the Project;
 15. Timely coordinate with EFHLD on plats and plans as necessary to enable for Army's timely transfer of the VDOT Replacement Lands and lands to the County.
 16. Participate in the final inspection of the Project;
 17. Convey sanitary sewer easements as mutually acceptable to the Army and the County, for those sanitary sewer lines now existing on Army Land within the former Southgate Road, permitting the County access to those lines for maintenance, replacement, and related purposes;
 18. Reasonably cooperate in discussions with the County regarding the County's acquisition of one or more easements over Army Land along the frontage of Route 27/110, outside the Cemetery wall, for the purpose of constructing the County's multi-use trail; and
 19. In exercising Army's rights and authorities under this Agreement, notify and consult with EFLHD, VDOT and the County to minimize interference with roadway operation or maintenance.

B. The EFLHD agrees to:

1. Assign and designate a Project point of contact so that all communication regarding the design and construction of the Project will be coordinated and managed through such person;
2. Provide full federal oversight for the Project;
3. Prepare a Financial Plan that will: (i) set forth the budget for the Project; (ii) include funding sources and estimated yearly needs to complete the final design and construction of the Project; and (iii) be updated annually. Within 90 days of the completion of each phase of design or construction, as requested for that phase, the EFLHD will provide the Army an auditable accounting of all funds expended for that phase to include all transfers and detailed expenditures of all funds;
4. The designation of the Army as the lead agency for compliance with § 106 of the National Historic Preservation Act (16 U.S.C. § 470s) in accordance with 36 CFR § 800.2(a)(2);
5. Assist the Army as a cooperating agency for purposes of NEPA review and decisions for which the Army is the lead agency under NEPA.
6. Procure an A/E design contractor for the final design of the Project;
 - a. Complete the design and construction for the Project in accordance with applicable AASHTO, VDOT, and County standards and guides and specifications in cooperation with the Army, VDOT and the County.
7. Procure an A/E design contractor to complete environment documentation and design for the County's multi-use trail along the frontage of Route 27/110, outside the Cemetery wall.
 - a. Serve as the lead agency for compliance with § 106 of the National Historic Preservation Act (16 U.S.C. § 470s) in accordance with 36 CFR § 800.2(a)(2) for the the County's multi-use trail.
 - b. Serve as the lead agency for National Environmental Policy Act (NEPA) environmental studies and documentation activities for the County's multi-use trail.
8. Obtain any necessary temporary work area easements or permits for lands not owned or obtained by the Army.
9. Do the following:
 - a. During construction:
 - i. Notify the Army, VDOT, the County, and, in accordance with state and federal law, appropriate state and federal agencies upon discovery of or release of any petroleum or hazardous substance during construction of the Project. Provide VDOT, Army, and the County with a description of remediation/disposal activities proposed to address release of any hazardous substances, or

petroleum as determined after the parties meet and confer in accordance with Article II, below;

- ii. For a discovery or release of petroleum or any hazardous substances off Army Land, not caused by the Army, then the EFLHD shall notify the Parties to this Agreement and take all response action as required under applicable federal and state laws and regulations at no cost to the Army;
 - iii. For discovery of a release of any hazardous substances caused by the Army, coordinate with the Army and perform at the request of the Army all required response activities required by applicable federal and state laws and regulations. Provide plans for required waste management and remediation activities to the Army, VDOT and the County for review. If the EFLHD takes response action for existing contamination on land that is not on Army Land or is not caused by the Army, the Army shall not be responsible for reimbursement for those costs. Any reimbursement must be based on an auditable accounting;
 - iv. Except as otherwise provided in this Agreement, for properties located off Army Land, if agreed to by VDOT and the County, EFLHD shall take all response action related to releases of petroleum or any hazardous substances, abatement of asbestos, and demolition of any structures or fixtures existing off Army Land. If the EFLHD takes such response action, the EFLHD shall request a determination if Project funds may be utilized for reimbursement for those costs and take action to determine the responsible party or parties and pursue them to recovery all costs of such response actions.
- b. Obtain written comments from the Parties for design reviews and any budget updates.
10. Prepare and provide plans and plats for conveyance of right-of-way property, including metes and bounds, related to roadway relocations and replacements. Mark all property corners with permanent survey markers;
 11. Coordinate with utility owners and the other Parties to the Agreement, prepare utility retention and relocation plats and plans, obtain utility agreements, and relocate utilities owned by VDOT, the County, and third parties with compensable rights and as set out in the VDOT Relocation Agreement, as required for the Project. EFLHD will prepare deeds and plats as required for transfer of easements for County-owned utilities (sanitary sewer, water, storm water), subject to approval by the County; VDOT owned utilities (communications), subject to approval by VDOT; and third party owned utilities (electricity, communications and gas pipelines);
 12. Apply for and obtain all required environmental permits, including for compensatory mitigation, and approvals in coordination with Army, VDOT, and the County as required;
 13. Award Project contracts in accordance with federal procurement laws and regulations;
 14. Conduct and document the final inspection of the Project, with the other Parties to the Agreement in attendance, and provide final inspection documentation;

15. Provide as-built plans to the Parties to the Agreement;
16. Timely coordinate with the Army on preparation of the plats and plans necessary for Army's timely transfer of the VDOT Replacement Lands and lands to the County, and provide final versions of such plats and plans to the District Engineer, U.S. Army Engineer District, Baltimore, no later than Final Construction Completion.
17. Be responsible for the administrative settlement or adjudication of formal claims arising from contracts awarded by the EFLHD and covered by this Agreement in accordance with the Federal Acquisition Regulation and the Transportation Acquisition Manual and subject to the availability of Project funds.
18. Prepare monthly written status reports on the Project for all Parties;
19. Hold regular meetings with all Parties on the Project regarding the status of the Project. Include all Parties in the partnering meetings with the construction contractor;
20. Allow VDOT, the Army, and the County, or its consultants, access to the Project throughout the procurement, design, right-of-way acquisition, and construction process and to participate in field reviews, onsite inspections, and records reviews and to monitor the entire process;
21. Prepare and submit detailed monthly performance and financial reports for Army as required by inter-agency agreement for eligible Project expenditures as outlined in this Agreement. Include all necessary documentation required by the Interagency Agreement for Project funds transfer between Army and EFLHD. Provide copies of all submissions to VDOT and the County;
22. Provide Army, VDOT, and the County all design and other work performed by EFLHD on the Project which have been paid with Project funds in the event that EFLHD does not award contracts for the construction of the Project;
23. Administer contract modifications using the following procedure:
 - a. All potential contract modifications will be evaluated for impacts to scope (design and construction), cost, schedule, and risk, using a standard form to be established by EFLHD;
 - b. EFLHD shall maintain a log of all contract modifications from the date of approval of the design documents through completion of the Project; and
 - c. Project changes will be evaluated on individual and aggregate basis to maintain Project budget and schedule.
24. Prepare and maintain a design and construction Project schedule throughout the project. Prepare an initial construction schedule for review prior to project bid for construction. After bid and acceptance of the contractor's schedule, the contractor's accepted schedule will establish initial baseline of the project work. Provide monthly updates of the Project schedule

with explanations for variations in planned activities. The schedule will be developed after contract award and shall include consideration of completion of retaining walls, tunnel construction, mass grading of the expanded Cemetery site, all utilities designated for relocation within the Columbia Pike corridor or other identified corridors, and grading of the future Cemetery Maintenance Compound parcel that could allow that portion of the Cemetery Southern Expansion Project construction to be started in advance of the overall Project completion;

25. Manage risk using a process by which EFLHD, in cooperation with the Army, VDOT, and the County, will identify, score, and rank risks to the Project. The risk register shall be developed to include the risk, comment and mitigation, probability, impact, and risk score, defined as the product of the probability and the impact. The risk register shall be sorted with the greatest risk listed first with others listed in decreasing order based on risk score. EFLHD shall develop risk mitigations simultaneously with current activities to ensure project progress based on evaluation of level of risk, cost of mitigation, and other factors as appropriate. The risk register will be reviewed monthly at the regular progress meetings and probability and impacts re-evaluated as necessary;
26. Enter into a separate Federal-Aid Project Agreements (PR-2) with VDOT and the County to provide funding to complete all tasks performed by VDOT and the County on this Project;
27. In accordance with VDOT and County standards and requirements, current as of the date of execution of the EFLHD Construction Contract, maintain, or cause to be maintained, all Project facilities constructed within the VDOT Roadway Project until the VDOT Maintenance Turnover Date, and all Project facilities constructed within the County Roadway Project until the applicable County Maintenance Turnover Date. VDOT and the County acknowledge that neither the EFLHD nor Army have authority or funding to provide operation and maintenance of improvements in the rights-of-way beyond the VDOT Maintenance Turnover Date and the County Maintenance Turnover Date, respectively;
28. Maintain access to operating businesses, the Air Force Memorial, and the Cemetery Maintenance Complex, to the extent permitted by construction based on approved plans;
29. Maintain multimodal transportation access and operations for public transit, motorists, pedestrians, and cyclists through the project area including roadway connections between Columbia Pike, Joyce Street, and the Washington Boulevard interchange during each phase of construction as per the approved Construction Phasing Plans and Traffic Management Plan.
30. In exercising EFLHD's rights and authorities under this Agreement, notify and consult with Army, VDOT and the County to minimize interference with roadway operation or maintenance.
31. Perform construction work to the applicable standards and requirements current as of the date of the EFLHD Construction Contract, used by VDOT and the County, including but not limited to: the most current respective edition of the Manual on Uniform Traffic Control Devices (MUTCD), Virginia Work Area Protection Manual, VDOT Northern Virginia District Traffic Engineering Design Guidelines for Traffic Control Devices, VDOT Northern Region 2014 Pavement Marking Reference Guide, VDOT Road Design Manual, VDOT Road

and Bridge Specifications, VDOT Road and Bridge Standards, and all applicable County standards and specifications for County maintained roads.

32. Install signs and associated structures, pavement markings, lighting and barricades in accordance with plans approved by VDOT and County in compliance with all applicable standards and requirements current as of the date of execution of the EFLHD Construction Contract used by VDOT and County, including but not limited to: the most current respective edition of the MUTCD, Virginia Work Area Protection Manual, VDOT Northern Virginia District Traffic Engineering Design Guidelines for Traffic Control Devices, VDOT Road and Bridge Specifications, VDOT Road and Bridge Standards, and any applicable County standards and specifications to County maintained roads. EFLHD shall be responsible for maintaining the items installed within the VDOT Roadway Project until the VDOT Maintenance Turnover Date and for maintaining the items installed within the County Roadway Project until the County Maintenance Turnover Date;
33. Provide input and coordinate in the completion of Army-required processes if needed, such as preparation of the Environmental Condition of the Property report (ECP).
34. Provide special provisions and notice of restrictions to its contractors that are acceptable to VDOT and the County for roads maintained by VDOT and the County that are affected by the Project. These shall be listed as performance requirements in the construction contract documents and will serve as the basis for the traffic maintenance (control) plans prepared prior to the issuance of VDOT and County land use permits;
35. Provide all necessary documentation as required by VDOT for revising the limited access line for the Route 244 and 27 Interchange, and Route 27 south of the parcel for the relocated Cemetery Maintenance Compound for approval by the Commonwealth Transportation Board; and
36. Provide Final Construction Completion to the Army, the County, VDOT, and the District Engineer, U.S. Army Engineer District, Baltimore. EFHLD shall not issue Final Construction Completion until after EFHLD has received the County Construction Completion Certification for the County Roadway Project and the VDOT Construction Completion Certification for the VDOT Roadway Project, as applicable.

C. **VDOT agrees to:**

1. Assign and designate a Project point of contact so that all communication regarding the design and construction of the Project will be coordinated and managed through such person;
2. Enter into a separate Federal-Aid Project Agreement (PR-2) with EFLHD to receive funding for tasks performed by VDOT for the Project;
3. Cooperatively participate in NEPA environmental studies and documentation activities, design activities, right-of-way transfers, public involvement, and any other project activities as applicable;

4. The designation of the Army as the lead agency for compliance with § 106 of the National Historic Preservation Act (16 U.S.C. § 470s) in accordance with 36 CFR § 800.2(a)(2);
5. Assist EFLHD in obtaining permits for the Project;
6. Cooperate in EFLHD's activities as necessary to provide and obtain the required final environmental and historical clearances, and the requisite coordination and approval processes related to the County multi-use trail, and assist EFLHD in obtaining permits for the trail;
7. Participate in all design and construction field reviews, including pre-construction and progress meetings, and other Project development activities and milestones as applicable;
8. Fund or furnish any VDOT-requested Betterments.
9. Upon execution of this MOA and the VDOT Relocation Agreement, and approval of VDOT Roadway Project construction plans, issue land use permits within the Commonwealth Land parcels and temporary work area easements across abutting VDOT right of way and licenses across other Commonwealth-owned lands for access necessary for Project construction;
10. When notified by EFLHD that the VDOT Roadway Project work is substantially completed, inspect the VDOT Roadway Project and identify punch list items requiring correction.
11. When notified by EFLHD that the project work is fully completed, VDOT shall inspect the VDOT Roadway Project and, if all final inspection punch list items have been addressed to the satisfaction of VDOT and EFLHD has met all of its obligations under Section I.B.9.a.iv. above, VDOT shall issue the VDOT Construction Completion Certification. Issuance of such VDOT Construction Completion Certification shall not be unreasonably delayed or withheld;
12. Provide input and coordinate in the completion of Army-required processes, if needed, such as preparation of the ECP.
13. Upon Final Construction Completion, pursuant to the VDOT Relocation Agreement, and provided the Army has performed its obligations under Section I.A.6. above with respect to the VDOT Roadway Project, accept a fee interest in the VDOT Replacement Lands, and operate and maintain the completed VDOT Roadway Project from and after the VDOT Maintenance Turnover Date;
14. Subject to agreement between the County and VDOT, grant to the County the necessary easements across VDOT's maintenance facility along Columbia Pike to allow construction of sidewalk and new utility locations for the Project;
15. Issue land use permits for utilities under or across VA Route 27 access connections and connecting to adjacent properties as required for the development of the Project. EFLHD or its designee will coordinate with VDOT and the County to ensure agreement on location of the utilities and the method of construction; and
16. Assist the Army and EFLHD with regard to response actions to any release or threatened release of a hazardous substance on Army lands resulting from VDOT operations and assume

responsibility for the cost of any such response actions through reimbursement of response costs to the Army or EFLHD, whichever agency has incurred response costs for responding to a VDOT release.

D. The County agrees to:

1. Assign and designate a Project point of contact so that all communication regarding the Project will be coordinated and managed through such person;
2. Enter into a separate Federal-Aid Project Agreement (PR-2) with EFLHD to receive funding for tasks performed by the County for the Project.
3. Continue to operate, maintain, and patrol those portions of Southgate Road, Columbia Pike, and South Joyce Street acquired by the United States in the Condemnation Case until such time as the temporary easement and right-of-way set forth in Schedule E of the Declaration of Taking filed in the Condemnation Case is terminated;
4. The designation of the Army as the lead agency for compliance with § 106 of the National Historic Preservation Act (16 U.S.C. § 470s) in accordance with 36 CFR § 800.2(a)(2);
5. Cooperate in EFLHD designing and constructing modifications or additions to the Project, which are beyond the design of the Design Documents. All required modifications or additions will be made in consultation with the Army, VDOT, and the County in accordance with applicable American Association of State Highway and Transportation Officials (AASHTO) and VDOT and County standards, regulations, specifications, and guides;
6. Cooperatively participate in NEPA environmental studies and documentation activities, design activities, right-of-way transfers, public involvement, and any other Project activities as applicable.
7. Cooperate and be responsible for guiding decisions associated with improvements to County land, or where County interests are involved, including utilities as necessary to implement the Project;
8. Review and approve the final designs for all improvements related to County-owned facilities when the final designs are satisfactory to the County;
9. Subject to agreement between the County and VDOT, acquire from VDOT the easements described in Section I.C.14. above.
10. Design and construct entrance grades for the joint VDOT and Virginia State Police operations facility acceptable to VDOT.
11. Cooperate in the EFLHD's activities as necessary to provide and obtain the required final environmental and historical clearances and the requisite coordination and approval processes, and assist the EFLHD in obtaining permits for the Project;

12. Review and provide comments on the utility retention and relocation plans and assist with the relocation of County-owned utilities;
13. Fund construction of any County requested Betterments, such as to County-owned utilities or otherwise;
14. When notified by EFLHD that the County Roadway Project work is substantially completed, inspect the County Roadway Project and identify punch list items requiring correction;
15. Participate in all design and construction field reviews, including pre-construction and progress meetings, and other Project development activities and milestones as applicable;
16. Provide input and coordinate with the Army if needed in the completion of Army-required processes, such as preparation of the Environmental Condition of the Property report (ECP);
17. When notified by EFLHD that the project work within the County Roadway Project (or any phase thereof of independent utility) is fully completed, the County shall inspect the County Roadway Project or portion thereof and, if all final inspection punch list items have been addressed to the satisfaction of the County and EFLHD has met all of its obligations under Section I.B.9.a.iv. above, the County shall issue the County Construction Completion Certification. Issuance of such County Construction Completion Certification shall not be unreasonably delayed or withheld;
18. Provide up to \$500,000 in funding to the Project to be used for the design of a multi-use trail along Route 27, for connecting a trail network around the Cemetery that will connect to the Project pedestrian and bicycle facilities;
19. Upon Final Construction Completion with regard to the County Roadway Project, or completion of any phase thereof of independent utility, and provided the Army has performed its obligations under Section I.A.6. above with respect to the County Roadway Project or phase thereof with independent utility, accept a fee simple interest in portions of Columbia Pike and South Joyce Street, and an easement or other interest in South Nash Street to be conveyed to the County pursuant to the Condemnation Case, to allow the County to operate and maintain the completed portion of the County Roadway Project, or such phase of independent utility, from and after the applicable County Maintenance Turnover Date, and initiate the acceptance of the road as part of the systems of highways to be maintained by the County;
20. Conduct the County's required processes and activities in accordance with this Project concurrent and in accordance with the Project development schedule and cooperate to maintain the Project schedule and to obtain funding for the County's multi-use trail (established for the Project subject to appropriations made by the County Board of Arlington County, Virginia, in its sole discretion);
21. Assist the Army and EFLHD with regard to response actions to any release or threatened release of a hazardous substance on Army lands resulting from County operations and assume responsibility for the cost of any such response actions through reimbursement of response costs to the Army or EFLHD, whichever agency has incurred response costs for responding to a County release; and

22. Advance and reasonably cooperate in discussions with the Army regarding the County's acquisition of one or more easements over Army Land along the frontage of Route 27/110, outside the Cemetery wall, for the purpose of constructing the County's multi-use trail.

ARTICLE II: DISCOVERY OF PETROLEUM RELEASES

During construction of the Project, upon any notification of a discovery or release of petroleum on or off Army Land, the Parties shall meet to confer and determine if any action is necessary and responsibility for such release. The Party determined to be responsible for such petroleum release shall timely coordinate with EFHLD pursuant to Paragraph I.B.9 above to perform any necessary response and remediation, in accordance with applicable federal and state laws and regulations. The responsible Party shall be solely responsible for the costs of such response and remediation, except as otherwise provided under Paragraph V.B. below.

ARTICLE III: DESCRIPTION OF THE CONVEYANCE

- A. The interest in property to be conveyed to the Commonwealth, County, and Army is generally illustrated in **Exhibit D** attached hereto and incorporated herein by this reference.
- B. Pursuant to the VDOT Relocation Agreement, VDOT shall convey to the Army the interest in the Commonwealth Land and the Army shall convey to VDOT the interest in the VDOT Replacement Lands.
- C. The interest in the property to be conveyed by the Army to the Commonwealth and the County is to be conveyed for use as a right of way and related purposes. These uses may include other transportation demand and transit related improvements.

ARTICLE IV: NOTICES

Any notice, request, demand, instruction, or other document to be given or served hereunder or under any document or instrument executed pursuant hereto shall be in writing and shall be delivered personally, including by messenger or a nationally recognized overnight delivery service, or sent by United States registered or certified mail, return receipt requested, postage prepaid, or by courier, postage prepaid and addressed to the Parties at their respective addresses set forth below, and the same shall be effective upon receipt if delivered personally or by messenger or two business days after deposit in the mails, if mailed. A Party may change its address for receipt of notices by service of notice of such change in accordance herewith.

If to the Army:

Chief of Staff
Army National Military Cemeteries
Arlington National Cemetery
Arlington County, VA 22211
Phone: 703-614-4140

With a copy to:

Chief of Engineering
Army National Military Cemeteries
Arlington National Cemetery
Arlington VA, 22211

If to FHWA:

Monique R. Evans, PE
Division Director
Department of Transportation
Federal Highway Administration
Eastern Federal Lands Highway Division
22001 Loudoun County Parkway
Building E2, Suite 200
Ashburn, VA 20147
Phone: (703) 404-6203
email: monique.evans@dot.gov

With a copy to:

Mr. Kurt Dowden
Chief of Business Operations
Department of Transportation
Federal Highway Administration
Eastern Federal Lands Highway Division
22001 Loudoun County Parkway
Building E2, Suite 200
Ashburn, Virginia 20147
Phone: (571) 434-1598
email: kurt.dowden@dot.gov

If to VDOT:

Mr. Bart Thrasher, PE
Chief Engineer
Virginia Department of Transportation
1401 East Broad Street
Richmond, VA 23219
Phone: 804-786-4798
Email: Ba.Thrasher@vdot.virginia.gov

With a copy to:

Mr. Steven Bates
NOVA District L&D Engineer
Virginia Department of Transportation
4975 Alliance Drive
Fairfax, VA 22030
Phone: 703-259-2949
Email: Steven.Bates@vdot.virginia.gov

If to the County:

Dennis Leach
Director of Transportation
Arlington County Government
2100 Clarendon Boulevard, Suite 900
Arlington, VA 22201
Phone: 703-228-0588
Email: dleach@arlingtonva.us

With a copy to:

Susan Finotti
Capital Project Management Coordinator
Division of Transportation
Arlington County Government
2100 Clarendon Boulevard, Suite 900
Arlington, VA 22201
Phone: 703-228-3735
Email: sfinotti@arlingtonva.us

ARTICLE V: GENERAL TERMS AND CONDITIONS

- A. With respect to all matters referenced in this Agreement under or through which the Army has any obligation, duty, control, authority or is required to be consulted, at its discretion the Army may fulfill any such actions through the United States Army Corps of Engineers (USACE) and/or its representatives at ANC.
- B. No part of the DAR Project funds shall be used by EFLHD to pay for the following:
 1. Unless otherwise agreed to by the Parties in writing, design or construction of the Project to a standard less than the Design Documents;
 2. Installation of new utilities (not to include those being relocated) or other improvements, including related right-of-way costs, for the development of Army Land by the Army;

3. Costs incurred resulting from discovery of, or releases of hazardous substances or petroleum on the Army Land including, but not limited to, Army response costs, contractor delay claims, contractor work order claims, or any re-design costs of the Project necessary to avoid or mitigate discovery of such materials unless approved by the Army;
 4. Installation, relocation, or modification of groundwater monitoring wells or any other remedial monitoring device installed on the Army Land within the Project right-of-way;
 5. Costs incurred as result of the discovery or releases of hazardous substances or petroleum off of Army Land except in accordance with Paragraph I.B.9.a. or Article II;
 6. Design or construction of the County's multi-use trail; or
 7. Betterments.
- C. This Agreement may not be amended, modified, or discharged nor may any of its terms be waived except by an instrument in writing signed by all of the Parties.
 - D. The failure of a Party to insist in any instance upon strict performance of any of the terms, conditions, or covenants contained, referenced, or incorporated into this Agreement shall not be construed as a waiver or a relinquishment of the Party's rights to the future performance of such terms, conditions, or covenants.
 - E. The headings and captions herein are inserted for convenient reference only and the same shall not limit or construe the articles, paragraphs, sections, or subsections to which they apply or otherwise affect the interpretation thereof.
 - F. If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each such term and provision of the Agreement shall be valid and be enforced to the extent permitted by applicable law.
 - G. Nothing set out in this Agreement shall constitute a waiver of the Parties' rights to seek any and all damages to the extent authorized by law, nor shall anything in this Agreement limit any defenses that the Parties may have with respect to such claims for damages.
 - H. Nothing in this Agreement shall be construed as creating any rights, interest, or third-party beneficiary status for any entity or person other than the Parties hereto.
 - I. Unless otherwise expressly provided herein, terms related to environmental investigations and responses used in this Agreement, are defined as they are in applicable federal law and in regulations promulgated thereunder, and shall have the meaning assigned to them in such laws and regulations.

- J. This Agreement has been drafted jointly by the Parties hereto. As a result, the language used in this Agreement shall be deemed to be the language chosen by the Parties to express their mutual intent and no rule of strict construction shall be applied against any Party.
- K. Subject to restrictions established in applicable state or federal law and regulations, all Parties will be afforded the opportunity to inspect, review and comment on, at any time, work in progress, the financial records, and any other supporting documentation related to this Agreement; and to participate in all meetings and field reviews.
- L. This Agreement is assignable; however, no transfer or assignment of this Agreement, or any part thereof or interest therein, directly or indirectly, voluntarily or involuntarily, shall be made unless such transfer or assignment is first approved in writing by all Parties, which approval shall not be unreasonably withheld.
- M. No Party shall have responsibility for any property damage, injury, or death caused by the acts or omissions of another Party's respective employees, acting within the scope of their employment, or their contractors' scope of work, to the extent allowed by the law. All claims shall be processed pursuant to applicable governing law.
- N. Any claim filed alleging an injury during the performance of this Agreement, which may be traced to a Party, shall be received and processed by the Party having responsibility for the injury-causing condition, under the law that governs such Party.
- O. Nothing in this Agreement shall be construed as limiting or affecting the legal authorities of the Parties, or as requiring the Parties to perform beyond their respective authorities. Nothing in this Agreement shall be deemed to bind any Party to expend funds exceeding available appropriations.
- P. The Parties shall not discriminate in the selection of employees or participants for any employment or other activities undertaken pursuant to this Agreement on the grounds of race, creed, color, sex, or national origin, and shall observe all of the provisions of Titles VI and VII of the Civil Rights Act of 1964 (78 Stat. 252; 42 U.S.C. § 2000(d) et. seq.). The Parties shall take positive action to ensure that all applicants for employment or participation in any activities pursuant to this Agreement shall be employed or involved without regard to race, creed, color, sex, or national origin.
- Q. No member of, or Delegate to, or Resident Commissioner in Congress shall be admitted to any share or part of this Agreement, or to any benefits that may arise therefrom, unless the share or part or benefit is for the general benefit of a corporation or company.
- R. The Parties will abide by the provisions of 18 U.S.C. § 1913 (Lobbying with Appropriated Monies).
- S. Contracts entered into by any federal agency pursuant to this Agreement are subject to all laws governing federal procurement and to all regulations and rules promulgated there under, whether now in force or hereafter enacted or promulgated, except as specified in this Agreement.

- T. Nothing in this Agreement shall be construed as in any way impairing the general powers of the Parties for supervision, regulation, and control of its property under such applicable laws, regulations, and rules.
- U. In the event of a conflict between the terms of this Agreement and the terms of the VDOT Relocation Agreement, this Agreement shall control with respect to construction means, methods, and responsibilities and the VDOT Relocation Agreement shall control with respect to obligations described therein that are not pertaining to construction means, methods, and responsibilities.

ARTICLE VI: FUNDING LIMITATIONS

- A. It is the anticipation of the Parties to this Agreement that all obligations of the Army, and the County arising under this Agreement will be fully funded up to the scope of the work described under the Purpose of the Project, subject to the availability of appropriations. The Parties agree to seek sufficient funding through the budgetary process to fulfill their obligations under this Agreement.
- B. The obligation of the Army to expend, pay, or reimburse any funds under this Agreement is subject to the availability of appropriated funds, and nothing in this Agreement shall be interpreted to require obligations or payments by the Army in violation of the Anti-Deficiency Act, 31 U.S.C. 1341.
- C. Any obligation of VDOT to expend, pay, or reimburse any funds under this Agreement is subject to the availability of appropriations by the Virginia General Assembly and allocations by the Commonwealth Transportation Board. No funds will be provided by VDOT unless VDOT requests that Betterments be constructed.
- D. The County's obligation to expend, pay, or reimburse any funds under this Agreement is subject to the availability of appropriations by the Arlington County Board, such appropriations to be made or not is by the sole discretion of the Board.

ARTICLE VII: DISBURSEMENT OF FUNDS

- A. This Agreement will not result in the obligation of Army or Department of Defense funds and does not establish any specific financial obligation of these agencies. To the extent appropriate and authorized by law and agreed to by authorized agency officials, separate funding agreements will be entered by the Army or Department of Defense and EFLHD pursuant to the Economy Act, 31 U.S.C. § 1535 or other applicable law to carry out the terms and responsibilities established in this Agreement.
- B. Department of Defense funds authorized under the DAR authority will be transferred, allocated, and allocated directly to the EFLHD for use on the Project. All funds and activities are subject to the requirements of Title 23 of the United States Code and Title 23 of the Code of Federal Regulations and standard Federal-aid procedures.
- C. VDOT and the County will be reimbursed for costs in connection with the Project through EFLHD's Rapid Approval and State Payment System in accordance with standard Federal-

Aid procedures from federal funds provided directly to EFLHD for activities such as efforts to obtain necessary environmental and historical clearances and permits, design reviews, construction inspections, and acceptance activities on the Project.

- D. EFLHD will request reimbursement from the County for design activities for the multi-use trail. EFLHD will provide invoicing, and documentation describing and verifying the expenses incurred.

ARTICLE VIII: DISPUTE RESOLUTION

Any dispute between the Parties arising from or under this Agreement that cannot be resolved by the Project point of contacts shall be formally presented in writing to the Chief Engineer of VDOT, the Executive Director for Arlington National Cemetery, the Division Director for EFLHD, and the Director of the Arlington County Division of Transportation for review and resolution. Any resolution of the dispute shall be reduced to writing signed by the reviewers.

If the dispute cannot be resolved by the second level of review, then the matter may be presented to the Commissioner of Highways, the Assistant Secretary of the Army (Installations and Environment), the Administrator of the FHWA, and the County Manager of Arlington County. The foregoing dispute procedures do not apply to matters arising from or related to the Condemnation Case or any other eminent domain action that may be initiated.

EXHIBITS

- Exhibit A-1 Army Land and Commonwealth Land
- Exhibit A-2 Temporary County Easement for Roads Previously Owned by the County
- Exhibit B County Roadway Project and VDOT Roadway Project
- Exhibit C Design Drawings (Title sheet plus Index Sheet)
- Exhibit D Lands to be conveyed
- Exhibit E Proposed Future Roadway Alignments

[Signatures appear on following pages.]

IN WITNESS WHEREOF, the Parties have executed this Agreement, as verified by their signatures below.

**UNITED STATES OF AMERICA
DEPARTMENT OF THE ARMY**

By: _____

Date

Karen Durham-Aguilera, Executive Director, Army National Military Cemeteries and Arlington National Cemetery :

DRAFT

**COMMONWEALTH OF VIRGINIA
DEPARTMENT OF TRANSPORTATION**

By: _____ Date _____

Stephen C. Brich, P.E., Commissioner of Highways:

DRAFT

ARLINGTON COUNTY, VIRGINIA

By: _____ Date _____

County Board of Arlington County:

DRAFT

**UNITED STATES OF AMERICA
FEDERAL HIGHWAY ADMINISTRATION
EASTERN FEDERAL LANDS HIGHWAY DIVISION**

By: _____

_____ Date

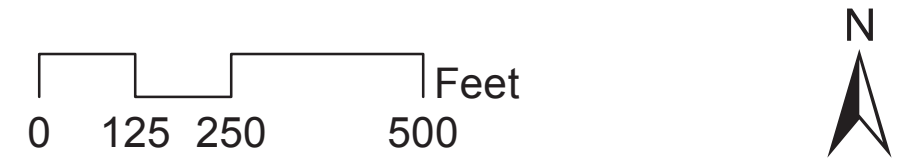
Kurt Dowden, Chief of Business Operations

DRAFT



- Legend**
- Army Land
 - Commonwealth Land
 - Existing Army Easement to Commonwealth (to revert back to USA)

Exhibit A-1
Army Land and Commonwealth Land





Z:\ArlingtonNationalCem\RoadWay\Proj_ExhA-2.mxd

Legend


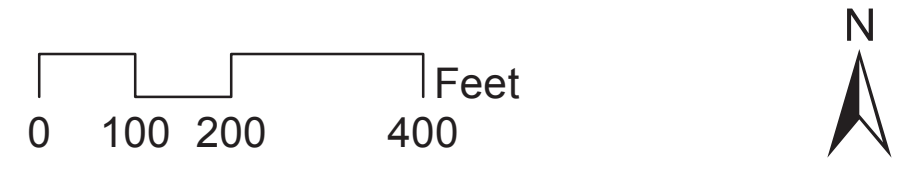
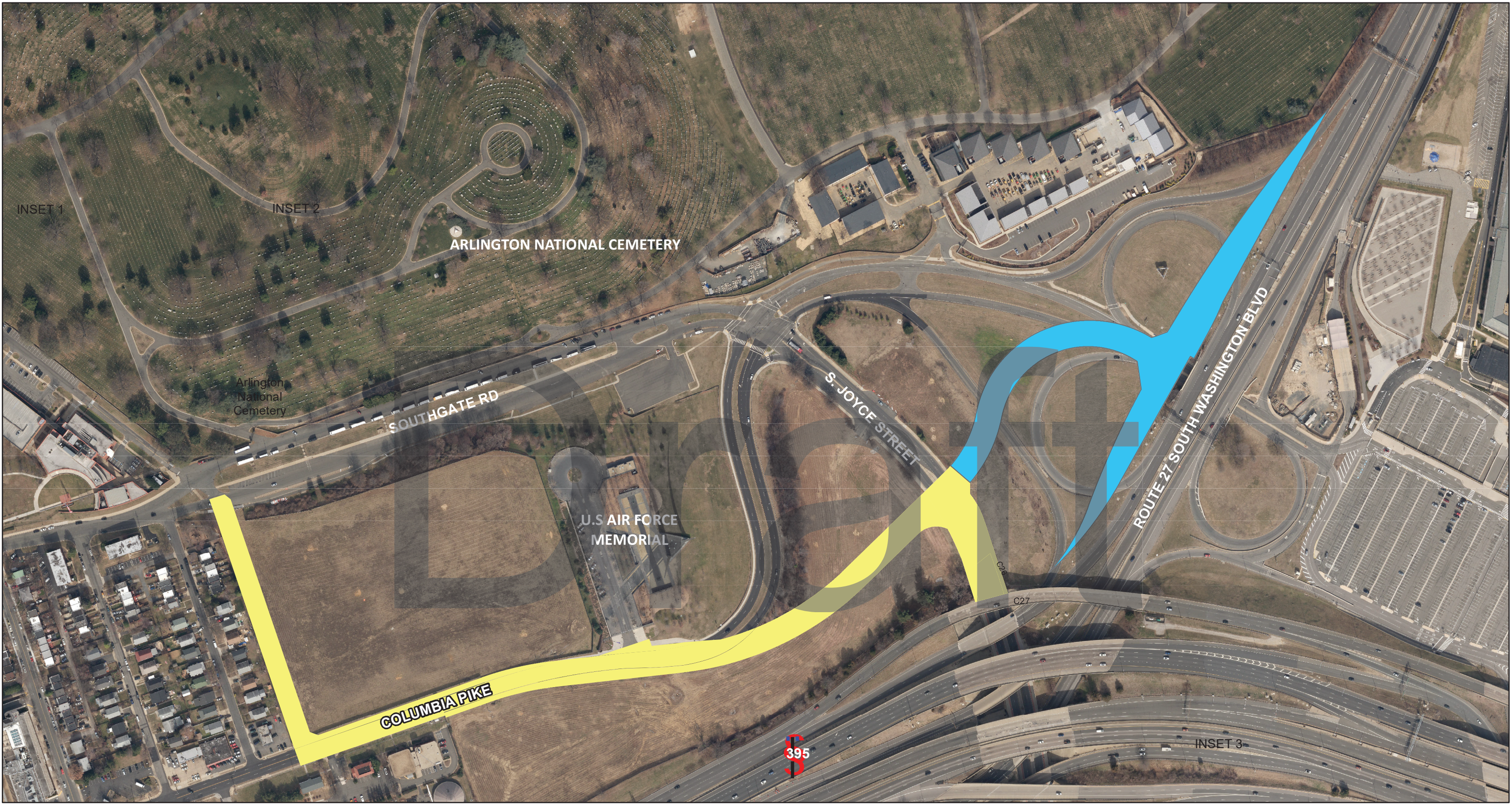
 Temporary O&M Easement Reserved to Arlington County

Exhibit A-2
Temporary Operations and Maintenance Easement
Reserved to Arlington County through Condemnation Case

Date: 14 Jan 2021

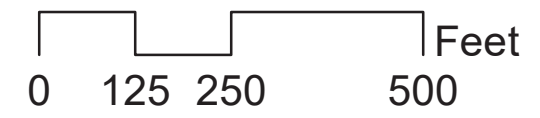




- Legend**
- County Roadway Project
 - VDOT Roadway Project

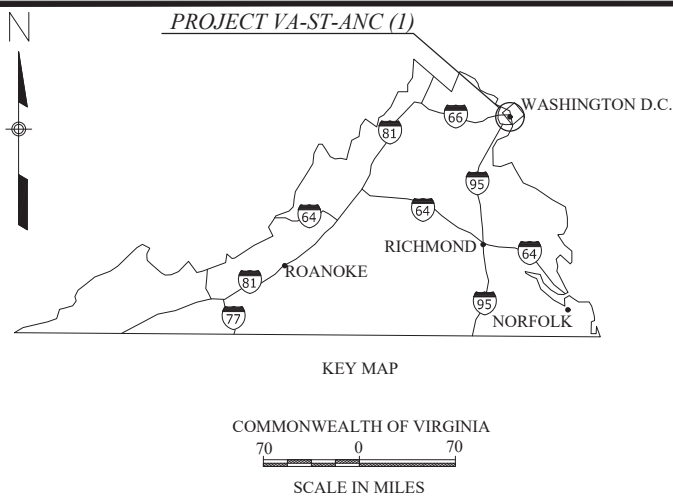
Exhibit B
County Roadway Project and VDOT Roadway Project

Date: 21 Dec 2020



Z:\ArlingtonNationalCem\RoadWayProj_ExhB.mxd

This document, together with the concepts and designs presented herein, is intended only for the specific purpose and client for which it was prepared. Reuse of and improper reliance on this document without written authorization and adaptation by Kimley-Horn and Associates, Inc. shall be without liability to Kimley-Horn and Associates, Inc. Plotted By: Cook, Tommy December 22, 2020 06:43:29pm K:\NVA_RDWV\110243021_Anc DAR\CAD\PlanSheets\1-TITLE_SHEET-FHWA.dwg



U.S. DEPARTMENT OF TRANSPORTATION FEDERAL HIGHWAY ADMINISTRATION

PLANS FOR PROPOSED PROJECT VA-ST-ANC(1) COLUMBIA PIKE REALIGNMENT FROM WASHINGTON BOULEVARD (STATE ROUTE 27) TO S. OAK STREET ARLINGTON COUNTY, VA 95% PLANS DECEMBER 18, 2020 ARLINGTON NATIONAL CEMETERY SOUTHERN EXPANSION DEFENSE ACCESS ROAD

REG	STATE	FHWA PROJECT #	VDOT PROJECT #	SHEET NO.	TOTAL SHEETS
	VA	VA-ST-ANC (1)	UPC 116717	1	694



SEE SHEET 1A FOR SHEET INDEX MAP
SEE SHEET 1B FOR INDEX OF SHEETS
SEE SHEET 1B FOR SYMBOLS & ABBREVIATIONS

DESCRIPTION OF PROJECT

REALIGNMENT OF COLUMBIA PIKE FROM WASHINGTON BOULEVARD TO S. OAK STREET, RECONFIGURATION OF INTERCHANGE WITH WASHINGTON BOULEVARD AND COLUMBIA PIKE, REMOVAL OF SOUTHGATE ROAD, CONSTRUCTION OF S. NASH STREET AND SHORTENING S. JOYCE STREET, RELOCATION OF UTILITIES FROM EXISTING LOCATIONS TO NEW ROAD ALIGNMENTS AND CONSOLIDATED UTILITY CORRIDORS, RETAINING WALLS IN VARIOUS LOCATIONS, TUNNEL UNDER COLUMBIA PIKE, MASS GRADING, AND MISCELLANEOUS WORK.

PROJECT LENGTH: 0.55 Miles (COLUMBIA PIKE, 0.16 Miles VDOT, 0.39 Miles Arlington Co.)
0.31 Miles (Route 27 RAMPS)
0.06 Miles (S. JOYCE STREET)
0.17 Miles (S. NASH STREET)
0.06 Miles (SOUTHGATE ROAD)
0.02 Miles (S. OAK STREET)

LANE MILES: 1.07 Miles - VDOT (RAMPS AND COLUMBIA PIKE)
2.33 Miles - ARLINGTON COUNTY

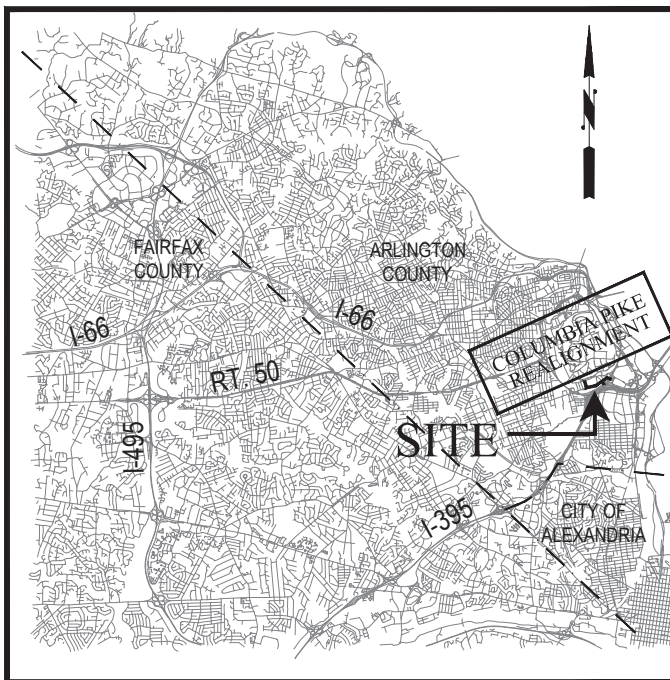
ROAD:	WIDTH	SURFACE	INTERMEDIATE	BASE	SUBGRADE
COLUMBIA PIKE	VARIABLES	2" SM-9.5D	4" IM-19.0	6" BM-25.0	12" 21B
S. JOYCE STREET	VARIABLES	2" SM-9.5D	4" IM-19.0	6" BM-25.0	12" 21B
S. NASH STREET	VARIABLES	2" SM-9.5D	4" IM-19.0	6" BM-25.0	12" 21B
WASH. BLVD. RAMPS					
EXIT FROM RTE 27	VARIABLES	2" SM-9.5D	4" IM-19.0	6" BM-25.0	12" 21B
ENTRANCE TO RTE 27	VARIABLES	2" SM-9.5D	4" IM-19.0	6" BM-25.0	12" 21B

DESIGN DESIGNATION:	COLUMBIA PIKE	S. JOYCE STREET	S. NASH STREET	RT. 27 OFF-RAMP	RT. 27 ON-RAMP
ADT (2025)	12,200	13,700	4,900	4,800	4,700
ADT (2045)	15,200	16,300	5,600	5,400	5,800
DHV	1,730	1,550	560	540	580
D	80/20	60/40	50/50	100/0	100/0
%Truck	1%	1%	1%	1%	1%
V (MPH)	25	25	25	25	25
C/A	None	None	None	None	None
e(max)	2%	2%	2%	8%	8%
Roadway Classification	Urban Other Principal Arterial	Urban Minor Arterial	Urban Local Road	Interchange Ramp	Interchange Ramp
DESIGN SPEED	25 MPH	35 MPH	25 MPH	25 MPH	25 MPH

SPECIFICATIONS:

VDOT, 2020 Road and Bridge Specifications.

LOCATION MAP



Know what's below.
Call before you dig.

95% PLANS
PLANS PREPARED FOR



RECOMMENDED FOR APPROVAL	
DATE: / / 2020	ARLINGTON COUNTY
DATE: / / 2020	DEPT. OF ENVIRONMENTAL SERVICES
DATE: / / 2020	RECOMMENDED FOR APPROVAL
DATE: / / 2020	VDOT, STATE L&D ENGINEER
DATE: / / 2020	ARLINGTON NATIONAL CEMETERY
DATE: / / 2020	DIRECTOR OF ENGINEERS

RW PLANS (95% DESIGN) NOT FOR CONSTRUCTION

RW PLANS (95% DESIGN) NOT FOR CONSTRUCTION

ARLINGTON NATIONAL CEMETERY SOUTHERN EXPANSION (ANCSE) DEFENSE ACCESS ROAD (DAR) PROJECT ARLINGTON COUNTY, VIRGINIA

95% PLANS
TITLE SHEET

EXHIBIT C - DESIGN DRAWINGS

Project Manager	Lead Designer
THOMAS SHIFFLETT EDEN JEMAL	KIMLEY-HORN

DATE: DEC. 18, 2020	SCALE: N/A	SHEET: 1
HOR. VERT.:	DESIGNED: TEC	
DRAWN: OCD	CHECKED: MRA	
MISSILITY TRANSMITTAL #:		

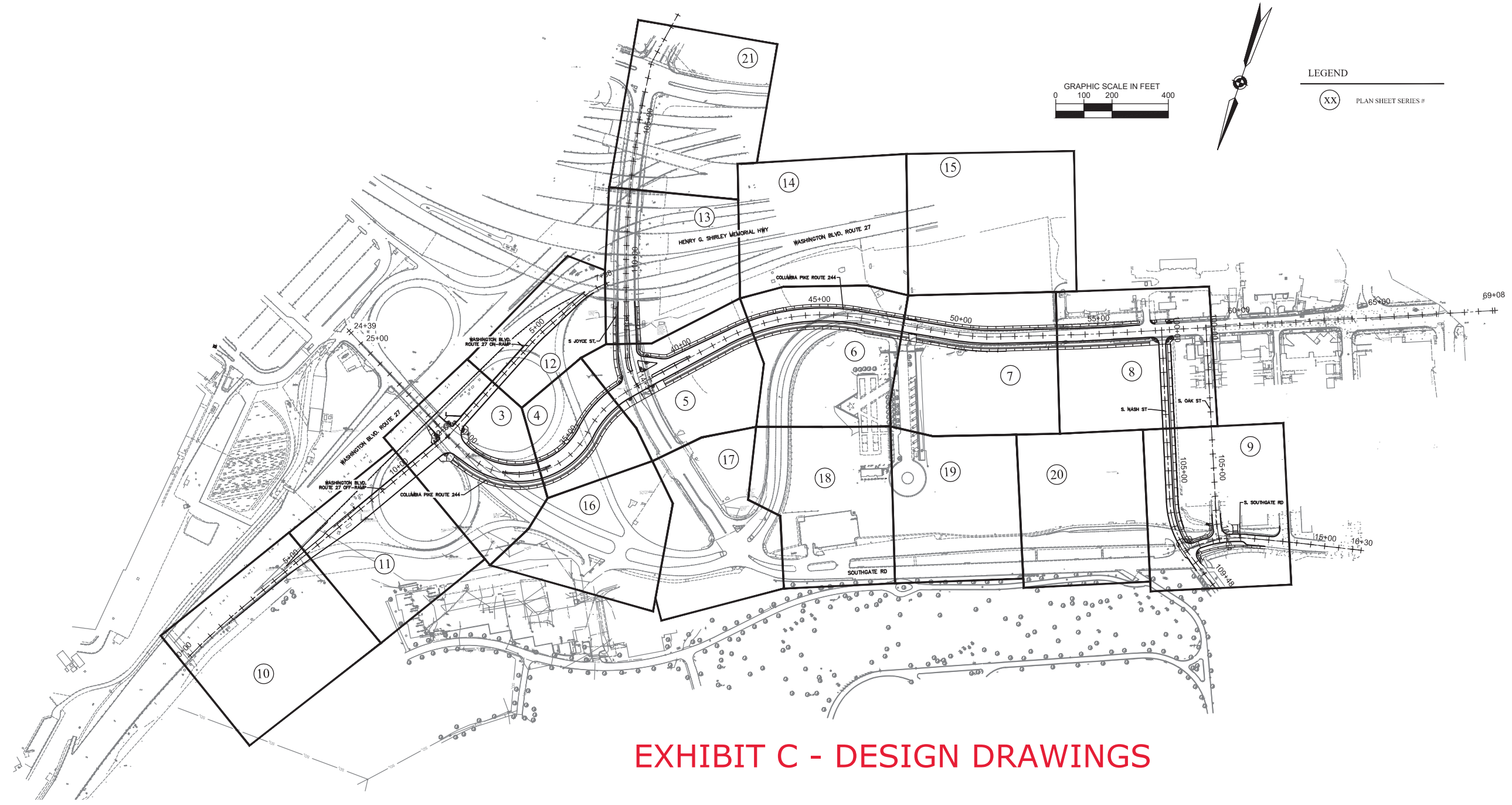
This document, together with the concepts and designs presented herein, as an instrument of service, is intended only for the specific purpose and client for which it was prepared. Reuse of and improper reliance on this document without written authorization and adaptation by Kimley-Horn and Associates, Inc. shall be without liability to Kimley-Horn and Associates, Inc. Plotted By: Cook, Tommy December 18, 2020 12:48:50pm K:\NVA_RDW\110243021 ANC DAR\CAD\PlanSheets\30-A1-COVER SHEET.dwg

COLUMBIA PIKE ROUTE 244

Arlington County, Virginia

DEFENSE ACCESS ROAD - COLUMBIA PIKE REALIGNMENT

COLUMBIA PIKE: STA. 28+76 - STA. 57+67
 S. JOYCE STREET: STA. 111+50 - STA. 114+56
 S. NASH STREET: STA. 100+00 - STA. 108+73
 S. SOUTHGATE ROAD: STA. 10+00 - STA. 13+61
 S. OAK STREET: STA. 106+62 - STA. 107+54
 ROUTE 27 ON RAMP: STA. 0+00 - STA. 7+50
 ROUTE 27 OFF RAMP: STA. 2+04 - STA. 12+03



LEGEND
 (XX) PLAN SHEET SERIES #

EXHIBIT C - DESIGN DRAWINGS



Seal
 RW PLANS
 (95% DESIGN)
 NOT FOR
 CONSTRUCTION

Seal
 RW PLANS
 (95% DESIGN)
 NOT FOR
 CONSTRUCTION

ARLINGTON NATIONAL CEMETERY
 SOUTHERN EXPANSION (ANCSE)
 DEFENSE ACCESS ROAD (DAR) PROJECT
 ARLINGTON COUNTY, VIRGINIA

95% PLANS
 SHEET INDEX MAP

DATE	DEC. 18, 2020
SCALE	HOR. 1" = 200'
VERT.	N/A
DESIGNED:	TEC
DRAWN:	OCD
CHECKED:	MRA
MISSILITY TRANSMITTAL #:	

SHEET
 1A

This document, together with the concepts and designs presented herein, as an instrument of service, is intended only for the specific purpose and client for which it was prepared. Reuse of and improper reliance on this document without written authorization and adaptation by Kimley-Horn and Associates, Inc. shall be without liability to Kimley-Horn and Associates, Inc. Plotted By: Cook, Tommy December 22, 2020 06:43:45pm K:\NVA_RDWV\110243021_ANC DAR\CAD\PlanSheets\30-A1-SHEET INDEX.dwg

SHEET	SHEET NAME
1	TITLE SHEET
1A	SHEET INDEX MAP
1B	INDEX OF SHEETS
1C	RIGHT-OF-WAY DATA SHEET
1D	REVISION DATA SHEET
1E-1E(1)	SURVEY ALIGNMENT DATA SHEET
1F-1F(2)	EXISTING ROADWAY CONSTRUCTION ALIGNMENT DATA SHEET
1G-1G(2)	PROPOSED ROADWAY CONSTRUCTION ALIGNMENT DATA SHEET
1H-1H(22)	UNDERGROUND UTILITY TEST HOLE INFORMATION SHEET
1J(1A)-1 - 1J(1A)-10	MOT/TMP PHASE 1A
1J(1B)-1 - 1J(1B)-X6	MOT/TMP PHASE 1B
1J(1C)-1 - 1J(1C)-X3	MOT/TMP PHASE 1C
1J(1D)-1 - 1J(1D)-10	MOT/TMP PHASE 1D
1J(2A)-1 - 1J(2A)-X37	MOT/TMP PHASE 2A
1J(2B)-1 - 1J(2B)-11	MOT/TMP PHASE 2B
1J(2C)-1 - 1J(2C)-X4	MOT/TMP PHASE 2C
1J(2D)-1 - 1J(2D)-X4	MOT/TMP PHASE 2D
1J(2E)-1 - 1J(2E)-X5	MOT/TMP PHASE 2E
1J(3A)-1 - 1J(3A)-X6	MOT/TMP PHASE 3A
1J(4A)-1 - 1J(4A)-10	MOT/TMP PHASE 4A
1J(5A)-1 - 1J(5A)-10	MOT/TMP PHASE 5A
1J(5B)-1 - 1J(5B)-10	MOT/TMP PHASE 5B
1M-1M(13)	DRAINAGE AREA MAPS
1N-1N(2)	STORM AND SANITARY MANHOLE ELEVATIONS
1P	STORMWATER CALCULATIONS (NOT INCLUDED IN THIS SUBMISSION. SEE DRAINAGE REPORT.)
1Q-1Q(11)	PHOTOMETRIC PLAN
1R-1R(2)	TABULATION OF QUANTITIES
2-2(2)	GENERAL NOTES
2A-2A(9)	TYPICAL SECTIONS
2B	DETAILS SHEET
2C-2C(4)	LANDSCAPE CONSERVATION PLAN DETAILS
2D	TREE PROTECTION PLAN DETAILS
2E(1)-2E(4)	STREET LIGHTING DETAILS
2F-2F(2)	SIGNING AND PAVEMENT MARKING NOTES & DETAILS
2G-2G(2)	RETAINING WALL NOTES AND DETAILS
2H	SANITARY DETAILS
2J-2J(1)	WATER DETAILS
2K	DRY UTILITY DETAILS
2K(1)	VDOT & COMMUNICATIONS DETAILS
3-13	ROADWAY PLAN
3A-13A	ROADWAY PROFILES
3B-13B	STAKING PLAN
3C-20C	GRADING PLAN AND CURB RETURN PROFILES
3D-20D	PHASE I EROSION AND SEDIMENT CONTROL AND DEMOLITION PLAN
3E-20E	PHASE II EROSION AND SEDIMENT CONTROL PLAN
3F-20F	EXISTING CONDITIONS PLAN
3G-20G	RIGHT-OF-WAY PLAN
3H-13H	SIGNING AND PAVEMENT MARKING PLAN
3J-13J	STORM DRAIN PROFILES
5K-20K	SANITARY PLAN
4M-21M	WATERLINE PLAN
3N-13N	STREET LIGHTING PLAN
3P-15P	RETAINING WALL PLAN AND PROFILES
3Q-18Q	DRY UTILITIES PLAN
3R-13R	LANDSCAPE CONSERVATION PLAN

SHEET	SHEET NAME
22(1)-22(1B)	TRAFFIC SIGNAL MODIFICATION NOTES
22(2-5)	TRAFFIC SIGNAL DESIGN PLAN
22(2A-5A)	TRAFFIC SIGNAL COMMUNICATIONS PLAN
23(1-4)	SANITARY PROFILE
24(1-7)	WATERLINE PROFILE
25(1-4)	DOMINION PROFILE
26(1-5)	VERIZON PROFILE
27(1-2)	COMCAST PROFILE
28(1-2)	MCI PROFILE
29(1-2)	UTILITY TRUNK PROFILE
30	ACF PROFILE
31	ACF AND FIBERLIGHT PROFILE
32(1-3)	JONES PROFILE
33(1-5)	USAF 844 PROFILE
34(1-4)	VDOT COMM PROFILE
X1-X60	CROSS SECTIONS
APPENDIX 1	TUNNEL & RETAINING WALL PLANS

SYMBOLS

SEE ADDITIONAL SYMBOLS ON SHEETS 3F-30F

ABBREVIATIONS

FO	FIBER OPTIC
UGE	UNDERGROUND ELECTRIC
ROW	RIGHT-OF-WAY
L/A	LIMITED ACCESS CONTROL LIMIT
AFM	AIR FORCE MEMORIAL
AFDW	AIR FORCE DISTRICT OF WASHINGTON
TC	TOP OF CURB
BC	BACK OF CURB
S/W	SIDEWALK
ME	MATCH EXISTING
EP	EDGE OF PAVEMENT
R	RADIUS MEASURED TO FACE OF CURB
TBR	TO BE REMOVED
TBA	TO BE ABANDONED

EXHIBIT C - DESIGN DRAWINGS



U.S. Department of Transportation
Federal Highway Administration
EASTERN FEDERAL LANDS HIGHWAY DIVISION
21400 RIDGETOP CIRCLE
STERLING, VIRGINIA 20166

Kimley-Horn
KIMLEY-HORN AND ASSOCIATES, INC.
1000 WEST 10TH STREET
DENVER, COLORADO 80202
Phone: 303.733.1300
Fax: 303.733.1300

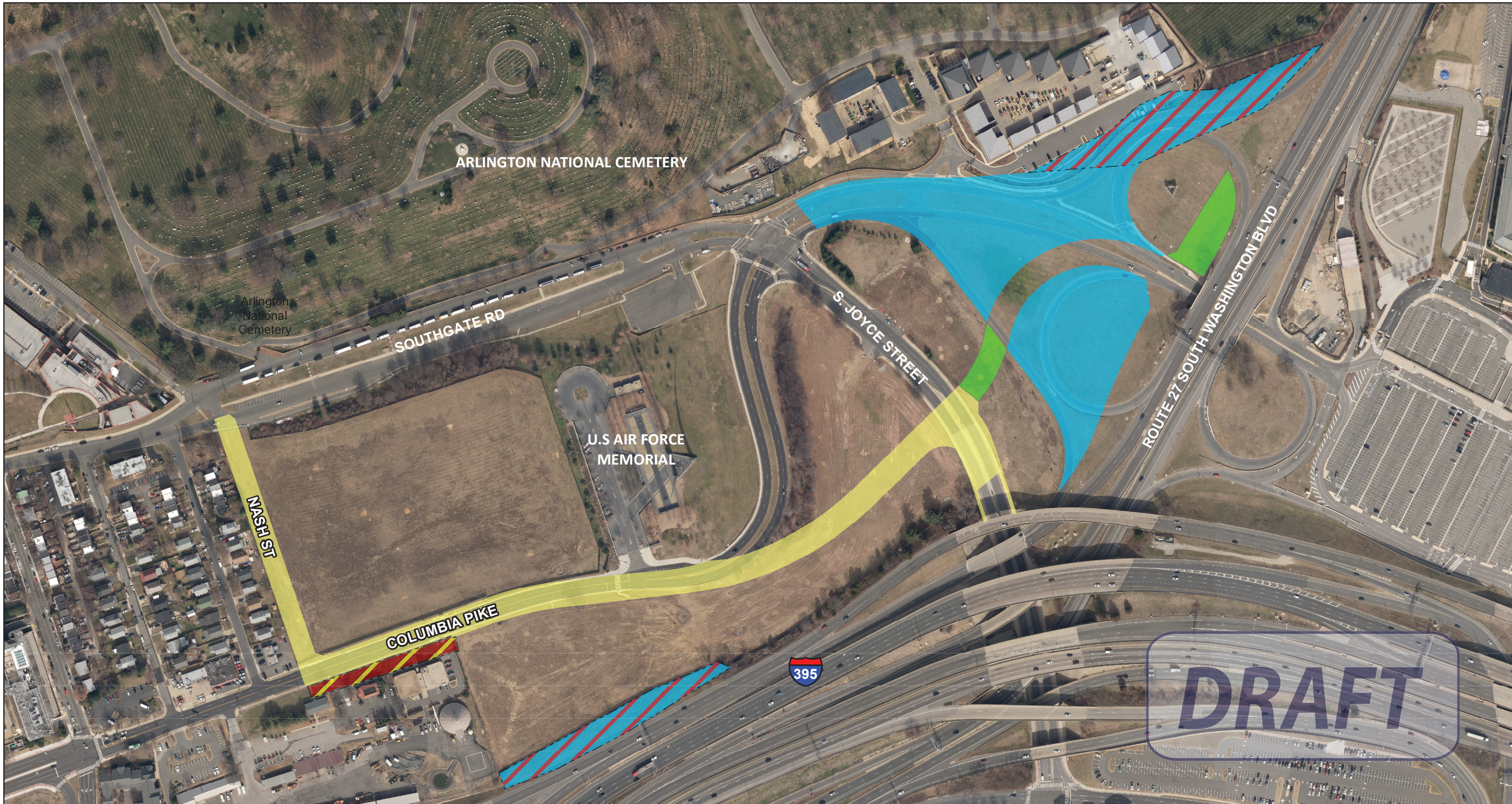
Seal
RW PLANS
(95% DESIGN)
NOT FOR
CONSTRUCTION

Seal
RW PLANS
(95% DESIGN)
NOT FOR
CONSTRUCTION

ARLINGTON NATIONAL CEMETERY
SOUTHERN EXPANSION (ANCSE)
DEFENSE ACCESS ROAD (DAR) PROJECT
ARLINGTON COUNTY, VIRGINIA

95% PLANS
INDEX OF SHEETS

DATE	DEC. 18, 2020
SCALE	N/A
HOR.	N/A
VERT.	N/A
DESIGNED:	TEC
DRAWN:	OCB
CHECKED:	MRA
MISS UTILITY TRANSMITTAL:	



Legend

- Commonwealth to Army
- Army to Commonwealth
- Army to Arlington County
- Commonwealth easement to Arlington County
- Existing Army Easement to Commonwealth (to revert back to USA)

**Exhibit D
Lands to be Conveyed**





Exhibit E: Future Roadway Alignment