



# FAIRFAX COUNTY PARK AUTHORITY



## B O A R D A G E N D A

August 4, 2021

### “SPECIAL MEETING”

6:30 PM

#### ACTION ITEMS

(HM) A-1 Scope Approval for Lake Fairfax Inline Skate Facility Including Approval of a Memorandum of Agreement with the Washington Capitals for a Turnkey Donation of Hockey Improvements

#### CLOSED SESSION

1. Discussion of personnel matters pursuant to Virginia Code §2.23711(A)(1)

*Recruitment of the Executive Director*

#### ADJOURNMENT



If ADA accommodations are needed, please call (703) 324-8563. TTY (703) 803-3354

Board Agenda Item  
August 4, 2021

## **ACTION – 1**

Scope Approval – Lake Fairfax Inline Skate Facility Including Approval of a Memorandum of Agreement with the Washington Capitals for a Turnkey Donation of Hockey Improvements (Hunter Mill District)

### ISSUE:

Approval of the project scope to design, permit, and construct an inline skate facility at Lake Fairfax Park including approval of a Memorandum of Agreement with the Washington Capitals for a turnkey donation of hockey improvements.

### RECOMMENDATION:

The Park Authority Acting Executive Director recommends approval of the project scope to design, permit, and construct an inline skate facility at Lake Fairfax Park including approval of a Memorandum of Agreement with the Washington Capitals for a turnkey donation of hockey improvements.

### TIMING:

Board approval of the project scope and acceptance of the turnkey donation are requested on August 4, 2021, to maintain the project schedule.

### BACKGROUND:

Lincoln Hockey, LLC doing business as (dba) the Washington Capitals (Capitals) has offered to provide and install an inline skating rink facility within Lake Fairfax Park which is owned by the Fairfax County Park Authority (FCPA) as shown on the attached map labeled as Attachment 1. The Capitals intend to donate the inline skating rink facility to FCPA via turnkey installation by a third-party contractor of hockey improvements on an improved site area constructed by FCPA. FCPA has the authority to accept gifts and enter into all agreements necessary or incidental to the performance of its duties under the Virginia Park Authorities Act (Virginia Code Ann. § 15.2-5700, *et seq.* (2012)).

Staff has estimated the value of the donation of the completed improvements to be over \$400,000. The Capitals have requested the right to include sponsors' logos at the rink pursuant to FCPA Policy 406 and the corresponding approval process. The Capitals may display the marks of the third-party sponsors on the rink surface, scoreboard, or dasher boards at the rink.

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The necessary site improvements by FCPA prior to the installation of the rink by the Capitals include:

- Clearing, grading, and earthwork
- Underground detention, water quality controls, and onsite drainage systems
- Retaining wall
- New parking spaces
- Paved rink base surface
- LED lighting

The scope cost estimate for the necessary rink facility site improvements at Lake Fairfax Park is \$1,949,105. (Attachment 2).

The proposed timeline for completing the entire project including work by FCPA and the Capitals is as follows:

<u>Phase</u>	<u>Planned Completion</u>
Scope	August 2021
Construction	July 2022

Operation and maintenance costs will be increased by approximately \$1,047 per year and the life-cycle replacement cost of replacing the rink facility is estimated to be \$1,949,105 in year 50.

FISCAL IMPACT:

Based on the scope cost estimate for the necessary site improvements, funding in the amount of \$1,949,105 is necessary to fund this project. Funding in the amount of \$719,105 in PR-000058-193, Lake Fairfax Park In-line Skating Rink and \$1,230,000 in PR-000147, Lake Fairfax Park Improvements in Fund 30400, Park Bond Construction for total available funding in the amount of \$1,949,105 required to fund this project.

ENCLOSED DOCUMENTS:

Attachment 1: Lake Fairfax Park In-line Skating Rink Location Map

Attachment 2: Scope Cost Estimate

Attachment 3: Memorandum of Agreement between the Capitals and FCPA

STAFF:

Sara Baldwin, Acting Executive Director

Board Agenda Item  
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Aimee L. Vosper, Deputy Director/CBD  
Stephanie Leedom, Director, Planning and Development Division  
Kurt Louis, Director, Park Operations Division  
Cindy Walsh, Director, Park Services Division  
Michael Peter, Director, Business Administration  
Paul Shirey, Manager, Project Management Branch  
Melissa Emory, Manager, Engineering Branch  
Jessica Tadlock, Fiscal Administrator

**Attachment 1**  
**Lake Fairfax Park In-line Skating Rink Location**



**SCOPE COST ESTIMATE**

**Lake Fairfax Park Inline Skating Rink**

<b>Design</b>	<b>\$ 90,000</b>
<b>Permit</b>	<b>\$ 30,000</b>
<b>Construction – Rink and Lighting</b>	<b>\$1,342,305</b>
<b>Construction Administration</b>	<b>\$ 50,000</b>
<b>Testing and Inspections</b>	<b>\$ 75,000</b>
<b>Project Contingency (15%)</b>	<b>\$ 201,000</b>
<b>Administration (12%)</b>	<b><u>\$ 160,800</u></b>
<b>Total Project Estimate</b>	<b>\$1,949,105</b>

Attachment 3

**MEMORANDUM OF AGREEMENT**

**BETWEEN**

**LINCOLN HOCKEY, LLC dba WASHINGTON CAPITALS  
AND**

**THE FAIRFAX COUNTY PARK AUTHORITY**

**WHEREAS**, Lincoln Hockey, LLC dba Washington Capitals (“WC”) has offered to provide and install an inline skating rink facility within Lake Fairfax Park which is owned by Fairfax County Park Authority (“FCPA”) as shown on the attached map labeled as Attachment A.; and

**WHEREAS**, WC intends to donate the inline skating rink facility to FCPA and desires to cause a third-party contractor to provide and install the inline skating rink (the “Rink”) in accordance with Exhibit B (the “Project”); and

**WHEREAS**, FCPA has the authority to accept gifts and enter into all agreements necessary or incidental to the performance of its duties under the Virginia Park Authorities Act (Virginia Code Ann. § 15.2-5700, *et seq.* (2012)); and

**WHEREAS**, WC and FCPA desire to define the obligations and conditions of the parties for FCPA’s acceptance of the gift donated by WC in this Memorandum of Agreement (“Agreement”).

**NOW THEREFORE**, it is agreed as follows:

**1. Obligations of FCPA:**

- a. FCPA plans to install a new lighting system for the inline skating rink (including obtaining all necessary permits) in accordance with FCPA’s Lighting Standards at its own cost.
- b. FCPA shall promptly procure and obtain all necessary approvals and permits based on the scope of work identified in Exhibit B for: (i) work on the Project or (ii) to fulfill or comply with any other obligations under this Agreement. FCPA will be responsible for obtaining any Fairfax County building or site plan permits required to construct the “Rink” including paying for permit fees, obtaining final inspections and approvals per permit requirements.

- c. FCPA retains responsibility for installation and maintenance of all public utilities at the facility, including, without limitation, any electrical service. FCPA shall ensure that sufficient power and electrical connections exist to operate a scoreboard at the facility. At all times during design and construction of the Project and upon donation of the Project to FCPA, FCPA shall pay for all related utility fees and electrical service including, without limitation, availability, tap, meter, and use fees.
- d. Except for any WC Marks or third-party Marks, upon acceptance of the Project in accordance with Section 10 below, FCPA will own, operate, and maintain the Project including the Rink.
- e. FCPA shall update any FCPA directional signage related to the Rink to include WC Marks as requested by WC.
- f. FCPA shall provide spectator seating along with new trash and recycling receptacles at the Rink per FCPA standards.
- g. FCPA shall schedule and hold a ribbon-cutting ceremony for dedication of the Rink when the facility is completed, subject to any public health restrictions or prohibitions.
- h. FCPA shall maintain the facility in good condition and perform any needed maintenance and repairs subject to availability of funding. "Good condition" is defined as safe and playable with no visible damage to the surface, boards or fencing that affects play of safety of players and/or spectators.
- i. FCPA will work with WC to schedule and allow access to the Rink at no cost to WC for events and programming activities by WC that are free to the public in accordance with FCPA policy.

**2. Obligations of WC:**

- a. WC shall cause the general contractor to design and construct the Project as outlined in Exhibit B at no cost to FCPA. WC will ensure that the Project is completed by the general contractor consistent with good workmanship.
- b. WC shall provide FCPA with plans for the inline skating rink. WC shall provide these plans and any subsequent revisions for review and approval by FCPA. Such approval shall not be unreasonably withheld. Prior to its approval, FCPA will notify WC or the general contractor if any of the inline skating rink plans do not comply with FCPA standards or applicable law.



- c. WC shall: (1) indemnify and (2) include a clause in the contract between WC and the general contractor that requires the general contractor to indemnify Fairfax County and the FCPA from any and all claims or suits which result from the intentional misconduct and negligent errors, omissions, or acts of WC, its general contractor, and/or all subcontractors in connection with the Project.
- d. WC will require that the general contractor working on the Project complies with Federal, State, and local safety and fire codes and regulations. WC will require that the general contractor is responsible for all safety precautions and programs in connection with the Project in accordance with OSHA regulations and standards. In connection with the Project, WC will require that the general contractor take all reasonable precautions for the safety of its employees, any of its subcontractors' employees, adjacent landowners, invitees, and anyone else affected by the Project.
- e. WC will provide design, engineering, materials, equipment and construction for the following improvements in accordance with Fairfax County Park Authority design standards at WC's expense:
  - i. Riley Manufacturing Series R4s Steel Prefabricated Dasher Board System, or its equivalent.
  - ii. Mateflex flooring system, or its equivalent.
  - iii. Black vinyl-coated chain link fence, or its equivalent around the perimeter of the rink. Fencing four (4) feet in height on sides of rink and six (6) feet in height on ends of rink.
  - iv. Two black plastic lumber player's benches or their equivalent.
  - v. Two 40" pre-strung steel goal frames.
  - vi. Daktronics MS-204 or MS-915 scoreboard or its equivalent.
- f. WC shall cause its general contractor and any subcontractors to provide to FCPA a one-year construction warranty for the Project; and shall pass on any extended warranties related to the Project to FCPA.
- g. WC shall provide a release of liens for its general contractor, any subcontractors, and material suppliers for the Project.
- h. WC shall cause the general contractor to provide insurance coverage during construction as required by Fairfax County's Risk Management Division that names Fairfax County and FCPA as additional insureds.

- i. Upon completion and acceptance of the Project in accordance with Section 9 below, WC shall donate the Project to FCPA. WC shall receive no financial remuneration or any other in-kind consideration from FCPA for the design or construction of the Project, except as identified in this Agreement.

**3. Term.** This Agreement shall commence as of \_\_\_\_\_, 2021, and, unless terminated as set forth herein, shall remain in effect for ten (10) calendar years (the "Initial Term"). Following the Initial Term, this Agreement shall automatically renew for one (1) year periods.

**4. Termination.**

- a. Following the Initial Term, FCPA, in its sole discretion may terminate this Agreement by providing written notice to WC. If FCPA terminates this Agreement after the Initial Term, FCPA may remove WC Marks and third-party Marks at its own expense.
- b. Either party may terminate this Agreement if the other party breaches a material term of this Agreement and does not cure such breach within thirty (30) days of receipt of written notice from the non-breaching party. Upon termination of this Agreement pursuant to this Section 4(c), all licenses granted herein shall immediately terminate. If WC terminates this Agreement pursuant to this Section 4(c), FCPA shall remove all WC Marks and third-party Marks at its own expense. If FCPA terminates this Agreement pursuant to this Section 4(c), WC shall remove all WC Marks and third-party Marks at its own expense.
- c. Notwithstanding any other provision in this Agreement, the Project (including the Rink) becomes the property of FCPA upon acceptance as outlined in in Section 9 below. Termination shall have no effect on the ownership of the Project, which will remain the property of FCPA.

**5. Public Announcements and Promotional Activities.** The timing and content of any public announcements or promotional activities relating to the Project shall be mutually agreed upon by the parties. The parties agree that all press releases or other media related to the Project shall name the parties or display the Marks of the parties to this Agreement. The parties agree to work together to plan and execute a ribbon cutting ceremony at the Rink upon completion of the Project.

**6. Intellectual Property.** Subject to the terms and conditions of this Agreement, each party hereby grants to the other party a non-exclusive, worldwide and royalty free license to use each party's Marks as necessary for each party to perform its obligations and activate and exercise its rights under this

Agreement. "Marks" shall mean the name, trademarks or logos of a person or entity. Each use of WC Marks shall be subject to the WC's prior written approval, and each use of FCPA Marks shall be subject to FCPA's prior written approval. Neither party shall change or edit the other's Marks without prior written approval. Either party may revoke this license at any time in its sole discretion and remove its Marks at its own expense. For purposes of this Agreement, WC Marks shall include the Marks of the Washington Capitals.

- 7. Third-party Marks and Sponsors.** Either party may propose the display of the Marks of third-party sponsors at the Rink. All third-party sponsorships and the display of third-party Marks require the mutual agreement of both parties and are subject to FCPA Policy 406 and the approval process set forth therein. For third-party sponsors proposed by WC (and approved by FCPA), WC may display the Marks of the third-party sponsors on the rink surface, scoreboard or dasher boards at the Rink. For third-party sponsors proposed by FCPA (and approved by WC), FCPA may display the Marks of the third-party sponsors anywhere at the Rink. Until termination of the Agreement, the parties may change such third-party Marks of sponsors upon mutual agreement. After termination of the Agreement, Paragraph 4 (above) governs the removal of the Marks.

Promotion of any other National Hockey League (NHL) member team is prohibited. Promotion of the Washington Capitals American Hockey League (AHL) affiliate club is acceptable upon approval of the Washington Capitals marketing front office. Promotion of any professional sports team, organization or brand is prohibited unless approved by the Washington Capitals.

- 8. Media Access.** To the extent permitted by federal, state, and local law, WC will be allowed to take photos and video of activities open to the public at the facility and use those images and videos on their website and in marketing materials.
- 9. Naming of the Rink.** Subject to FCPA Policy 406 and the approval process set forth therein, WC may name the Rink as part of the Project, including, without limitation, after a current or former player, coach or executive of the Washington Capitals franchise (i.e., "[Player/Coach Name] Rink"). The Rink name shall be included on the scoreboard, field marker, and any directional signage. If during the Term FCPA revokes its approval of the naming of the Rink, WC shall have an opportunity to rename the Rink, subject to FCPA Policy 406.
- 10. Inspection and Acceptance.** WC, or its designated representative, and FCPA will conduct a joint completion inspection prior to final acceptance of the completed Project by FCPA. WC and FCPA shall jointly compile a punch list of any outstanding items from Exhibit B to be completed or corrected by

WC. WC shall endeavor to complete, or cause to be completed, any punch list items in a timely fashion. FCPA will accept the donated Project upon completion of the punch list items.

- 11. Maintenance and Repair.** FCPA is responsible, in accordance with its existing standards, for all the maintenance and repair of the Rink and all related signage, including, without limitation, the scoreboard and directional signage. FCPA shall perform routine maintenance and repairs in accordance with FCPA Maintenance Standards
- 12. Operation of the Rink.** FCPA is entitled to operate the Rink in accordance with FCPA Policy 109 User Fees.
- 13. Representations.** Each party represents that: (i) it has all corporate power, legal authority and rights necessary to enter into and to perform its obligations under this Agreement; and (ii) that its Marks do not, and will not, infringe any intellectual property rights of any third party.
- 14. Force Majeure.** No party shall be in breach of this Agreement for any delay in performance or non-performance due to an act of God, natural disaster, catastrophe, accident, fire, labor dispute, lockout or strike, riot or civil commotion, act of public enemy, governmental act, regulation or rule, failure of technical facilities, emergency, or other circumstance beyond the control of the applicable party ("Force Majeure Event"). The parties' respective performance under this Agreement will be suspended during any such Force Majeure Event, and each party shall resume performance of this Agreement upon the conclusion of such Force Majeure Event.
- 15. Notice.** All notices shall be in writing and shall be deemed delivered three (3) days after deposit in the U.S. mail, certified, return receipt requested, to the addresses listed in the signature blocks below.
- 16. Governing Law and Waiver of Jury Trial.** This Agreement shall be governed by the laws, codes, and policies of the Commonwealth of Virginia, Fairfax County. The parties agree to the exclusive jurisdiction and venue of the federal and state courts in the Commonwealth of Virginia in any action arising out of or relating to this Agreement. The parties expressly waive their right to trial by jury.
- 17. Compliance with Local, State, and Federal Law.** Each party agrees to comply with all applicable federal, state, and local laws; provided, however, that although WC will ensure that the Project complies with the Americans with Disabilities Act ("ADA") to extent required by FCPA standards, WC is under no obligation to ensure that any part of the Rink outside of scope of Exhibit B complies with the ADA.

**18. Appropriations.** Any requirement for the provision of funding by FCPA or Fairfax County in this Agreement is subject to appropriations by the FCPA Board or the Fairfax County Board of Supervisors, as may be applicable.

**19. Miscellaneous.** No delay or failure to exercise any right or remedy accruing to any party shall impair any such right or remedy, nor shall it be construed as a waiver of any future right or remedy. The parties are independent contractors. If any provision of this Agreement is declared invalid or unenforceable by an arbitrator or court of competent jurisdiction, such provision shall be severed from the remainder of this Agreement, which shall remain in full force and effect. This Agreement constitutes the entire agreement between the parties regarding its subject matter and may not be amended except by a writing signed by an authorized representative of each party.

**20. Assignment & Counterparts.** Neither party may assign this Agreement without written consent of the other party. This Agreement may be executed in any number of counterparts (including by facsimile or .pdf), each of which will be deemed an original, but all of which taken together shall constitute one single agreement.

LINCOLN HOCKEY, LLC  
dba THE WASHINGTON CAPITALS

By: \_\_\_\_\_  
Peter Robinson  
Director of Youth Hockey Development  
627 N. Glebe Road, Suite 850  
Arlington, VA 21203

Date: \_\_\_\_\_

FAIRFAX COUNTY PARK AUTHORITY

By: \_\_\_\_\_  
Sara K. Baldwin, Acting Executive Director  
Fairfax County Park Authority  
12055 Government Center Parkway, Suite 927  
Fairfax, VA 22035-1118

Date: \_\_\_\_\_

EXHIBIT A

FCPA'S LAKE FAIRFAX PARK SITE PLAN



## **EXHIBIT B**

### **THE PROJECT**

1. FCPA shall install a 100' x 200' asphalt pad, lighting, electrical service and related site work.
2. WC shall cause a general contractor to provide design, engineering, materials, equipment and construction of the following improvements:
  - a. Riley Manufacturing Series R4s Steel Pre-Fabricated Dasher Board System, or its equivalent.
  - b. Mateflex flooring system, or its equivalent.
  - c. Extra heavy black vinyl-coated chain link fencing around the perimeter of the rink. Fencing to be 4' high on the sides of the rink and 6' high on the ends of the rink.
  - d. Players benches. Black plastic lumber, or their equivalent.
  - e. 40" Pre-strung steel goal frames.
  - f. Daktronics MS-204 or MS-915 scoreboard or its equivalent.
3. WC shall submit plans and specifications for the facilities for FCPA review and for FCPA to obtain any necessary building permits and inspections.