FAIRFAX COUNTY
BOARD OF SUPERVISORS
June 23, 2015

AGENDA

9:00	Reception for World War II Veterans, Forum of the Government Center
9:00	Reception for 2014 A. Heath Onthank Awardees, Reception Area of the J. Lambert Conference Center
9:30	Presentations
10:30	Presentation of the A. Heath Onthank Award
10:40	Board Appointments
10:50	Items Presented by the County Executive

ADMINISTRATIVE ITEMS

1	Authorization to Advertise a Public Hearing to Consider Amendments to The Code of the County of Fairfax, Virginia—Chapter 30 (Minimum Private School and Child Care Facility Standards), Article 3 (Home Child Care Facilities)
2	Authorization for the County Executive to Execute Contract Modification No. 2 to the Virginia Water Quality Improvement Fund Point Source Grant and Operation and Maintenance Agreement Contract #440-S-09-08 Between the County of Fairfax and the Commonwealth of Virginia
3	Supplemental Appropriation Resolution AS 15269 for the Fire and Rescue Department to Accept an Award from the U.S. Department of Homeland Security Grant for the Assistance to Firefighters (AFG) Grant
4	Streets into the Secondary System (Hunter Mill District)
5	Authorization of a Public Hearing on a Proposal to Vacate and Abandon Jasper Lane (Lee District)
6	Authorization of a Public Hearing on a Proposal to Abandon Part of Willard Road (Sully District)
7	Installation of “Watch for Children” Signs as Part of the Residential Traffic Administration Program (Mount Vernon District)

FAIRFAX COUNTY
BOARD OF SUPERVISORS
June 23, 2015

ADMINISTRATIVE ITEMS (Continued)

8 Extension of Review Period for 2232 Application (Hunter Mill District)

9 Supplemental Appropriation Resolution AS 15275 for the Fairfax County Economic Development Authority to Accept Grant Funding from the Commonwealth of Virginia – Governor's Opportunity Fund (GOF) for Bechtel Corporation

10 Authorization to Advertise a Public Hearing on Proposed Revisions to Sections 3-2-26, 3-3-27 and 3-7-25 of Chapter 3 of the Code of Fairfax County

ACTION ITEMS

1 Approval of the Fairfax County Emergency Operations Plan

2 Approval of Head Start/Early Head Start Policy Council Bylaws and Self-Assessment Report

3 Approval of a Memorandum of Understanding with the City of Fairfax on the Use of MPSTOC as an Emergency Backup Facility

4 Approval of the Consumer Protection Commission Recommendation on the Number of Taxicab Certificates to be Authorized in 2015

5 Approval of a Standard Project Agreement with the Northern Virginia Transportation Authority for Preliminary Engineering and Environmental Study of Route 28 Widening from Prince William County Line to Route 29 (Springfield and Sully Districts)

6 Approval of the Fairfax County Department of Transportation's (FCDOT) Disadvantaged Business Enterprise Policy and Goal for the Federal Transit Administration (FTA) for Federal Fiscal Years 2015-17

7 Approval of a Standard Project Agreement with the Northern Virginia Transportation Authority for the West Ox Bus Garage Phase II (Springfield District)

8 Approval of a Standard Project Funding Agreement with the Northern Virginia Transportation Authority for the Purchase of Fairfax Connector Buses

FAIRFAX COUNTY
BOARD OF SUPERVISORS
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ACTION ITEMS (Continued)

9	Approval of Commuter Parking at Springfield Town Center License Agreement (Lee District)
10	Approval of the Changes to the Fairfax County Purchasing Resolution
11	Approval of the Consolidated Community Funding Advisory Committee Recommendations for the FY 2017 and FY 2018 Funding Priorities for the Consolidated Community Funding Pool

CONSIDERATION ITEMS

1	Election Year Policies
2	Appeal by WM/Olayan Holdings LLC of the October 2, 2014, Proffer Interpretation for RZ 2006-PR-027 Proffer 16.B. Related to Parking, and an Appeal of the May 11, 2015, Notice of Violation Citing the Appellant for Violating Proffer 16.B.
11:00	Matters Presented by Board Members
11:50	Closed Session

PUBLIC HEARINGS

3:00	Decision Only on Amendments to the Fairfax County Code to: Adopt New Chapter 108.1 (Noise Ordinance), Repeal Chapter 108 (Noise Ordinance), and Repeal Article 6 (Excessive Sound Generation in Residential Areas and Dwellings Ordinance) to Chapter 5 (Offenses)
3:00	Public Hearing on PCA 76-M-007-02 (Fairfax County School Board) (Mason District)
3:00	Public Hearing on PCA 82-P-015 (Yue Wang also known as Mike Wang) (Providence District)

FAIRFAX COUNTY
BOARD OF SUPERVISORS
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PUBLIC HEARINGS
(Continued)

3:30	Public Hearing on SE 2015-SP-002 (Terry M. Peter / Love'n Care Day Care, Inc.) (Springfield District)
3:30	Public Hearing on SE 2015-MV-003 (First Years Learning Center LLC / Claudia Tramontana) (Mount Vernon District)
3:30	Public Hearing on SEA 91-S-031 (Milestone Tower Limited Partnership III Cellco Partnership D/B/A Verizon Wireless & Virginia Electric and Power Company D/B/A Dominion Virginia Power) (Springfield District)
3:30	Public Hearing on SEA 2004-DR-004 (Shore Armani Trustee E A/K/A Shoreh H. Armani) (Dranesville District)
3:30	Public Hearing on SE 2014-DR-033 (Krishna R. Murthy) (Dranesville District)
3:30	Public Hearing on RZ 2013-DR-017 (JLB Dulles Tech LLC) (Dranesville District)
3:30	Public Hearing on PCA 79-C-037-07 (JLB Dulles Tech LLC)(Dranesville District)
3:30	Public Hearing on PCA 2002-HM-043 (JLB Dulles Tech LLC/ Fairfax County Park Authority) (Dranesville District)
3:30	Public Hearing on SEA 2002-HM-046-02 (JLB Dulles Tech LLC /Fairfax County Park Authority) (Dranesville District)
3:30	Public Hearing on SEA 85-C-119 (JLB Dulles Tech LLC/ Fairfax County Park Authority) (Dranesville District)
4:00	Public Hearing on RZ 2015-BR-001 (AREC 2018, LLC) (Braddock District)
4:00	Public Hearing on SE 2015-BR-001 (AREC 2018, LLC) (Braddock District)
4:00	Public Hearing on a Proposed Zoning Ordinance Amendment Re: Articles 7 and 19 – Architectural Review Board (ARB) Project Approval Process and Voting Membership
4:00	Public Hearing on 2014 Amendment to Restated and Amended Service Agreement with the Upper Occoquan Service Authority

FAIRFAX COUNTY
BOARD OF SUPERVISORS
June 23, 2015

PUBLIC HEARINGS
(Continued)

4:00	Public Hearing to Establish the Mason Community Parking District (Mason District)
4:30	Public Hearing on Amendments to the Code of the County of Fairfax, Chapter 82, Motor Vehicles and Traffic, Section 82-1-6, Adoption of State Law
4:30	Public Hearing on RZ 2014-LE-010 (Piney Run Elm Investments LC) (Lee District)
4:30	Public Hearing on SEA 2005-LE-027-02 (Piney Run Elm Investments LC) (Lee District)
4:30	Public Hearing on SEA 2005-LE-028 (Piney Run Elm Investments LC) (Lee District)
4:30	Public Hearing to Consider an Ordinance to Amend and Readopt Fairfax County Code Sections 7-2-7, 7-2-10, 7-2-12, and 7-2-13 Relating to Election Precincts and Polling Places
5:00	Public Comment

Fairfax County, Virginia

BOARD OF SUPERVISORS AGENDA

Tuesday
June 23, 2015

9:30 a.m.

PRESENTATION OF THE COLORS

Presentation of the Colors by the Color Guard
from American Legion Fairfax Post 177
Fairfax, Virginia

PRESENTATIONS

- RESOLUTION – To recognize the veterans of World War II for their courage, contributions and service to defend the ideals of America. Requested by Supervisor Cook.

- CERTIFICATE – To recognize the Langley High School Science Olympiad Team for its achievement at the 2015 Virginia Science Olympiad state competition. Requested by Supervisor Foust.

- RESOLUTION – To recognize William Bates, principal of Herndon High School, for being named the 2015 Fairfax County Principal of the Year. Requested by Supervisor Foust.

- RESOLUTION – To recognize Jacqueline Clemente Cheshire for receiving a Virginia Volunteerism and Community Service Award for her work training service dogs. Requested by Supervisor Foust.

- RESOLUTION – To recognize the 50th anniversary of the Annandale Rotary Club. Requested by Chairman Bulova.

— more —

Board Agenda Item
June 23, 2015

- RESOLUTION – To recognize Temple Douglas and the appropriate representatives from the Center for Applied Proteomics and Molecular Medicine of George Mason University for their efforts to find a better test for Lyme disease. Requested by Supervisor Herrity.

- RESOLUTION – To recognize the 40th anniversary of Huntley Meadows Park. Requested by Supervisor McKay.

- RESOLUTION – To recognize the Community Action Advisory Board for its efforts to make a positive difference in the lives of low-income families and individuals in Fairfax County. Requested by Supervisor McKay.

- PROCLAMATION – To designate July 2015 as Recreation and Parks Month in Fairfax County. Requested by Supervisors Cook and Herrity.

- RESOLUTION – To recognize Tawny Hammond for her years of service to Fairfax County. Requested by Chairman Bulova and Supervisors Herrity, Frey and McKay.

STAFF:
Tony Castrilli, Director, Office of Public Affairs
Bill Miller, Office of Public Affairs

Board Agenda Item
June 23, 2015

10:30 a.m.

Presentation of the A. Heath Onthank Awards

ENCLOSED DOCUMENTS:
None

PRESENTED BY:
Broderick Dunn, Civil Service Commission
Joseph Blackwell, Onthank Award Committee Chairman
Sharon Bulova, Chairman, Board of Supervisors
Edward L. Long Jr, County Executive
Cathy Spage, Assistant Director, Human Resources

Board Agenda Item
June 23, 2015

10:40 a.m.

Appointments to Citizen Boards, Authorities, Commissions, and Advisory Groups

ENCLOSED DOCUMENTS:
Attachment 1: Appointments to be heard June 23, 2015
(An updated list will be distributed at the Board meeting.)

STAFF:
Catherine A. Chianese, Assistant County Executive and Clerk to the Board of Supervisors

NOTE: A revised list will be distributed immediately prior to the Board meeting.

APPOINTMENTS TO BE HEARD JUNE 23, 2015

(ENCOMPASSING VACANCIES PROJECTED THROUGH JULY 31, 2015)

(Unless otherwise noted, members are eligible for reappointment)

A. HEATH ONTHANK MEMORIAL AWARD SELECTION COMMITTEE
(1 year)

Incumbent History	Requirement	Nominee	Supervisor	District
VACANT (Formerly held by Charles T. Coyle; appointed 2/13-6/14 by Hyland) Term exp. 1/15 *Resigned*	Mount Vernon District Representative		Hyland	Mount Vernon

ADVISORY SOCIAL SERVICES BOARD
(4 years – limited to 2 full consecutive terms)

Incumbent History	Requirement	Nominee	Supervisor	District
VACANT (Formerly held by Elizabeth D'Alelio; appointed 12/09-9/13 by Cook) Term exp. 9/17 *Resigned*	Braddock District Representative		Cook	Braddock
VACANT (Formerly held by Margaret Osborne; appointed 12/14 by McKay) Term exp. 9/16 *Resigned*	Lee District Representative		McKay	Lee

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ADVISORY SOCIAL SERVICES BOARD
(4 years – limited to 2 full consecutive terms)
continued

Incumbent History	Requirement	Nominee	Supervisor	District
VACANT (Formerly held by Sydney Stakley; appointed 6/07-9/13 by Smyth) Term exp. 9/17 *Resigned*	Providence District Representative		Smyth	Providence

AFFORDABLE DWELLING UNIT ADVISORY BOARD (4 years)

Incumbent History	Requirement	Nominee	Supervisor	District
VACANT (Formerly held by Arthur R. Genuario; appointed 4/96-5/12 by Hyland) Term exp. 9/13 *Resigned*	Builder (Single Family) Representative		By Any Supervisor	At-Large
VACANT (Formerly held by James Francis Carey; appointed 2/95-5/02 by Hanley; 5/06 by Connolly) Term exp. 5/10 *Resigned*	Lending Institution Representative		By Any Supervisor	At-Large

AIRPORTS ADVISORY COMMITTEE (3 years)

Incumbent History	Requirement	Nominee	Supervisor	District
VACANT (Formerly held by Barbara Kreykenbohm; appointed 1/09 by Gross) Term exp. 1/11 *Resigned*	Mason District Representative		Gross	Mason

ANIMAL SERVICES ADVISORY COMMISSION (2 years)

[Note: In addition to attendance at Commission meetings, members shall volunteer at least 24 hours per year in some capacity for the Animal Services Division.]

Incumbent History	Requirement	Nominee	Supervisor	District
VACANT (Formerly held by Barbara Hyde; appointed 9/13-9/14 by Gross) Term exp. 2/16 *Resigned*	Mason District Representative		Gross	Mason

ARCHITECTURAL REVIEW BOARD (3 years)

[NOTE: Members shall be appointed by the Board of Supervisors as follows: at least two (2) members shall be certified architects; one (1) landscape architect authorized to practice in Virginia; one (1) lawyer with membership in the Virginia Bar; six (6) other members shall be drawn from the ranks of related professional groups such as archaeologists, historians, lawyers, and real estate brokers.]

Incumbent History	Requirement	Nominee	Supervisor	District
VACANT (Formerly held by Joy Marshall Ortiz; appointed 10/03-9/12 by Hudgins) Term exp. 9/15 *Resigned*	Architect #2 Representative		By Any Supervisor	At-Large

ATHLETIC COUNCIL (2 years)

Incumbent History	Requirement	Nominee	Supervisor	District
Marcia Pape Daniels (Appointed 6/09-6/13 by Cook) Term exp. 6/15	Braddock District Principal Representative		Cook	Braddock
Morgan B. Danner (Appointed 7/13 by Foust) Term exp. 3/15	Dranesville District Alternate Representative		Foust	Dranesville
Terry Adams (Appointed 11/11-7/13 by Gross) Term exp. 6/15	Mason District Alternate Representative		Gross	Mason
Barbara Lowrey (Appointed 7/99-7/13 by Gross) Term exp. 6/15	Mason District Principal Representative	**Barbara Lowrey**	Gross	Mason
Mark R. Heilbrun (Appointed 12/10-4/13 by Herrity) Term exp. 4/15	Springfield District Alternate Representative	**Mark R. Heilbrun**	Herrity	Springfield

BARBARA VARON VOLUNTEER AWARD SELECTION COMMITTEE (1 year)

Incumbent History	Requirement	Nominee	Supervisor	District
Ken Balbuena (Appointed 9/11-5/14 by Bulova) Term exp. 6/15	At-Large Chairman's Representative	**Ken Balbuena**	Bulova	At-Large Chairman's
Andrew Miller (Appointed 1/15 by Cook) Term exp. 6/15	Braddock District Representative	**Andrew Miller**	Cook	Braddock

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BARBARA VARON VOLUNTEER AWARD SELECTION COMMITTEE (1 year) continued

Incumbent History	Requirement	Nominee	Supervisor	District
Barbara Glakas (Appointed 1/12-5/14 by Foust) Term exp. 6/15	Dranesville District Representative		Foust	Dranesville
Therese Martin (Appointed 2/13-5/14 by Hudgins) Term exp. 6/15	Hunter Mill District Representative		Hudgins	Hunter Mill
Judith Fogel (Appointed 2/14-5/14 by Gross) Term exp. 6/15	Mason District Representative	**Judith Fogel**	Gross	Mason
Brett Kenney (Appointed 10/13-6/14 by Hyland) Term exp. 6/15	Mount Vernon District Representative		Hyland	Mount Vernon
Emilie F. Miller (Appointed 7/05-6/14 by Smyth) Term exp. 6/15	Providence District Representative		Smyth	Providence
Joshua Foley (Appointed 9/13-5/14 by Herrity) Term exp. 6/15	Springfield District Representative		Herrity	Springfield
Olga Hernandez (Appointed 9/04-5/14 by Frey) Term exp. 6/15	Sully District Representative	**Olga Hernandez**	Frey	Sully

BOARD OF BUILDING AND FIRE PREVENTION CODE APPEALS (4 years)
(No official, technical assistant, inspector or other employee of the DPWES, DPZ, or FR shall serve as a member of the board.)

Incumbent History	Requirement	Nominee	Supervisor	District
VACANT (Formerly held by Wayne Bryan; appointed 1/10-2/13 by Bulova) Term exp. 2/17 *Resigned*	Alternate #2 Representative		By Any Supervisor	At-Large
John B. Scott (Appointed 2/08-2/11 by Frey) Term exp. 2/15	Alternate #3 Representative		By Any Supervisor	At-Large
VACANT (Formerly held by Susan Kim Harris; appointed 5/09-2/11 by Hudgins) Term exp. 2/15 *Resigned*	Alternate #4 Representative		By Any Supervisor	At-Large
Matthew Arnold (Appointed 1/05-2/07 by DuBois; 2/11 by Foust) Term exp. 2/15	Design Professional #2 Representative		By Any Supervisor	At-Large

CHESAPEAKE BAY PRESERVATION ORDINANCE EXCEPTION REVIEW COMMITTEE (4 years)

Incumbent History	Requirement	Nominee	Supervisor	District
VACANT (Formerly held by Kanthan Siva; appointed 1/13 by Frey) Term exp. 9/15 *Resigned*	Sully District Representative		Frey	Sully

CHILD CARE ADVISORY COUNCIL (2 years)

Incumbent History	Requirement	Nominee	Supervisor	District
VACANT (Formerly held by Pamela Nilsen; appointed 6/13-9/13 by McKay) Term exp. 9/15 *Resigned*	Lee District Representative		McKay	Lee
VACANT (Formerly held by Eric Rardin; appointed 4/13 by Hyland) Term exp. 9/15 *Resigned*	Mount Vernon District Representative		Hyland	Mount Vernon

COMMISSION FOR WOMEN (3 years)

Incumbent History	Requirement	Nominee	Supervisor	District
VACANT (Formerly held by Julia Boone; appointed 2/13 by Hudgins) Term exp. 10/15 *Resigned*	Hunter Mill District Representative		Hudgins	Hunter Mill

COMMISSION ON AGING (2 years)

Incumbent History	Requirement	Nominee	Supervisor	District
VACANT (Formerly held by Tena Bluhm; appointed 5/09-5/13 by Bulova) Term exp. 5/15 *Resigned*	At-Large Chairman's Representative		Bulova	At-Large Chairman's
Richard Chobot (Appointed 6/13 by Cook) Term exp. 5/15	Braddock District Representative		Cook	Braddock
Kay Larmer (Appointed 1/12-6/13 by Foust) Term exp. 5/15	Dranesville District Representative		Foust	Dranesville
Joseph Heastie (Appointed 2/05-5/13 by Smyth) Term exp. 5/15	Providence District Representative	**Joseph Heastie**	Smyth	Providence
Thomas Bash (Appointed 5/11-6/13 by Herrity) Term exp. 5/15	Springfield District Representative		Herrity	Springfield

COMMISSION ON ORGAN AND TISSUE DONATION AND TRANSPLANTATION
(4 years)

Incumbent History	Requirement	Nominee	Supervisor	District
VACANT (Formerly held by Howard Leroy Kelley; Appointed 8/01-1/13 by Hudgins) Term exp. 1/17 *Resigned*	At-Large Representative		By Any Supervisor	At-Large
VACANT (Formerly held by Benjamin Gibson; appointed 4/11 by McKay) Term exp. 1/15 *Resigned*	Lee District Representative		McKay	Lee
VACANT (Formerly held by Carmen A. Cintron; appointed 2/13 by Hyland) Term exp. 1/15 *Resigned*	Mount Vernon District Representative		Hyland	Mount Vernon
VACANT (Formerly held by William Stephens; appointed 9/02-1/03 by McConnell; 1/07-1/11 by Herrity) Term exp. 1/15 *Resigned*	Springfield District Representative		Herrity	Springfield

COMMUNITY ACTION ADVISORY BOARD (CAAB)
(3 years)

Incumbent History	Requirement	Nominee	Supervisor	District
Philip Rosenthal (Appointed 1/01-2/16 by McConnell; 2/09-2/12 by Herrity) Term exp. 2/15	Springfield District Representative	**Philip Rosenthal**	Herrity	Springfield
VACANT (Formerly held by Jay Hilbert; appoint 7/12-2/13 by Frey) Term exp. 2/15 *Resigned*	Sully District Representative		Frey	Sully

CONSUMER PROTECTION COMMISSION
(3 years)

Incumbent History	Requirement	Nominee	Supervisor	District
Mehmood S. Kazmi (Appointed 11/12 by Bulova) Term exp. 7/15	Fairfax County Resident #3 Representative		By Any Supervisor	At-Large
Wes Callender (Appointed 9/14 by Foust) Term exp. 7/15	Fairfax County Resident #6 Representative		By Any Supervisor	At-Large
VACANT (Formerly held by Jason M. Chung; appointed 2/13 by Frey) Term exp. 7/15 *Resigned*	Fairfax County Resident #7 Representative		By Any Supervisor	At-Large
Harold Belkowitz (Appointed 11/08-7/12 by Herrity) Term exp. 7/15	Fairfax County Resident #8 Representative		By Any Supervisor	At-Large

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CONSUMER PROTECTION COMMISSION
(3 years)
continued

Incumbent History	Requirement	Nominee	Supervisor	District
Hung Quoc Nguyen (Appointed 3/04-7/06 by Connolly; 7/09-7/12) Term exp. 7/15	Fairfax County Resident #9 Representative	**Hung Quoc Nguyen** (Bulova)	By Any Supervisor	At-Large
John Theodore Fee (Appointed 7/97-7/12 by Bulova) Term exp. 7/15	Fairfax County Resident #10 Representative	**John T. Fee** (Bulova)	By Any Supervisor	At-Large
Scott Hine (Appointed 2/07 by McConnell; 7/09-9/12 by Herrity) Term exp. 7/15	Fairfax County Resident #11 Representative		By Any Supervisor	At-Large
VACANT (Formerly held by Leah Durant; appointed 6/13 by Herrity) Term exp. 7/15 *Resigned*	Fairfax County Resident #12 Representative		By Any Supervisor	At-Large
Leiann Leppin Luse (Appointed 7/12 by Smyth) Term exp. 7/15	Fairfax County Resident #13 Representative		By Any Supervisor	At-Large

CRIMINAL JUSTICE ADVISORY BOARD (CJAB) (3 years)

Incumbent History	Requirement	Nominee	Supervisor	District
VACANT (Formerly held by Marc Greidinger; appointed 4/13 by Cook) Term exp. 11/15 *Resigned*	Braddock District Representative		Cook	Braddock
VACANT (Formerly held by Janice Shafer; appointed 9/14 by Frey) Term exp. 4/16 *Resigned*	Sully District Representative		Frey	Sully

ECONOMIC ADVISORY COMMISSION (3 years)

Incumbent History	Requirement	Nominee	Supervisor	District
VACANT (Formerly held by Suzette Kern; appointed 1/09-12/11 by McKay) Term exp. 12/14 *Resigned*	Lee District Representative		McKay	Lee

ECONOMIC DEVELOPMENT AUTHORITY (EDA) (4 years)

Incumbent History	Requirement	Nominee	Supervisor	District
Michael Lewis (Appointed 9/04-6/07 by Connolly; 6/12 by Bulova) Term exp. 7/1/15	At-Large #2 Citizen Representative	**Michael** Lewis	By Any Supervisor	At-Large
Mark Lowham (Appointed 12/09-7/11 by Bulova) Term exp. 7/1/15	At-Large #6 Citizen Representative	**Mark Lowham**	By Any Supervisor	At-Large

ENGINEERING STANDARDS REVIEW COMMITTEE (3 years)

Incumbent History	Requirement	Nominee	Supervisor	District
VACANT (Formerly held by James M. Dougherty; appointed 9/10-3/12 by Smyth) Term exp. 3/15 *Resigned*	Citizen #2 Representative		By Any Supervisor	At-Large

FAIRFAX AREA DISABILITY SERVICES BOARD
(3 years- limited to 2 full consecutive terms per MOU, after initial term)
[NOTE: Persons may be reappointed after being off for 3 years. State Code requires that membership in the local disabilities board include at least 30 percent representation by individuals with physical, visual or hearing disabilities or their family members. For this 15-member board, the minimum number of representation would be 5.

Incumbent History	Requirement	Nominee	Supervisor	District
VACANT (Formerly held by Richard Nilsen; appointed 6/13 by McKay) Term exp. 11/15 *Resigned*	Lee District Representative		McKay	Lee
Jacqueline Browne (Appointed 9/08-12/11 by Gross) Term exp. 11/14 ***Not eligible for reappointment***	Mason District Representative		Gross	Mason
VACANT (Formerly held by Ann Pimley; appointed 9/03-11/6 by Frey) Term exp. 11/09 *Resigned*	Sully District Representative		Frey	Sully

FAIRFAX COMMUNITY LONG TERM CARE COORDINATING COUNCIL (2 years)

CONFIRMATIONS NEEDED:

- Ms. Rose Mario as a Medical Community Representative
- Dr. Carol Quam Urban as an Educational Organization Representative
- Ms. Margaret Anne Miklancie as an Educational Organization Representative
- Mr. Jim Phelps as a Long Term Care Providers Representative
- Mr. David Posner as a Long Term Care Providers Representative

FAIRFAX COUNTY CONVENTION AND VISITORS CORPORATION BOARD OF DIRECTORS (3 years)

Incumbent History	Requirement	Nominee	Supervisor	District
Paul Gilbert (Appointed 6/09-6/12 by Bulova) Term exp. 6/15	At-Large Chairman Representative	**Paul Gilbert**	Bulova	At-Large Chairman's
David Eisenman (Appointed 8/04-6/11 by Hudgins) Term exp. 6/14 ***Not eligible for reappointment*** (need 1 year lapse)	Hunter Mill District Representative		Hudgins	Hunter Mill
David Melugin (Appointed 7/05-6/06 by Kauffman; 6/09-6/12 by McKay) Term exp. 6/15	Lee District Representative	**Sam Misleh**	McKay	Lee
Fouad Qreitum (Appointed 9/12 by Herrity) Term exp. 6/15	Springfield District Representative		Herrity	Springfield
Frank McNally (Appointed 10/11-6/12 by Frey) Term exp. 6/15	Sully District Representative		Frey	Sully

FAIRFAX COUNTY EMPLOYEES' RETIREMENT SYSTEM BOARD OF TRUSTEES
(4 years)

Incumbent History	Requirement	Nominee	Supervisor	District
Gordon Trapnell (Appointed 9/87-6/91 by Davis; 5/95-5/99 by Dix; 7/03-6/11 by Gross) Term exp. 6/15	At-Large #2 Representative	**Gordon Trapnell** (Gross)	By Any Supervisor	At-Large

FAIRFAX-FALLS CHURCH COMMUNITY SERVICES BOARD
(3 years – limited to 3 full terms)
[NOTE: In accordance with *Virginia Code* Section 37.2-502, "**prior to making any appointment, the appointing authority shall disclose and make available to the public the names of those persons being considered for appointment**. The appointing authority shall also make information on the candidates available to the public, if such information is available to the appointing authority." **Members can be reappointed after 3 year break from initial 3 full terms. VA Code 37.2-502]**

Incumbent History	Requirement	Nominee	Supervisor	District
Pamela Barrett (Appointed 9/09-6/12 by Bulova) Term exp. 6/15	At-Large Chairman's #1 Representative		Bulova	At-Large Chairman's
Molly E. Long (Appointed 12/14 by Cook) Term exp. 6/15	Braddock District Representative	**Molly E. Long** (Nomination announced *on May 12, 2015)*	Cook	Braddock
VACANT (Formerly held by Juan Pablo Segura; appointed 10/12-7/14 by Foust) Term exp. 6/17 *Resigned*	Dranesville District Representative	**Katherine C. Kehoe** (Nomination announced *on June 2, 2015)*	Foust	Dranesville

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FAIRFAX-FALLS CHURCH COMMUNITY SERVICES BOARD
(3 years – limited to 3 full terms)
continued

Incumbent History	Requirement	Nominee	Supervisor	District
Katherine K. Hanley (Appointed 6/13 by Hudgins) Term exp. 6/15	Hunter Mill District Representative	**Katherine K. Hanley** (Nomination announced *on May 12, 2015)*	Hudgins	Hunter Mill
Suzette Kern (Appointed 9/12 by McKay) Term exp. 6/15	Lee District Representative	**Suzette Kern** (Nomination announced *on May 12, 2015)*	McKay	Lee

HEALTH CARE ADVISORY BOARD (4 years)

Incumbent History	Requirement	Nominee	Supervisor	District
Timothy Yarboro (Appointed 7/96-6/03 by Hanley; 6/07 by Connolly; 6/11 by Bulova) Term exp. 6/15	At-Large Representative		By Any Supervisor	At-Large
Ellyn Crawford (Appointed 6/07-6/11 by Hudgins) Term exp. 6/15	Hunter Mill District Representative		Hudgins	Hunter Mill
Marlene Blum (Appointed 8/85 by Scott; 6/87-6/91 by Hanley; 5/95-6/03 by Connolly; 6/07-6/11 by Smyth) Term exp. 6/15	Providence District Representative	**Marlene Blum**	Smyth	Providence
VACANT (Formerly held by Judith Beattie; appointed 6/96-9/12 by Frey) Term exp. 6/16 *Resigned*	Sully District Representative		Frey	Sully

HEALTH SYSTEMS AGENCY BOARD
(3 years - limited to 2 full terms, may be reappointed after 1 year lapse)

Incumbent History	Requirement	Nominee	Supervisor	District
Sally Patterson (Appointed 7/12 by Bulova) Term exp. 6/15 ***Not eligible for reappointment*** (need 1 year lapse)	Consumer #3 Representative		By Any Supervisor	At-Large
VACANT (Formerly held by Andrew A. Painter; appointed 2/11 by Smyth) Term exp. 6/13 *Resigned*	Consumer #4 Representative		By Any Supervisor	At-Large
Batul N. Alsaigh (Appointed 7/12 by Foust) Term exp. 6/15	Consumer #5 Representative		By Any Supervisor	At-Large
VACANT (Formerly held by Carol Ann Coryell; appointed 6/05-6/08 by Frey) Term exp. 6/11 *Resigned*	Consumer #6 Representative		By Any Supervisor	At-Large
VACANT (Formerly held by Samuel Jones; appointed 12/09 by Gross) Term exp. 6/12 *Resigned*	Provider #1 Representative		By Any Supervisor	At-Large
Dave Lucas (Appointed 12/10-7/12 by Hyland) Term exp. 6/15	Provider #2 Representative		By Any Supervisor	At-Large
Fizzah Z. Gocke (Appointed 12/12 by McKay) Term exp. 6/15	Provider #3 Representative	**Fizzah Z. Gocke** (McKay)	By Any Supervisor	At-Large

HISTORY COMMISSION (3 years)

[NOTE: The Commission shall include at least one member who is a resident from each supervisor district.] Current Membership:

Braddock - 3	Lee - 2	Providence - 1
Dranesville - 2	Mason - 2	Springfield - 2
Hunter Mill - 3	Mt. Vernon - 3	Sully - 2

Incumbent History	Requirement	Nominee	Supervisor	District
Esther McCullough (Appointed 3/00-11/02 by Hanley; 12/08-12/11 by Connolly) Term exp. 12/14 *(Sully District Resident)*	Citizen #10 Representative		By Any Supervisor	At-Large

HUMAN RIGHTS COMMISSION (3 years)

Incumbent History	Requirement	Nominee	Supervisor	District
VACANT (Formerly held by Heather Lawson; appointed 1/03-10/14 by Hudgins) Term exp. 9/17 *Resigned*	At-Large #12 Representative		By Any Supervisor	At-Large

HUMAN SERVICES COUNCIL (4 years)

Incumbent History	Requirement	Nominee	Supervisor	District
Kevin Bell (Appointed 6/95-6/99 by Hanley; 7/03-7/07 by Connolly; 1/12 by Bulova) Term exp. 7/15	At-Large Chairman's Representative	**Kevin Bell**	Bulova	At-Large Chairman's

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HUMAN SERVICES COUNCIL (4 years) continued

Incumbent History	Requirement	Nominee	Supervisor	District
Jennifer Dannick (Appointed 7/10 by Bulova; 7/11 by Cook) Term exp. 7/15	Braddock District Representative		Cook	Braddock
Steven Bloom (Appointed 11/11 by Foust) Term exp. 7/15	Dranesville District #1 Representative		Foust	Dranesville
VACANT (Formerly held by Kathleen Murphy; appointed 7/08-7/12 By Foust) *Resigned*	Dranesville District #2 Representative		Foust	Dranesville
VACANT (Formerly held by Richard Gonzalez; appointed 7/97-7/05 by Kauffman; 8/09 by McKay) Term exp. 7/13 *Resigned*	Lee District #1 Representative		McKay	Lee
Carol Hawn (Appointed 9/07-10/11 by Frey) Term exp. 7/15	Sully District Representative	**Carol Hawn**	Frey	Sully

INFORMATION TECHNOLOGY POLICY ADVISORY COMMITTEE (ITPAC)
(3 years)

Incumbent History	Requirement	Nominee	Supervisor	District
VACANT (Formerly held by Walter Williams appointed 5/09-12/11 by Herrity) Term exp. 12/14 *Resigned*	Springfield District Representative	**John Yeatman**	Herrity	Springfield

LIBRARY BOARD
(4 years)

Incumbent History	Requirement	Nominee	Supervisor	District
Charles A. Fegan (Appointed 3/09-7/11 by Bulova) Term exp. 7/15	At-Large Chairman's Representative	**Charles A. Fegan**	Bulova	At-Large Chairman's

NORTHERN VIRGINIA COMMUNITY COLLEGE BOARD
(4 years – limited to 2 full terms)

Incumbent History	Requirement	Nominee	Supervisor	District
Bruce H. Neilson (Appointed 1/11-6/11 by Bulova) Term exp. 6/15	Fairfax County #1 Representative	**Bruce H. Neilson**	By Any Supervisor	At-Large

OVERSIGHT COMMITTEE ON DRINKING AND DRIVING (3 years)

Incumbent History	Requirement	Nominee	Supervisor	District
VACANT (Formerly held by Eileen Nelson; appointed 3/04-6/07 by Connolly; 6/10 by Bulova) Term exp. 6/13 *Resigned*	At-Large Chairman's Representative		Bulova	At-Large Chairman's
William Uehling (Appointed 3/10-7/12 by Bulova) Term exp. 6/15	Braddock District Representative		Cook	Braddock
VACANT (Formerly held by Amy K. Reif; appointed 8/09-6/12 by Foust) Term exp. 6/15 *Resigned*	Dranesville District Representative		Foust	Dranesville
VACANT (Formerly held by Adam Parnes; appointed 9/03-6/12 by Hudgins) Term exp. 6/15 *Resigned*	Hunter Mill District Representative		Hudgins	Hunter Mill
VACANT (Formerly held by Richard Nilsen; appointed 3/10-6/10 by McKay) Term exp. 6/13 *Resigned*	Lee District Representative		McKay	Lee
Tina Montgomery (Appointed 9/10-6/11 by Smyth) Term exp. 6/14	Providence District Representative		Smyth	Providence

ROAD VIEWERS BOARD (1 year)

Incumbent History	Requirement	Nominee	Supervisor	District
VACANT (Formerly held by Joseph Bunnell; appointed 9/05-12/06 by McConnell; 2/08-11/13 by Herrity) Term exp. 12/14 *Resigned*	At-Large #1 Representative		By Any Supervisor	At-Large
VACANT (Formerly held by Stephen E. Still; appointed 6/06-12/11 by Smyth) Term exp. 12/12 *Resigned*	At-Large #4 Representative		By Any Supervisor	At-Large

SMALL BUSINESS COMMISSION, FAIRFAX COUNTY (3 years)

Incumbent History	Requirement	Nominee	Supervisor	District
VACANT (Formerly held by Suchada Langley; appointed 11/11-12/11 by Hudgins) Term exp. 12/14 *Resigned*	At-Large #2 Representative		By Any Supervisor	At-Large

SOUTHGATE COMMUNITY CENTER ADVISORY COUNCIL (2 years)

Incumbent History	Requirement	Nominee	Supervisor	District
VACANT (Formerly held by Robert Dim; appointed 3/05-3/12 by Hudgins) Term exp. 3/14 *Resigned*	Fairfax County #5 Representative		By Any Supervisor	At-Large
VACANT (Formerly held by Cleveland Williams; appointed 12/11-3/13 by Hudgins) Term exp. 3/15 *Resigned*	Fairfax County #7 Representative		By Any Supervisor	At-Large
VACANT (Formerly held by Linda Diamond; appointed 3/07-4/13 by Hudgins) Term exp. 3/15 *Resigned*	Fairfax County #8 Representative		By Any Supervisor	At-Large

TENANT LANDLORD COMMISSION (3 years)

Incumbent History	Requirement	Nominee	Supervisor	District
VACANT (Formerly held by Michael Schwarz; appointed 1/14 by Herrity) Term exp. 12/15 *Resigned*	Citizen Member #3 Representative	**Eric Fielding** (Bulova)	By Any Supervisor	At-Large
VACANT (Formerly held by Sally D. Liff; appointed 8/04-1/11 by Smyth) Term exp. 1/14 *Deceased*	Condo Owner Representative		By Any Supervisor	At-Large

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TENANT LANDLORD COMMISSION (3 years)
continued

Incumbent History	Requirement	Nominee	Supervisor	District
VACANT (Formerly held by Evelyn McRae; appointed 6/98-8/01 by Hanley; 12/04-1/08 by Connolly; 4/11 by Bulova) Term exp. 1/14 *Resigned*	Tenant Member #2 Representative		By Any Supervisor	At-Large
VACANT (Formerly held by Kevin Denton; appointed 4/10&1/11 by Smyth) Term exp. 1/14 *Resigned*	Tenant Member #3 Representative		By Any Supervisor	At-Large

TRAILS AND SIDEWALKS COMMITTEE (2 years)

Incumbent History	Requirement	Nominee	Supervisor	District
Jan Reitman (Appointed 3/08-1/12 by Gross) Term exp. 1/14	Mason District Representative		Gross	Mason

TREE COMMISSION (3 years)

Incumbent History	Requirement	Nominee	Supervisor	District
VACANT (Formerly held by Dean Dastvar; appointed 11/13 by Herrity) Term exp. 10/16 *Resigned*	Springfield District Representative		Herrity	Springfield

TYSONS TRANSPORTATION SERVICE DISTRICT ADVISORY BOARD (2 YEARS)

Incumbent History	Requirement	Nominee	Supervisor	District
Michael Bogasky (Appointed 2/13 by Smyth) Term exp. 2/15	Residential Owners and HOA/Civic Association Representative #1		Smyth	Providence
VACANT (Formerly held by Ron Parson; appointed 2/13 by Smyth) Term exp. 2/17 *Resigned*	Residential Owners and HOA/Civic Association Representative #2	**Douglas M. Doolittle** (Smyth)	Smyth	Providence

WATER AUTHORITY (3 years)

Incumbent History	Requirement	Nominee	Supervisor	District
Anthony Griffin (Appointed 5/12-6/12 by Bulova) Term exp. 6/15	At-Large Chairman's Representative	**Anthony Griffin**	Bulova	At-Large Chairman's
J. Alan Roberson (Appointed 8/09-6/12 by Cook) Term exp. 6/15	Braddock District Representative		Cook	Braddock
Frank Begovich (Appointed 9/04-6/06 by Kauffman; 6/09-6/12 by McKay) Term exp. 6/15	Lee District Representative	**Frank Begovich**	McKay	Lee

WETLANDS BOARD (5 years)

Incumbent History	Requirement	Nominee	Supervisor	District
Elizabeth Martin (Appointed 11/09 by Gross) Term exp. 12/13	At-Large #1 Representative		By Any Supervisor	At-Large

Board Agenda Item
June 23, 2015

10:50 a.m.

Items Presented by the County Executive

Board Agenda Item
June 23, 2015

ADMINISTRATIVE - 1

Authorization to Advertise a Public Hearing to Consider Amendments to The Code of the County of Fairfax, Virginia—Chapter 30 (Minimum Private School and Child Care Facility Standards), Article 3 (Home Child Care Facilities)

ISSUE:
Authorization to advertise a public hearing to consider amendments to *The Code of the County of Fairfax*, Chapter 30, Article 3.

RECOMMENDATION:
The County Executive recommends that the Board authorize the advertisement of the public hearing on July 28, 2015, at 4:30 p.m., to consider adoption of these amendments.

TIMING:
Board action is requested on June 23, 2015 to provide sufficient time to advertise a July 28, 2015 public hearing on the proposed amendments.

BACKGROUND:
Chapter 30, Article 3, of the County Code regulates Home Child Care Facilities in which a person cares for five or fewer children. Section 30-3-2 of this Chapter sets forth the background check requirements for the applicant of a proposed home child care facility and each adult resident in the facility. This search, completed by the Virginia State Police, provides a report of any police record for the individual in the state of Virginia.

Based on the information on the report, the Office for Children determines whether there are any barrier offense convictions that would prevent the issuance of a family child care permit. Barrier offenses are defined by the Code of the County of Fairfax, Virginia Chapter 30.

Section 30-3-2 currently requires a search of the Central Criminal Records Search every five years for each applicant and adult resident in a facility. The Office for Children is proposing to reduce the time in which the background checks are renewed to every three years. The amendment will align background check requirements for the Fairfax County family home child care facilities with the background check requirements found in 63.2-1704, 63.2-1720, 63.2-1721, 63.2-1722, 63.2-1724, and 63.2-1727 of the

Code of Virginia, which are the statutes associated with child care facilities licensed and regulated by the State.

Currently, the cost to complete a background check is $15.00 per individual. The proposed amendment to the ordinance will require the applicant and each adult resident in the facility to pay this fee every three years instead of every five years.

The proposed amendments also delete language from Sections 30-3-4 in reference to annual training hours required, and 30-3-6 in reference to non-climbable barrier requirements, which set forth time deadlines that have expired and serve no further purpose.

It is important to note that in response to recent legislation passed by the State of Virginia and the reauthorization of the national Child Care Development Block Grant, the Office for Children will be proposing further amendments to Chapter 30 of the County Code in the future. These proposed amendments will include responses to the recent state legislation which lowers the threshold for family child care providers to have a state license from six to five children effective July 1, 2016, and a requirement for applicants and adult residents to have a national background check which will be effective July 1, 2017.

FISCAL IMPACT:
None

ENCLOSED DOCUMENTS:
Attachment 1: Proposed Amendments to *The Code of the County of Fairfax*, Chapter 30, Article 3.

STAFF:
Patricia D. Harrison, Deputy County Executive
Nannette M. Bowler, Director, Department of Family Services
Anne-Marie D. Twohie, Director, Office for Children
Daniel Robinson, Assistant County Attorney

AN ORDINANCE AMENDING
ARTICLE 3 OF CHAPTER 30 OF THE FAIRFAX COUNTY CODE, RELATING TO HOME CHILD CARE FACILITIES

Draft of May 4, 2015

AN ORDINANCE to amend the Fairfax County Code by amending and readopting Sections 30-3-2, 30-3-4, and 30-3-6, all relating to home child care facilities.

Be it ordained by the Board of Supervisors of Fairfax County:

1. That Sections 30-3-2, 30-3-4 and 30-3-6 are amended and readopted as follows:

Article 3. – Home Child Care Facilities.

Section 30-3-2. Annual permit application, issuance or denial.

(a) A person proposing to operate a home child care facility shall submit an application on a form prepared by the Director of the Office for Children, which shall include:

(i) The name and address of the home child care facility;

(ii) The name of the applicant;

(iii) A statement of whether the applicant currently holds or previously held a home child care facility permit in the County;

(iv) The names of all persons who reside in the home;

(v) Disclosures from the applicant and each adult who resides in the proposed facility stating whether he or she has committed any barrier offense, consent forms signed by the applicant and each adult who resides in the proposed facility allowing the Director of the Office for Children to request a search of the Central Criminal Records Exchange for files on each such person, and payment of an investigation fee in an amount equal to the fee established by the Virginia State Police for conducting a records search multiplied by the number of persons making disclosures and providing consent forms. When the Central Criminal Records Exchange records indicate that any such person has a criminal record in another state, or when the Director otherwise deems appropriate, the Director may also require that the applicant or such adult who resides in the proposed facility consent to and pay for a national criminal background check;

(vi) Statements from the applicant and each adult who resides in the proposed facility, and statements from a parent, guardian or legal custodian on behalf of all minors age 14 and older who reside in the proposed facility, consenting to the release of information to the Director of the Office for Children from child protective services investigating agencies reflecting whether any such individual has been the subject of a founded complaint of abuse or neglect; the term "child protective services" shall have the meaning defined by Virginia law;

(vii) Copies of the applicant's current certifications in first aid and cardiopulmonary resuscitation (CPR);

(viii) Proof of the applicant's compliance with the training requirements established in Section 30-3-4(b), which shall consist of records provided by the trainer or, if none are provided by the trainer, records maintained by the applicant;

(ix) A description of the structure in which the home child care facility is proposed to be operated, including a description of all places and areas to which the children shall have access;

(x) The proposed hours of operation;

(xi) A statement of whether the applicant is 18 or more years old;

(xii) A certificate from a physician, physician's designee, or Health Department official stating that acceptable screening methods (tuberculin skin test and/or tuberculosis risk and symptom screen and/or chest X-ray), singly or in combination as determined appropriate by the signatory, indicate that the applicant and all adult household residents are currently free from communicable tuberculosis. The screen must be performed every two years or more frequently as recommended by a physician or the local health department;

(xiii) A written policy describing what the applicant will do with children in care who are sick and a written emergency preparedness plan;

(xiv) Such other information, including, but not limited to, information concerning applicant's child care training and special skills, as the Director of the Office for Children may deem appropriate;

(xv) The application fee of $14, which is in addition to any business or occupation license tax imposed by the County, and any other taxes or fees that may be required to engage in the business.

If the information the provider submits in accordance with subsections (iv), (v), (vi), and (xii) changes during the term of the permit, the provider must report the change to the Director of the Office for Children within 21 days and must promptly submit updated information and documents.

(b) Upon submission of an application to the Office for Children:

(i) The Director of the Office for Children shall inspect the proposed facility to determine whether it is in compliance with this Article and all applicable Virginia law that may affect the health and safety of the children who may attend or be present at the facility.

(ii) The Fire Code Official shall conduct a fire safety inspection of the proposed facility and advise the Director of the Office for Children of any noncompliance with this Article or any applicable Virginia law that may affect the health and safety of the children who may attend or be present at the facility.

(iii) If the applicant does not hold a permit under this Article at the time of the application, the Director of the Office for Children shall request a search of the Central Criminal Records Exchange to determine whether the applicant or any persons who

reside in the home have committed any crimes that constitute barrier offenses. When the Central Criminal Records Exchange records indicate that any such person has a criminal record in another state, or when the Director otherwise deems appropriate, the Director may also require that the applicant or such adult who resides in the proposed facility consent to and pay for a national criminal background check. Otherwise, the Director may request a criminal records search if ~~five~~ three or more years have passed since the last records search on an individual, or upon receipt of new information submitted in accordance with this section, or as the Director deems appropriate in extenuating circumstances.

(iv) The Director of the Office for Children shall request information from child protective services investigating agencies as deemed necessary to determine whether the applicant or any person age 14 and older who resides in the proposed facility has been the subject of a founded complaint of abuse or neglect.

(c) The Director of the Office for Children shall issue a permit to an applicant if the Director determines from the information contained in the permit application, the facility inspections, and the records searches that (i) the applicant is an adult; (ii) neither the applicant nor any person who resides in the facility has committed any barrier offense; and (iii) both the applicant and the proposed facility are in compliance with this Article and all applicable Virginia laws that may affect the health and safety of the children who may attend or be present at the proposed facility. The permit shall be displayed in the home child care facility by the provider.

(d) The Director of the Office for Children shall deny a permit to any applicant if the Director determines from the information contained in the permit application, the facility inspections, and the records searches that (i) the applicant is not an adult; (ii) the applicant or any person who resides in the facility has committed any barrier offense; or (iii) either the applicant or the proposed facility is not in compliance with this Article and all applicable Virginia laws that may affect the health and safety of the children who may attend or be present at the proposed facility. If the denial is based on the results of the searches of the records of the Central Criminal Records Exchange, the national criminal background check, or the Department of Social Services, the Director shall provide the applicant a copy of the information upon which the denial was based.

Section 30-3-4. Provider Qualifications.

(a) The provider must be an adult.

(b) The provider must be trained in areas such as physical, intellectual, social, and emotional child development; behavior management and discipline techniques; health and safety in the home child care environment; art and music activities for children; nutrition; child abuse detection and prevention; recognition and prevention of the spread of communicable diseases; emergency preparedness; and business practices of family child care. ~~From February 1, 2013, through December 31, 2013, any applicant granted an initial or renewal permit must attend 12 hours of training by an approved trainer during the term of the permit.~~ From January 1, 2014, through December 31, 2014, any person granted an initial or renewal permit must attend 14 hours of training by an approved trainer during the term of the permit. Any applicant granted an initial or renewal permit at any time on or after January 1, 2015, must attend 16 hours of training by an approved trainer during the term of the permit. The Director of the Office for Children

shall maintain a list of entities that are approved as trainers. Upon request from the provider, accompanied by information about the entity and/or the course, the Director of the Office for Children may approve additional trainers or a specific course.

(c) The provider must be currently certified in first aid and cardiopulmonary resuscitation (CPR).

(d) In addition to the training required in subsection (b) above, and except as set forth in Section 30-3-6 (o) and (p), a provider who administers prescription medications or non-prescription medications to children in care must satisfactorily complete a training program for this purpose developed or approved by the Board of Nursing and taught by a registered nurse, licensed practical nurse, doctor of medicine or osteopathic medicine, or pharmacist. Providers required to complete the training program shall be retrained at three-year intervals.

Section 30-3-6. Physical facilities, equipment and operation.

(a) Providers shall supervise children in a manner which ensures that the provider is aware of what the children are doing at all times and can promptly assist or redirect activities when necessary. In deciding how closely to supervise children, providers shall consider the ages of the children, individual differences and abilities, layout of the house and play area, neighborhood circumstances or hazards and risk activities in which children are engaged.

(b) All rooms used for child care shall be dry, well-lighted and have adequate ventilation and shall be smoke free when any child in care is present. Windows that can be opened shall be screened from April 1 through November 1 of each year.

(c) The provider shall provide each child with adequate space to allow free movement and active play indoors and out. Indoor and outdoor areas shall provide developmentally appropriate activities, supplies, and materials that are safe and accessible. All areas shall be free of dangerous and hazardous conditions.

(d) Covered, washable waste receptacles shall be provided for all waste materials, diapers, garbage, and refuse. Trash and other waste materials shall be removed as often as necessary to prevent excessive accumulations and shall be deposited in trash or waste disposal containers.

(e) Toxic or dangerous materials shall be stored in areas that are inaccessible to children and separate from food supplies and areas in which food is prepared.

(f) Dogs and cats four months old or older that regularly are present at the facility shall be immunized for rabies, and records of such immunizations shall be kept available at the facility for inspection by the Director of the Office for Children.

(g) A refrigerator shall be used for perishable food and that refrigerator shall maintain a constant temperature of 41 degrees Fahrenheit or less. Food brought into any home child care facility for consumption by nonresident children shall be clearly marked for consumption by the children for whom the food is intended. Meals or snacks shall be offered to the children at least once every three hours. Home child care facilities that provide meals or snacks to children in care shall follow the most recent, age-appropriate nutritional guidelines set forth by the United States Department of Agriculture, Food and Nutrition Service.

(h) Each home child care facility that is not served by a public water supply shall have a private water supply approved by the Department of Health. Each home child care facility that is not served by a public sewage disposal system shall have a private sewage disposal system approved by the Department of Health. Drinking water from a public water supply, well permitted by the Department of Health, or other source acceptable to the Department of Health shall be available for all children.

(i) Except for those rooms used by children while sleeping under covers, all rooms used for child care shall be maintained at a temperature of not less than 68 degrees Fahrenheit.

(j) Providers shall not use or allow any other person to use corporal punishment, physical, verbal, or emotional punishment, or any humiliating or frightening methods of discipline.

(k) Firearms of every type and purpose shall be stored unloaded in a locked container, compartment, or cabinet, and apart from ammunition. Ammunition shall be stored in a locked container, compartment, or cabinet during the home child care facility's hours of operation. If a key is used to lock the container, compartment, or cabinet, the key shall be inaccessible to children.

(l) Providers shall handle blood, bodily fluids, and other potentially infectious materials as if known to be infectious for human immunodeficiency virus, hepatitis B virus, and other blood borne pathogens.

(m) During rest times the provider shall provide appropriate sleeping equipment that meets the current standards of the United States Consumer Product Safety Commission for children birth through 12 months of age and for children over 12 months of age who are not developmentally ready to sleep on a cot or bed. If children are in care overnight on a regular or frequent basis, then the provider shall provide cribs that meet the current standards of the United States Consumer Product Safety Commission for full-size baby cribs for children from birth through 12 months of age and for children over 12 months of age who are not developmentally ready to sleep on a cot or bed.

(n) All home child care facilities shall be maintained free from rodents and insect infestation.

(o) Except as set forth in subsection (p) below, whenever the home child care facility has agreed to administer prescription medications or non-prescription medications, the medication shall be administered in compliance with the Virginia Drug Control Act by a provider who has satisfactorily completed the training required by Section 30-3-4(d).

(p) Notwithstanding subsection (o) above, a provider may administer nonprescription topical skin products such as sunscreen, diaper ointment and lotion, oral teething medicine, and insect repellent, provided the following requirements are met:

(i) The provider has obtained written authorization, at least annually, from a parent or guardian noting any known adverse reactions;

(ii) The product is in the original container and, if the product is provided by the parent, labeled with the child's name;

(iii) The product is applied in accordance with the manufacturer's instructions;

(iv) Parents are informed immediately of any adverse reaction;

(v) The product shall not be used beyond the expiration date of the product;

(vi) Sunscreen must have a minimum sunburn protection factor (SPF) of 15; and

(vii) The product does not need to be kept locked, but shall be inaccessible to children.

(q) The home child care facility shall annually obtain written permission from the parent of each child who participates in swimming or wading activities, and a written statement from the parent advising of a child's swimming skills before the child is allowed in water above the child's shoulder height.

(i) The provider shall have a system for accounting for all children in the water.

(ii) Outdoor swimming activities shall occur only during daylight hours.

(iii) When one or more children are in water that is more than two feet deep in a pool, lake, or other swimming area on or off the premises of the home child care facility, the provider and another person 15 years or older shall be present at all times and either the provider or the other person must be currently certified in basic water rescue, community water safety, water safety instruction, or lifeguarding. The certification shall be obtained from a national organization such as the American Red Cross or the YMCA.

(r)

(i) Access to the water in above-ground swimming pools shall be prevented by locking and securing the ladder in place or storing the ladder in a place inaccessible to children.

(ii) A non-climbable barrier at least four feet high such as, but not limited to, a fence or impenetrable hedge shall surround outdoor play areas located within 30 feet of drowning hazards such as, but not limited to, in-ground swimming or wading pools, ponds, or fountains not enclosed by safety fences. ~~Facilities permitted prior to the effective date of this ordinance must comply fully with the requirements of this subsection (r)(ii) by July 1, 2013.~~

(iii) Portable wading pools without integral filter systems shall be emptied, rinsed, and filled with clean water after use by each group of children or more frequently as necessary; and shall be emptied, sanitized, and stored in a position to keep them clean and dry when not in use during the home child care facility's hours of operation. Portable wading pools shall not be used by children who are not toilet trained. Bathtubs, buckets, and other containers of liquid accessible to children shall be emptied immediately after use.

(iv) Hot tubs, spas, and whirlpools shall not be used by children in care, and shall be covered with safety covers while children are in care.

2. That the provisions of this ordinance are severable, and if any provision of this ordinance or any application thereof is held invalid, that invalidity shall not affect the other provisions or applications of this ordinance that can be given effect without the invalid provision or application.

3. That this Ordinance is effective upon adoption.

GIVEN under my hand this _____ day of _____, 2015

_____

Clerk to the Board of Supervisors

Board Agenda Item
June 23, 2015

ADMINISTRATIVE - 2

Authorization for the County Executive to Execute Contract Modification No. 2 to the Virginia Water Quality Improvement Fund Point Source Grant and Operation and Maintenance Agreement Contract #440-S-09-08 Between the County of Fairfax and the Commonwealth of Virginia

ISSUE:
Board of Supervisors authorization is needed for the County Executive to execute the attached Contract Modification No. 2 to the Water Quality Improvement Fund (WQIF) Point Source Grant and Operation and Maintenance Agreement (Contract #440-S-09-08) between the County and the Commonwealth of Virginia.

RECOMMENDATION:
The County Executive recommends that the Board authorize the County Executive to execute the attached Contract Modification No. 2 to the WQIF agreement on behalf of the County.

TIMING:
Board action is requested on June 23, 2015.

BACKGROUND:
With the adoption of the Virginia Water Quality Improvement Act of 1997, and as amended in 2005, the Virginia General Assembly established a grant fund program to partially fund point and non-point source nutrient reduction projects to meet the goals of the Chesapeake Bay Program. On September 11, 2008, the County submitted a WQIF grant request for state-of-the-art nutrient reduction projects at the Noman M. Cole Pollution Control Plant (NMCPCP). In the original request, NMCPCP project costs were estimated to be $134.5 million, of which $87.5 million was determined by the Virginia Department of Environmental Quality (DEQ) to be eligible for 35% grant funding. The estimated total amount of the grant was $30.6 million. The original contract with the state was approved by the Board of Supervisors at its meeting on February 23, 2009.

Contract Modification No. 1, which was approved by the Board on May 1, 2012, reduced the estimated project costs to $104.1 million and the grant eligible costs to $70.2 million based on “as-bid” costs for some of the construction contracts. The grant funding percentage of 35% remained unchanged; based on the revised project costs

the total grant amount was reduced to $24.6 million. Revisions to the project schedule were also made to more accurately reflect various phases of the project completion dates.

Contract Modification No. 2 is necessary to reflect the actual total construction costs resulting from adjustments to the scope of the original project and final construction costs, as the project has been completed. Modification No. 2 reduces the grant amount to $20,382,338, which is 35% of the total eligible actual project cost of $58,235,251. This modification also reduces the monetary assessment for breach of the contract by the County to $2,043,820 annually or $40,876,400 during life of this agreement.

FISCAL IMPACT:
Fairfax County has received a total of $20,382,338 in state grant funding based on the as-bid construction costs and adjustments to the scope of the original project instead of the planning estimates of $24.6 million, as reflected by Contract Modification No.1. As set by DEQ guidelines, Fairfax County grant funding remains limited to 35% of project eligible costs or $20,382,338 ($58,235,251.43X 35%). Funding in the amount of $20,382,338 has already been received under this agreement with no additional requisitions to be submitted.

ENCLOSED DOCUMENTS:
Attachment I – Virginia Water Quality Improvement Fund Point Source Grant and Operation and Maintenance Agreement Contract #440-S-09-08,
Contract Modification No. 2

STAFF:
Robert A. Stalzer, Deputy County Executive
James W. Patteson, Director, Department of Public Works and Environmental Services (DPWES)
Randy Bartlett, Deputy Director, DPWES
Shahram Mohsenin, Director, Wastewater Planning and Monitoring Division, DPWES

ATTACHMENT I

VIRGINIA WATER QUALITY IMPROVEMENT FUND
POINT SOURCE GRANT AND
OPERATION AND MAINTENANCE AGREEMENT

Grantee: Fairfax County **Grant: #440-S-09-08**

CONTRACT MODIFICATION NO. 2

A. Delete Section 4.0, Grant Amount, and substitute in its place the following:

4.0. Grant Amount. The total grant award from the Fund under this Agreement is $20,382,338 and represents the Commonwealth's thirty-five percent (35%) share of the Total Eligible Project Budget. Any material changes made to the Eligible Project after execution of this Agreement, which alters the Total Eligible Project Budget, will be submitted to the Department for review of grant eligibility. The amount of the grant award set forth herein may be modified from time to time by agreement of the parties to reflect changes to the Eligible Project or the Total Eligible Project Budget.

B. Delete Section 8.2, Monetary Assessments for Breach, and substitute in its place the following:

8.2. Monetary Assessments for Breach. In no event shall total Monetary Assessments pursuant to this Agreement exceed (i) $2,043,820 annually or (ii) $40,876,400 during the life of this Agreement. Monetary Assessments will be paid into the State Treasury and credited to the Fund. The Director's right to collect Monetary Assessments does not affect in any way the Director's right to secure specific performance of this Agreement using such other legal remedies as may otherwise be available. Within 90 days of receipt of written demand from the Director, the Grantee shall pay the following Monetary Assessments for the corresponding material breaches of this Agreement unless the Grantee asserts a defense pursuant to the requirements of Section 8.3 herein.

C. *Delete existing Exhibit F and substitute the following:*

EXHIBIT F
FORMULA FOR CALCULATING MONETARY ASSESSMENT
FOR EXCEEDANCE OF
NUMERICAL NITROGEN CONCENTRATIONS

Grantee: Fairfax County
Grant: #440-S-09-08

Section 1: Nitrogen Exceedances

$$CN = (TNe/TNr) \times AnPay \times PerGrant$$

where:

CN	=	Assessment for Nitrogen Exceedance.
TNe	=	Exceedance in tenths of a milligram per liter.
TNr	=	Expected nitrogen removal (difference between "pre-nutrient removal" annual average concentration and 3.0 mg/l limitation) in tenths of a milligram per liter.
AnPay	=	Annual Payment on grant; assumes principal payments amortized over 20 years and an interest rate of 5 percent. Using these assumed values leads to a "cost recovery factor" of 0.0802. The "cost recovery factor" times the grant amount yields the Annual Payment amount.
PerGrant	=	Percentage of grant received by year of exceedance.

Values used for Grant #440-S-09-08:

Pre-Nutrient Removal TN Concentration = 19.0 mg/l
Effluent TN Concentration Limitation = 3.0 mg/l
Grant Amounts for TN Removal:
- Original BNR Project = $10,203,288
- This NRT Project = $20,382,338

Total Grant Amount = $30,585,626

Useful Service Life:
- Original BNR Project = 10 years remaining
- This NRT Project = 20 years
- Interest Rate = 5 percent

Calculated (assumes grant paid 100%):
Expected Removal (TNr) = 16.0 mg/l
AnPay = $2,043,820
CN = $12,770 (for each 0.1 mg/l TN exceedance)

Grantee: Fairfax County
Grant: #440-S-09-08

The contracting parties have caused the Agreement to be modified by the following duly authorized signatures:

GRANTEE	**GRANTOR**
Fairfax County	Department of Environmental Quality
BY: _____	BY: _____
TITLE: _____	TITLE: David K. Paylor, DEQ Director
DATE: _____	DATE: _____

Board Agenda Item
June 23, 2015

ADMINISTRATIVE - 3

Supplemental Appropriation Resolution AS 15269 for the Fire and Rescue Department to Accept an Award from the U.S. Department of Homeland Security Grant for the Assistance to Firefighters (AFG) Grant

ISSUE:
Board of Supervisors' approval of Supplemental Appropriation Resolution AS 15269 in the amount of $580,365, including Local Cash Match of $75,699, for the Fire and Rescue Department to accept a grant award from the U.S. Department of Homeland Security for the Assistance to Firefighters (AFG) Grant. Funding will be used to purchase a multi-story burn container for full-scale live fire training ($214,250), expand health and safety programs by increasing the cadre of peer fitness trainers ($12,675), and procuring functional training lockers to support departmental wellness-fitness initiatives ($353,440). The program period is May 12, 2015 to May 11, 2016. There are no positions associated with this grant. The required Local Cash Match of $75,699 is available in the Federal-State Grant fund. It should be noted that on November 18, 2014, the Board of Supervisors authorized the Fire and Rescue Department to apply for a total of $2,954,865, including $443,230 in Local Cash Match, from this grant program to fund five projects. Funding was awarded for three of the five projects included in the application, with a total award of $580,365. As the actual award is significantly different from the application, Board authorization is required for the appropriation of grant funds.

RECOMMENDATION:
The County Executive recommends the Board approve Supplemental Appropriation Resolution 15269 in the amount of $580,365, including Local Cash Match of $75,699. These funds will support the purchase of a multi-story burn container for use in the provision of full-scale live fire training, as well as expand health and safety programs by procuring functional training lockers to support departmental wellness-fitness initiatives and increasing the cadre of peer fitness trainers. There are no positions associated with this grant.

TIMING:
Board approval is requested on June 23, 2015.

BACKGROUND:
The Assistance to Firefighters Grant program was originally authorized under the Defense Authorization Bill of 2001, Public Law 106-398, which amended Section 33 of

the Federal Fire Prevention and Control Act of 1974, 15 U.S.C. 2201 et seq. This program supports the Country's national preparedness goal to prevent, protect, respond, and recover from both terrorist attacks and catastrophic natural disasters. The purpose of the Assistance to Firefighters Grant program is to enhance, through financial assistance, the safety of the public and firefighters regarding fire and fire-related hazards. For FY 2014, approximately $306 million is available to assist fire departments and non-affiliated EMS organizations across the United States.

Fairfax County Fire and Rescue Department has been awarded funding in the amount of $580,365 to purchase a multi-story burn container for use in the provision of full-scale live fire training and expand Health and Safety programs by procuring functional training lockers to support departmental wellness-fitness initiatives and increasing the cadre of peer fitness trainers. The federal share is $504,666 and the required 15 percent Local Cash Match for this project is $75,699.

The multi-story burn container ties together several training programs to provide full-scale live fire training including: reading smoke and fire, ventilation, and overall fireground operations. This type of training enables fire personnel to experience realistic conditions encountered in live emergency situations in a safe environment. Firefighters exposed to changing smoke and fire conditions, forced to conduct searches in limited visibility, and made to adapt to various fire behaviors during training perform at an optimum level during actual fire emergencies. The award for this project is $214,250.

The FRD's wellness fitness program has made great strides in developing training standards consistent with the health and fitness needs of the fire service. One successful, existing program is Peer Fitness Training (PFT) which trains a cadre of department personnel to implement fitness programs designed to improve the wellness and fitness of uniformed department members. The FRD proposes to expand the PFT program by increasing the cadre of peer fitness trainers. Grant funds will be used to train and certify an additional 13 peer fitness trainers. The award for this project is $12,675.

The department places stringent fitness requirements on operational personnel and mandates each operational member pass a rigorous work performance test annually. Because operational personnel must meet certain fitness standards the County places fitness equipment in stations to allow personnel the opportunity to maintain their physical fitness. However, there are several work locations that are too small to accommodate the necessary equipment. The FRD has identified functional training lockers as a solution to this problem. These weatherproof, modified shipping containers will be stored outside the station, and are custom fabricated to anchor and store the equipment necessary to create the ultimate multi-modality training center. The FRD has

identified 11 work locations that are in need of the functional training lockers. The award for this project is $353,440.

FISCAL IMPACT:
Grant funding of $580,365, including Local Cash Match of $75,699, is available from the FY 2014 Assistance to Firefighters Grant Program. These funds will support the purchase of a multi-story burn container for use in the provision of full-scale live fire training ($214,250), the expansion of Health and Safety programs by procuring functional training lockers to support departmental wellness-fitness initiatives ($353,440), and increasing the cadre of peer fitness trainers ($12,675). This action does not increase the expenditure level in the Federal-State Grant Fund, as funds are held in reserve for unanticipated grant awards in FY 2015. The required Local Cash Match of $75,699 is available in the Federal-State Grant fund. This grant did allow for the recovery of indirect costs; however, because of the highly competitive nature of the award, the Fire and Rescue Department did not include indirect costs as part of the application.

CREATION OF NEW POSITIONS:
No new positions will be created by this grant.

ENCLOSED DOCUMENTS:
Attachment 1 – Supplemental Appropriation Resolution AS 15269
Attachment 2 – Grant Award Document

STAFF:
David M. Rohrer, Deputy County Executive
Chief Richard R. Bowers, Fire and Rescue Department
Assistant Chief John J. Caussin, Jr., Fire and Rescue Department
Assistant Chief John A. Burke, Fire and Rescue Department
Assistant Chief Garrett A. Dyer, Fire and Rescue Department
Cathi Schultz Rinehart, Fiscal Services Director, Fire and Rescue Department
Chinaka Barbour, Budget Analyst, Fire and Rescue Department

SUPPLEMENTAL APPROPRIATION RESOLUTION AS 15269

At a regular meeting of the Board of Supervisors of Fairfax County, Virginia, held in the Board Auditorium in the Government Center at 12000 Government Center Parkway, Fairfax Virginia on June 23, 2015, at which a quorum was present and voting, the following resolution was adopted:

BE IT RESOLVED by the Board of Supervisors of Fairfax County, Virginia, that in addition to appropriations made previously for FY 2015, the following supplemental appropriation is authorized and the Fiscal Planning Resolution is amended accordingly:

Appropriate to:

Fund:	500-C50000, Federal-State Grant Fund	
Agency:	G9292, Fire and Rescue Department	$580,365
Grant:	1920040-2014, Assistance to Firefighters Grant	

Reduce Appropriation to:

Agency:	G8787, Unclassified Administrative Expenses	$580,365
Fund:	500-C50000, Federal-State Grant Fund	

Source of Funds: U.S. Department of Homeland Security, $504,666
Local Cash Match, $75,699

A Copy - Teste:

Catherine A. Chianese
Clerk to the Board of Supervisors

U.S. Department of Homeland Security
Washington, D.C. 20472

FEMA

Mrs. Cathi Schultz Rinehart
Fairfax County Fire and Rescue Department
4100 Chain Bridge Road
Fairfax, Virginia 22030-7000

Re: Award No.EMW-2014-FO-05870

Dear Mrs. Schultz Rinehart:

Congratulations, on behalf of the Department of Homeland Security, your application for financial assistance submitted under the Fiscal Year (FY) 2014 Assistance to Firefighters Grant has been approved in the amount of $504,666.00. As a condition of this award, you are required to contribute a cost match in the amount of $75,699.00 of non-Federal funds, or 15 percent of the Federal contribution of $504,666.00.

Before you request and receive any of the Federal funds awarded to you, you must establish acceptance of the award through the Assistance to Firefighters Grant Programs' e-grant system. By accepting this award, you acknowledge that the terms of the following documents are incorporated into the terms of your award:

- Summary Award Memo
- Agreement Articles (attached to this Award Letter)
- Obligating Document (attached to this Award Letter)
- FY 2014 Assistance to Firefighters Grant Funding Opportunity Announcement.

Please make sure you read, understand, and maintain a copy of these documents in your official file for this award.

Prior to requesting Federal funds, all recipients are required to register in the System for Award Management (SAM.gov). As the recipient, you must register and maintain current information in SAM.gov until you submit the final financial report required under this award or receive the final payment, whichever is later. This requires that the recipient review and update the information annually after the initial registration, and more frequently for changes in your information. There is no charge to register in SAM.gov. Your registration must be completed on-line at https://www.sam.gov/portal/public/SAM/. It is your entity's responsibility to have a valid DUNS number at the time of registration.

In order to establish acceptance of the award and its terms, please follow these instructions:

Step 1: Please go to https://portal.fema.gov to accept or decline your award. This will take you to the Assistance to Firefighters eGrants system. Enter your User Name and Password as requested on the login screen. Your User Name and Password are the same as those used to complete the application on-line.

Once you are in the system, the Status page will be the first screen you see. On the right side of the Status screen, you will see a column entitled Action. In this column, please select the View Award Package from the drop down menu. Click Go to view your award package and indicate your acceptance or declination of award. PLEASE NOTE: your period of performance has begun. If you wish to accept your grant, you should do so immediately. When you have finished, we recommend printing your award package for your records.

Step 2: If you accept your award, you will see a link on the left side of the screen that says "Update 1199A" in the Action column. Click this link. This link will take you to the SF-1199A, Direct Deposit Sign-up Form. Please complete the SF-1199A on-line if you have not done so already. When you have finished, you must submit

the form electronically. Then, using the Print 1199A Button, print a copy and take it to your bank to have the bottom portion completed. Make sure your application number is on the form. After your bank has filled out their portion of the form, you must fax a copy of the form to FEMA's SF-1199 Processing Staff at 301-998-8699. You should keep the original form in your grant files. After the faxed version of your SF 1199A has been reviewed you will receive an email indicating the form is approved. Once approved you will be able to request payments online. If you have any questions or concerns regarding your 1199A, or the process to request your funds, please call (866) 274-0960.

Sincerely,

Brian E. Kamoie
Assistant Administrator for Grant Programs

Board Agenda Item
June 23, 2015

ADMINISTRATIVE – 4

Streets into the Secondary System (Hunter Mill District)

ISSUE:
Board approval of streets to be accepted into the State Secondary System.

RECOMMENDATION:
The County Executive recommends that the street listed below be added to the State Secondary System.

Subdivision	**District**	**Street**
Great Oak Section 1	Hunter Mill	Greg Roy Lane

TIMING:
Routine.

BACKGROUND:
Inspection has been made of this street, and it is recommended for acceptance into the State Secondary System.

FISCAL IMPACT:
None.

ENCLOSED DOCUMENTS:
Attachment 1 – Street Acceptance Form

STAFF:
Robert A. Stalzer, Deputy County Executive
James W. Patteson, Director, Department of Public Works and Environmental Services (DPWES)
William D. Hicks, P.E., Director, Land Development Services, DPWES

Print Form

Street Acceptance Form For Board Of Supervisors Resolution - June 2005

FAIRFAX COUNTY BOARD OF SUPERVISORS
FAIRFAX, VA

Pursuant to the request to inspect certain streets in the subdivisions as described, the Virginia Department of Transportation has made inspections, and recommends that same be included in the secondary system.

VIRGINIA DEPARTMENT OF TRANSPORTATION - OFFICE OF THE ENGINEERING MANAGER, FAIRFAX, VIRGINIA

REQUEST TO THE ENGINEERING MANAGER, FOR INCLUSION OF CERTAIN SUBDIVISION STREETS INTO THE STATE OF VIRGINIA SECONDARY ROAD SYSTEM.

PLAN NUMBER: 0933-SP-01

SUBDIVISION PLAT NAME: Great Oak Section 1

COUNTY MAGISTERIAL DISTRICT: Hunter Mill

ENGINEERING MANAGER: Imad A. Salous, P.E.

BY: Nidia Arghorst

FOR OFFICIAL USE ONLY

DATE OF VDOT INSPECTION APPROVAL: 04/02/2015

STREET NAME	LOCATION		LENGTH MILE
	FROM	TO	
Greg Roy Lane	Existing Greg Roy Lane (Route 2520) - 915' NW CL Frying Pan Road (Route 608)	125' NW to End of Cul-de-Sac	0.02
		TOTALS:	0.02

NOTES:

4' Concrete Sidewalk on Both Sides to be maintained by VDOT.

Board Agenda Item
June 23, 2015

ADMINISTRATIVE – 5

Authorization of a Public Hearing on a Proposal to Vacate and Abandon Jasper Lane (Lee District)

ISSUE:
Authorization of a public hearing on a proposal to vacate and abandon Jasper Lane.

RECOMMENDATION:
The County Executive recommends that the Board authorize the advertisement of a public hearing to consider the vacation and abandonment of the subject right-of-way.

TIMING:
The Board should take action on June 23, 2015, to provide sufficient time to advertise the public hearing for July 28, 2015, at 5:00 p.m.

BACKGROUND:
The applicants, Liberty View One LLC, MetroPark 2345 LLC, and MetroPark 8 LLC, are requesting that Jasper Lane be vacated under §15.2-2272(2) and abandoned under §33.2-909 of the Code of Virginia. The subject right-of-way is located along the west side of Metro Park Drive. Jasper Lane is in the Virginia Department of Transportation (VDOT) State Secondary System (Route 10439).

The applicants have made the request under an option provided by proffer 24 of RZ 2010-LE-009. This proffer permits Liberty One LLC to propose to convert Jasper Lane to a private street as part of the area's transportation improvements with the concurrence of the adjacent owners. Of the applicants, only MetroPark 2345 LLC and MetroPark 8 LLC would receive property from the vacation and abandonment.

The application originally included Arco Street and Lewin Drive; these rights-of-way could be evaluated and processed under the administrative vacation procedures and were severed from this action.

Traffic Circulation and Access
The vacation and abandonment will have no long-term impact on pedestrian, transit, or vehicle circulation and access. The service from the existing Jasper Lane would be

provided by the private street. This would connect to the private streets within the Liberty View One property.

Easements
Public easement needs have been identified by the Fairfax County Water Authority and the Department of Public Works and Environmental Services. A public ingress-egress easement was also required. Dominion Virginia Power has a service line crossing candidate right-of-way. The applicants have provided easements in a form acceptable to all parties. No other easement needs were identified.

The proposal to vacate and abandon this right-of-way was circulated to the following public agencies and utility companies for review: Office of the County Attorney, Department of Public Works and Environmental Services, Fairfax County Department of Transportation, Department of Planning and Zoning, Fairfax County Park Authority, Fairfax County Water Authority, Fairfax County School Board, Fire and Rescue, Virginia Department of Transportation, Dominion Virginia Power, Washington Gas Light Company, and Verizon. None of these indicate any opposition to the proposal.

FISCAL IMPACT:
None.

ENCLOSED DOCUMENTS:
Attachment I: Statement of Justification
Attachment II: Notice of Intent
Attachment III: Order of Abandonment
Attachment IV: Ordinance of Vacation
Attachment V: Metes and Bounds Description
Attachment VI: Vacation Plat
Attachment VII: Vicinity Map

STAFF:
Robert A. Stalzer, Deputy County Executive
Tom Biesiadny, Director, Fairfax County Department of Transportation (FCDOT)
Donald Stephens, FCDOT

McGuireWoods LLP
1750 Tysons Boulevard
Suite 1800
Tysons Corner, VA 22102-4215
Phone: 703.712.5000
Fax: 703.712.5050
www.mcguirewoods.com

Scott E. Adams
Direct: 703.712.5461

McGUIREWOODS

sadams@mcguirewoods.com
Direct Fax: 703.712.5278

August 31, 2012

Donald Stephens
Fairfax County Department of Transportation
4050 Legato Road, 4th Floor
Fairfax County, Virginia 22033

Re: Vacation of Lewin Drive, Arco Street, and Jasper Lane

Dear Mr. Stephens:

On behalf of the owners of property adjacent to Lewin Drive, Arco Street, and Jasper Lane, we are submitting this request to vacate those public streets pursuant to the enclosed plats in conformance with Code of Virginia Section 15.2-2272(1). Lewin Drive and Arco Street were dedicated pursuant to the Deed of Dedication recorded in Deed Book 689, at Page 37 among the land records of Fairfax County, Virginia (the "Land Records"). Jasper Lane was dedicated pursuant the Deed of Dedication, Division, Easements, Quitclaim, Release and Subordination recorded in Deed Book 12964, at Page 695 among the land records.

The property involved in these deeds was subject to, or immediately adjacent to, a rezoning application (RZ/FDP 2010-LE-009) approved by the Board of Supervisors on April 26, 2011. Copies of the approved development plans for the project are attached. Pursuant to the plans approved by the Board of Supervisors, the properties will be served by new private streets. Therefore, the public streets are no longer necessary and we hereby request that they be vacated.

Enclosed with this request, please find the following:

- Eighteen (18) copies of the recordable plat entitled "LEWIN DRIVE – ROUTE 1233 AND ARCO STREET – ROUTE 1234 WITHIN LEWIN PARK".
- One (1) copy of the Deed of Dedication recorded in Deed Book 689, at Page 37 dedicating Arco Street and Lewin Drive.
- Eighteen (18) copies of the metes and bounds description of the vacated portion of Lewin Drive and Arco Street.

- Eighteen (18) copies of a plat entitled "PLAT SHOWING VACATION OF JASPER LANE".
- One (1) copy of the Deed of Dedication, Division, Easements, Quitclaim, Release and Subordination recorded in Deed Book 12964, at Page 694 dedicating Jasper Lane.
- Eighteen (18) copies of the metes and bounds description of the vacated portion of Jasper Lane.
- One (1) original and Eighteen (18) copies of the Notice of Public Hearing for Lewin Drive and Arco Street.
- One (1) original and Eighteen (18) copies of the Vacation Ordinance for Lewin Drive and Arco Street.
- One (1) original and Eighteen (18) copies of the Notice of Public Hearing for Jasper Lane.
- One (1) original and Eighteen (18) copies of the Vacation Ordinance for Jasper Lane.
- Eighteen (18) copies of the Vicinity Map showing Lewin Drive and Arco Street.
- Eighteen (18) copies of the Vicinity Map showing Jasper Lane
- Eighteen (18) copies of the related development plan.
- $200.00 Fee Check.

Please let me know if you have any questions regarding this request or if additional information is required.

Sincerely,

Scott Adams

Enclosures

\41865288.1

NOTICE OF INTENT TO
ADOPT AN ORDINANCE VACATING
AND AN ORDER ABANDONING
A PART OF A PLAT ON WHICH IS SHOWN
JASPER LANE

Lee District,
Fairfax County, Virginia

Notice is hereby given that the Board of Supervisors of Fairfax County, Virginia, will hold a public hearing on July 28, 2015, at 5:00 PM during its regular meeting in the Board Auditorium of the Fairfax County Government Center, 12000 Government Center Parkway. Fairfax. VA, pursuant to Virginia Code Ann. §15.2-2204, for vacating and abandoning a part of the plat of Jasper Lane, recorded in Deed Book 12964, at Page 694 on which is shown Jasper Lane, a total of 17,259 square feet and a distance of 298.29 feet.

The road is located on Tax Map 91-1 and is described and shown on the metes and bounds schedule dated December 12, 2012, and plat dated August 9, 2012, and revised through April 20, 2015, prepared by VIKA, Inc., both of which are on file in the Fairfax County Department of Transportation, 4050 Legato Road, Suite 400, Fairfax, Virginia 22033, Telephone Number (703) 877-5600.

All persons wishing to speak on this subject may call the Office of the Clerk to the Board, (703) 324-3151, to be placed on the Speaker's List, or may appear and be heard.

LEE DISTRICT. § 15.2-2272(2)

ORDER OF ABANDONMENT
JASPER LANE (ROUTE 10439)
LEE DISTRICT

Fairfax County, Virginia

At a regular meeting of the Board of Supervisors of Fairfax County, Virginia, held this 28th day of July, 2015, it was duly moved and seconded that:

WHEREAS, after conducting a public hearing pursuant to notice as required by Virginia Code §33.2-909, and after giving due consideration to the historic value, if any, of such road, the Board has determined that no public necessity exists for continuance of this road as a public road, and that the safety and welfare of the public will be served best by an abandonment,

WHEREFORE, BE IT ORDERED:

That Jasper Lane, from Metro Park Drive a distance of 298.29 feet, located on Tax Map 91-1, and described on the plat prepared by VIKA, Inc., dated August 9, 2012, and revised through April 20, 2015, which is attached hereto and incorporated herein, be and the same is hereby abandoned as a public road pursuant to Virginia Code §33.2-909.

This abandonment is subject to any right, privilege, permit, license, or easement in favor of any public service company, utility, or other person or entity, including any political subdivision, whether located above, upon, or under the surface, either presently in use or of record, including the right to operate, maintain, replace, alter, extend, increase or decrease in size any facilities in the abandoned roadway, without any permission of the landowner(s).

A Copy Teste:

Catherine A. Chianese
Clerk to the Board

§33.2-909

ADOPTION OF AN ORDINANCE VACATING
A PART OF A PLAT ON WHICH IS SHOWN
JASPER LANE

Lee District,
Fairfax County, Virginia

At a regular meeting of the Board of Supervisors of Fairfax County, Virginia, held in the Board Auditorium of the Governmental Center in Fairfax County, Virginia, on July 28, 2015, at which meeting a quorum was present and voting, the Board, after conducting a public hearing upon due notice given pursuant to Virginia Code Ann. §15.2-2204 and as otherwise required by law, adopted the following ordinance, to-wit:

BE IT ORDAINED by the Board of Supervisors of Fairfax County, Virginia: that Part of the Plat of Dedication, recorded in Deed Book 12964, Page 694, on which is shown Jasper Lane, comprising a total of 17,259 square feet, located on Tax Map 91-1, and described and shown on the metes and bounds schedule dated December 12, 2012, and plat dated August 9, 2012, and revised through April 20, 2015, prepared by VIKA, Inc., attached hereto and incorporated herein, be and the same is hereby vacated, pursuant to Virginia Code Ann. § 15.2-2272(2).

This vacation is subject to any right, privilege, permit, license, easement, in favor of any public service company, utility, or other person or entity, including any political subdivision, whether located above, upon, or under the surface, either presently in use or of record, including the right to operate, maintain, replace, alter, extend, increase, or decrease in size any facilities in the vacated roadway, without any permission of the landowner.

A Copy Teste:

Catherine A. Chianese
Clerk to the Board of Supervisors

§ 15.2-2272(2)

ENGINEERS ◆ PLANNERS ◆ LANDSCAPE ARCHITECTS ◆ SURVEYORS ◆ SUSTAINABLE DESIGN

REVISED
December 12, 2012

DESCRIPTION OF
JASPER LANE
METRO PARK PHASE FIVE
DEED BOOK 12964 AT PAGE 694
LEE DISTRICT
FAIRFAX COUNTY, VIRGINIA

Being all of Jasper Lane as shown on a plat entitled "Metro Park Phase Five" recorded in Deed Book 12964 at Page 694 among the Land Records of Fairfax County, Virginia and being more particularly described as follows:

Beginning for the same at the intersection of southeasterly right-of-way line of Jasper Lane (54' wide) and the southwesterly right-of-way line of Metro Park Drive (width varies) (DB 12964 Pg 694), said point also being a point of curvature; thence running with the right-of-way lines of Jasper Lane as shown on said plat entitled "Metro Park Phase Five" recorded in Deed Book 12964 at Page 694 the following twelve (12) courses and distances

1. 74.91 feet along the arc of a curve to the left having a radius of 50.00 feet and a chord bearing and distance of North 81°09'14" West, 68.10 feet to a point; thence
2. South 55°55'00" West, 43.32 feet to a point of curvature; thence
3. 43.33 feet along the arc of a non-tangent curve to the left having a radius of 323.00 feet and a chord bearing and distance of South 52°05'04" West, 43.30 feet to a point; thence
4. South 34°08' 28" East, 1.01 to a point of curvature; thence
5. 133.92 feet along the arc of a non-tangent curve to the left having a radius of 322.00 feet and a chord bearing and distance of South 36°18'09" West, 132.96 feet to a point on the northerly line of Lewin Park (DB 689, Pg 37); thence running with a portion of said northerly line of Lewin Park
6. South 89°51'02" West, 60.64 feet to a point of curvature; thence leaving said northerly line of Lewin Park and continuing with the aforesaid right of way lines of Jasper Lane
7. 165.95 feet along the arc of a non-tangent curve to the right having a radius of 378.00 feet and a chord bearing and distance of North 33°08'40" East, 164.62 to a point; thence
8. South 44°16'44" East, 1.00 feet to a point of curvature
9. 67.16 feet along the arc of a non-tangent curve to the right having a radius of 377.00 feet and a chord bearing and distance of North 50°49'28" East, 67.07 to an iron pipe; thence
10. North 55°55'39" East, 52.69 feet to a point of curvature marked by an iron pipe; thence
11. 68.83 along the arc of a non-tangent curve to the left having a radius of 50.00 feet and a chord bearing and distance of North 16°29'16" East, 63.52 feet to a point of curvature lying on the aforesaid southwesterly right-of-way line of Metro Park Drive; thence following the common right of way line of said Metro Park Drive and the aforesaid Jasper Lane
12. 141.40 feet along the arc of a non-tangent curve to the left having a radius of 530.00 feet and a chord bearing and distance of South 30°35'31" East, 140.98 feet to the point of beginning containing 17,259 square feet or 0.39621 acres of land.

X:\DATA\7000-9000\V7324C\DESCRIPTION\JASPER VACATION.DOC

VIKA Virginia, LLC
8180 Greensboro Drive, Suite 200 ◆ Tysons Corner, Virginia 22102 ◆ 703.442.7800 Fax 703.761.2787
Tysons Corner, VA ◆ Germantown, MD ◆ Washington, DC
www.vika.com

OWNERSHIP TABULATION

TAX MAP #	PARCEL	OWNERSHIP	DB / PG	EXISTING SQ.FT.	EXISTING ACRES	R/W VACATION SQ.FT.	TOTAL SQ.FT. AFTER VACATION	TOTAL AC AFTER VACATION
091-1-01	0040	METROPARK 2345 LLC	21125/0863	97,179	2.23092	8,971	106,150	2.43687
091-1-01	0023E	METROPARK 8 LLC	19015/1424	36,506	0.83805	8,288	44,794	1.02833
TOTAL				503,149	11.55071	82,561	585,710	13.44605

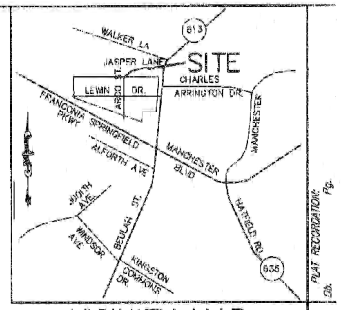
CURVE TABLE

CURVE	RADIUS	LENGTH	DELTA	TANGENT	CHD BRG	CHORD
C1	50.00'	74.81'	85°44'11"	46.50'	N81°09'14"W	68.10'
C2	323.00'	43.33'	7°41'10"	21.70'	S32°01'04"W	43.30'
C3	322.00'	133.82'	23°48'49"	67.94'	S36°16'05"W	132.86'
C4	375.00'	195.95'	29°56'12"	84.33'	N33°18'40"E	194.62'
C5	377.00'	87.16'	10°12'23"	43.67'	N50°49'28"E	87.02'
C6	50.00'	68.83'	78°52'24"	41.12'	N16°29'16"E	63.52'
C7	530.00'	141.40'	15°17'08"	71.12'	S30°35'31"E	140.98'
C8	350.00'	62.55'	10°12'23"	31.36'	S50°49'28"W	62.46'
C9	350.00'	143.00'	23°24'34"	72.51'	S34°00'59"W	142.01'

AREA TABULATION:

PORTION OF JASPER LANE.....8,288 SF OR 0.19027 ACRES
(TO PARCEL 23F)
PORTION OF JASPER LANE.....8,971 SF OR 0.20594 ACRES
(TO PARCEL 4C)

JASPER LANE VACATION (TOTAL).....17,259 SF OR 0.39621 ACRES



VICINITY MAP
SCALE: 1" = 1000'

NOTES:

1. THE ADJACENT PROPERTIES SHOWN HEREON IS/ARE IDENTIFIED ON FAIRFAX COUNTY TAX ASSESSMENT MAP NO. 91-1-((31)) 0401 AND 91-1-((01)) 23E AND IS ZONED PDC.
2. THE PROPERTY SHOWN HEREON IS LOCATED IN FLOOD ZONE "X" AS SHOWN ON THE FLOOD INSURANCE RATE MAP (FIRM) COMMUNITY PANEL NUMBER 515525 0150D, FOR FAIRFAX COUNTY, VIRGINIA AND IS DATED MARCH 5, 1990.
3. THE PLAT OF THE PROPERTY SHOWN HEREON IS REFERENCED TO THE VIRGINIA COORDINATE SYSTEM OF 1983 (VCS 83) AS COMPUTED FROM A FIELD SURVEY PREPARED BY VIKA MARCH 2010.

WETLAND NOTE:

I HEREBY CERTIFY THAT ALL WETLAND PERMITS REQUIRED BY LAW WILL BE OBTAINED PRIOR TO COMMENCING LAND DISTURBING ACTIVITIES.

SIGNATURE: [signature] AS AGENT FOR OWNER

OWNER/DEVELOPER: METROPARK 2345 LLC / METROPARK 8 LLC

SURVEYOR'S CERTIFICATION:

I, FRANKLIN E. JENKINS, A LICENSED LAND SURVEYOR IN THE COMMONWEALTH OF VIRGINIA, DO HEREBY CERTIFY THAT I HAVE CAREFULLY SURVEYED THE PROPERTY DELINEATED ON THIS PLAT OF STREET VACATION, AND THAT IT IS CORRECT TO THE BEST OF MY PROFESSIONAL KNOWLEDGE AND BELIEF, THAT IT IS ALL OF THE PROPERTY DEDICATED BY DEED RECORDED IN DEED BOOK 12984 AT PAGE 694, ALL AMONG THE LAND RECORDS OF FAIRFAX COUNTY, VIRGINIA.

I FURTHER CERTIFY THAT THE LAND EMBRACED BY THIS PLAT OF STREET VACATION LIES ENTIRELY WITHIN THE BOUNDS OF THE ORIGINAL TRACT, THAT THIS PLAT REPRESENTS AN ACCURATE SURVEY OF THE SAME AND THAT THE PROPERTY SHOWN HEREON IS REFERENCED TO THE VIRGINIA COORDINATE SYSTEM OF 1983 (VCS '83), SEE NOTE 3, IN ACCORDANCE WITH THE REQUIREMENTS OF THE FAIRFAX COUNTY SUBDIVISION ORDINANCE.

GIVEN UNDER MY HAND AND SEAL

COMMONWEALTH OF VIRGINIA
FRANKLIN E. JENKINS
No. 2061
LAND SURVEYOR

FRANKLIN E. JENKINS
LICENSED LAND SURVEYOR
VIRGINIA # 2061

THIS APPROVAL IS NOT A COMMITMENT TO PROVIDE PUBLIC SANITARY SEWER.

FINAL PLAT
RECOMMENDED FOR APPROVAL
FAIRFAX COUNTY
DPWES REVIEW BRANCH STAFF
DATE FOR AGENT

APPROVED
FOR
BOARD OF SUPERVISORS
FAIRFAX COUNTY, VIRGINIA
DATE DIRECTOR, PUBLIC WORKS & ENVIRONMENTAL SERVICES OR DESIGNEE
APPROVAL VOID IF PLAT IS NOT OFFERED FOR RECORD ON OR BEFORE

DEPARTMENT OF PUBLIC WORKS AND ENVIRONMENTAL SERVICES
OFFICE OF SITE DEVELOPMENT SERVICES
Fairfax, Virginia

All street locations and/or easements conform to the requirements of this office and the necessary agreements or bonds have been received.

By _____ Date _____

APPROVED
COUNTY OF FAIRFAX
OFFICE OF BUILDING CODE SERVICES
PERMITS DIVISION - SITE PERMISSION SECTION
STREET ADDRESS FUNCTION

By _____
Date _____

APPROVED
COUNTY OF FAIRFAX
OFFICE OF SITE DEVELOPMENT SERVICES
SANITARY SEWER SECTION

By _____
Date _____

SHEET 1 OF 3
PLAT SHOWING
VACATION AND ABANDONMENT OF JASPER LANE AND DEDICATION OF INGRESS/EGRESS AND STORM DRAIN EASEMENT

DEED BOOK 12984 PAGE 694
LEE DISTRICT
FAIRFAX COUNTY, VIRGINIA
SCALE: 1" = 50' DATE: AUGUST 9, 2012
DECEMBER 12, 2012, APRIL 19, 2013
APRIL 23, 2013

VIKA

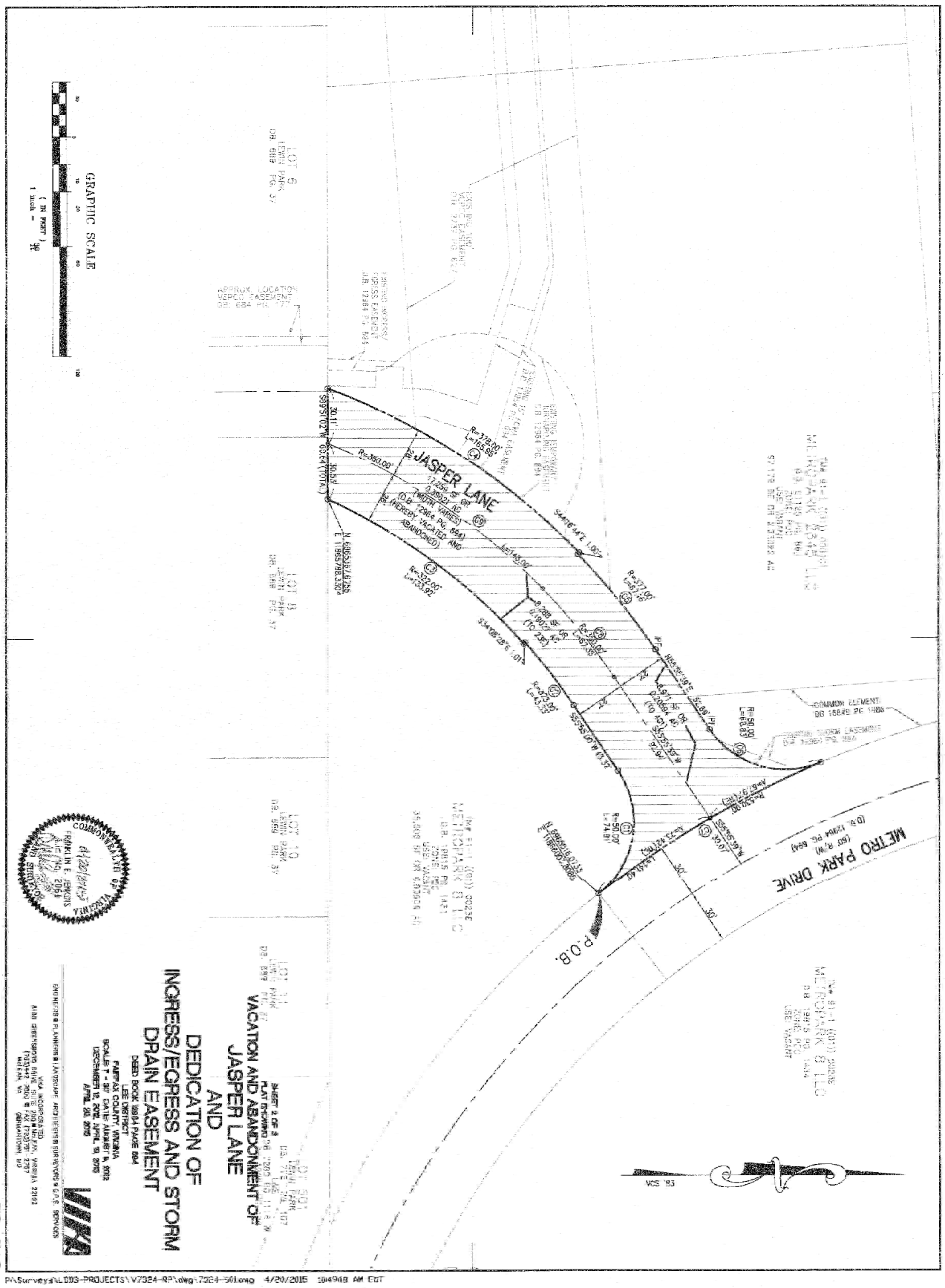
ENGINEERS ■ PLANNERS ■ LANDSCAPE ARCHITECTS ■ SURVEYORS ■ G.I.S. SERVICES

VIKA INCORPORATED
8180 GREENSBORO DR VA SUITE 200 M MCLEAN, VIRGINIA 22102
(703)442-7800 ■ FAX (703)761-2787
McLEAN, VA GERMANTOWN, MD

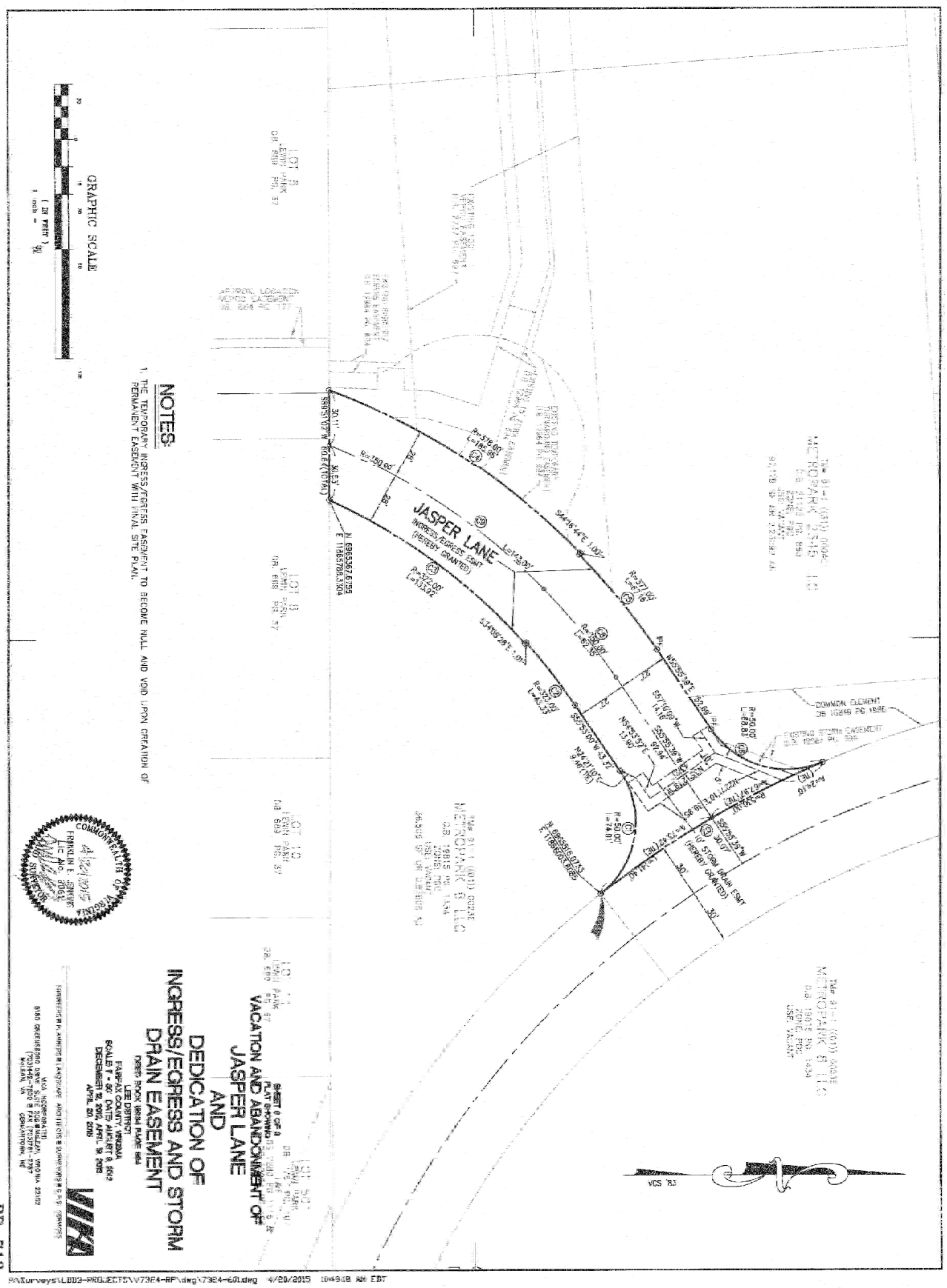
PLAT RECORDATION No.

XXXX-SP-XX XXXX-RP-XX

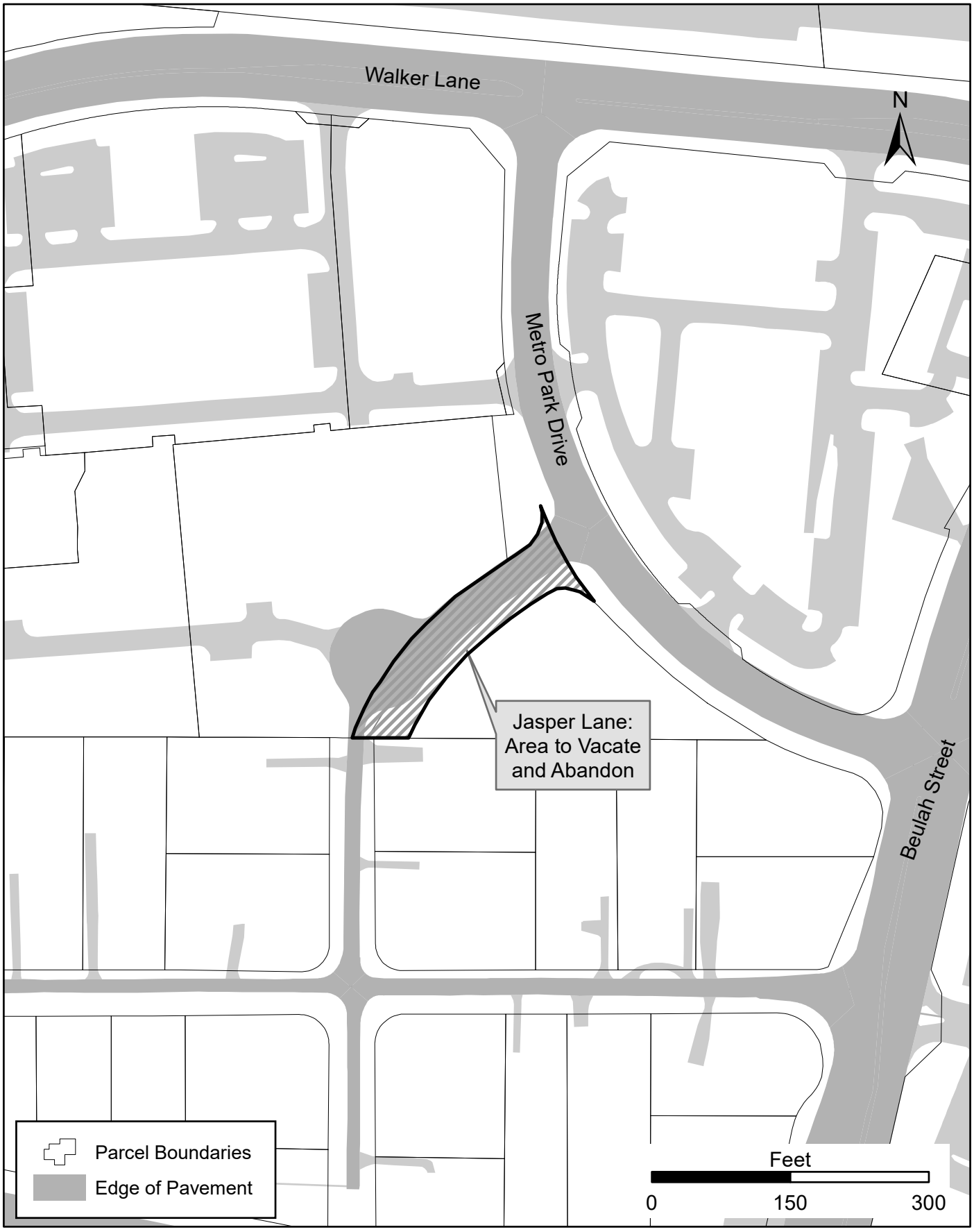
F:\Surveys\LDDS\PROJECTS\7984-RP\dwg\7984-601.dwg 4/29/2013 10:43:18 AM EDT


GRAPHIC SCALE
JASPER LANE
METRO PARK DRIVE
P.O.B.
VACATION AND ABANDONMENT OF
JASPER LANE
AND
DEDICATION OF
INGRESS/EGRESS AND STORM
DRAIN EASEMENT
DEED BOOK 19694 PAGE 684
LEE DISTRICT
FAIRFAX COUNTY, VIRGINIA
SCALE 1" = 50' DATE: AUGUST 6, 2012
DECEMBER 12, 2012, APRIL 15, 2015
APRIL 28, 2015
SHEET 2 OF 3
PLAT REVISED
VCS '83
P:\Surveys\LDD3-PROJECTS\V7324-RP\dwg\7324-SD1.dwg 4/20/2015 10:49:08 AM EDT

RP-713


GRAPHIC SCALE
NOTES:
1. THE TEMPORARY INGRESS/EGRESS EASEMENT TO BECOME NULL AND VOID UPON CREATION OF PERMANENT EASEMENT WITH FINAL SITE PLAN.
JASPER LANE
INGRESS/EGRESS ESMT (HEREBY GRANTED)
VACATION AND ABANDONMENT OF
JASPER LANE
AND
DEDICATION OF
INGRESS/EGRESS AND STORM DRAIN EASEMENT
DEED BOOK 19934 PAGE 864
LEE DISTRICT
FAIRFAX COUNTY, VIRGINIA
SCALE 1" = 50' DATE: AUGUST 6, 2002
DECEMBER 12, 2002, APRIL 16, 2003
APRIL 20, 2015
SHEET 6 OF 8
PLAT BOOK/PAGE
VCS '83
RP-7113

Vicinity Map - Tax Map 91-4



Board Agenda Item
June 23, 2015

ADMINISTRATIVE – 6

Authorization of a Public Hearing on a Proposal to Abandon Part of Willard Road (Sully District)

ISSUE:
Authorization of a public hearing on a proposal to abandon a portion of Willard Road.

RECOMMENDATION:
The County Executive recommends that the Board authorize the advertisement of a public hearing to consider the abandonment of the subject right-of-way.

TIMING:
The Board should take action on June 23, 2015, to provide sufficient time to advertise the public hearing for July 28, 2015, at 5:00 p.m.

BACKGROUND:
The applicant, Petula Prolix Development Company (successor to Petula Associates), is requesting that a portion of Willard Road be abandoned under §33.2-909 of the Code of Virginia. The subject right-of-way is located on the west side of Stonecroft Boulevard in the vicinity of U.S. Route 50. Although it is not currently in use, this portion of Willard Road is still in the Virginia Department of Transportation (VDOT) State Secondary System (Route 607).

The applicant has made the request per the requirements of the VDOT street acceptance process for Stonecroft Boulevard. Since the original developer partnership dissolved, the Applicant has been responsible for the various internal transportation improvements under the submitted site plans (#9232 et. seq.) for the adjoining development. This process culminated in a Development Agreement (Attachment VII), dated December 22, 2014, in which the Applicant committed to a particular set of improvements and, in paragraph 6.1, to requesting the final disposal of this portion of Willard Road through abandonment.

As the subject right-of-way is prescriptive, the effect of the abandonment will be to return the right-of-way to the adjacent property owners who hold the residual fee ownership.

Traffic Circulation and Access
The abandonment will have no long-term impact on pedestrian, transit, or vehicle circulation and access. Stonecroft Boulevard currently provides all the public right-of-way functions and access.

Easements
Public easement needs have been identified by the Fairfax County Water Authority and the Department of Public Works and Environmental Services. Public ingress-egress easements were also required. Dominion Virginia Power and Verizon have service lines within the candidate right-of-way. The applicants have provided easements in a form acceptable to all parties. No other easement needs were identified.

The proposal to abandon this right-of-way was circulated to the following public agencies and utility companies for review: Office of the County Attorney, Department of Public Works and Environmental Services, Fairfax County Department of Transportation, Department of Planning and Zoning, Fairfax County Park Authority, Fairfax County Water Authority, Fairfax County School Board, Fire and Rescue, Virginia Department of Transportation, Dominion Virginia Power, Washington Gas Light Company, and Verizon. None of these indicate any opposition to the proposal.

FISCAL IMPACT:
None.

ENCLOSED DOCUMENTS:
Attachment I: Application Letter
Attachment II: Notice of Intent
Attachment III: Order of Abandonment
Attachment IV: Metes and Bounds Description
Attachment V: Vacation Plat
Attachment VI: Vicinity Map
Attachment VII: Development Agreement

STAFF:
Robert A. Stalzer, Deputy County Executive
Tom Biesiadny, Director, Fairfax County Department of Transportation (FCDOT)
Donald Stephens, FCDOT

LAW OFFICE OF
Thomas W. Myers, LLC

January 26, 2007

Fairfax County Department of Transportation
Attention: Donald E. Stephens
12055 Government Center Parkway, Suite 1034
Fairfax, Virginia 22035

Re: Proposed Abandonment of a Portion of Willard Road (Route 607)

Dear Mr. Stephens:

In September, 1987, Crow-Avion Associates recorded that certain Deed of Dedication, Subdivision, and Easement in Deed Book 6852 at Page 1321 (the "Original Deed"), and in November, 1988, Crow-Avion Associates recorded that certain Corrected Deed of Dedication, Subdivision, and Easement in Deed Book 7211 at Page 1804 (the "Corrected Deed"), in each case pursuant to Site Plan 6455-SP-001-4 (the "Site Plan"), the Original Deed and the Corrected Deed being hereinafter referred to as the "Deeds".

At the time of the recordation of the Deeds, Crow-Avion Associates was a joint venture comprised of Crow-Avion Limited Partnership and Petula Associates, Ltd., and following the recordation of the Deeds, Petula Associates, Ltd., which was owned by Principal Life Insurance Company, succeeded to all of the interests of Crow-Avion Limited Partnership in Crow-Avion Associates.

In order to comply with the Deeds and the Site Plan, Principal Life Insurance Company, through its attorney, hereby requests the abandonment of a portion of the public road known as Willard Road (Route 607), from the cul-de-sac immediately north of Route 50 north to Stonecroft Boulevard, a distance of approximately 626 feet. Such portion of Willard Road is located on Tax Map 33-2 and is described and shown on the metes and bounds legal description and plat prepared by Rinker Design Associates, P.C., dated January 16, 2007.

Accordingly, enclosed herewith is a check in the amount of Two Hundred Dollars ($200), payable to Fairfax County, Virginia, and representing the Processing Fee, as well as eighteen (18) copies of this letter and the following items:

1. "Plat Showing the Abandonment of a Portion of Willard Road", prepared by Rinker Design Associates, P.C., dated January 16, 2007;

7272 Wisconsin Avenue, Suite 300, Bethesda, Maryland 20814
Office 301-941-1940 Fax 301-951-5862 Cell 301-641-6939
tom.myers@twmyerslaw.com www.twmyerslaw.com

LAW OFFICE OF
Thomas W. Myers, LLC

2. Metes and bounds legal description of the portion of Willard Road to be abandoned, prepared by Rinker Design Associates, P.C., dated January 16, 2007;

3. Proposed Notice of Intent to Abandon a Portion of Willard Road;

4. Proposed Order of Abandonment of a Portion of Willard Road; and

5. Tax Map 33-2 and Tax Map 34-1. The portion of Willard Road to be abandoned is located very close to eastern edge of on Tax Map 33-2; so I have also included Tax Map 34-1, which is the tax map immediately east of Tax Map 33-2.

In accordance with your instructions, I am also e-mailing to you (in Word format) electronic copies of Items 3 and 4 above and sending you one (1) copy of each of the Deeds and the Site Plan under separate cover.

If you have any questions, please do not hesitate to call. My direct phone line is (301) 657-1201, and my direct fax line is (301) 657-1203.

Very truly yours,

Thomas W. Myers, Jr.

cc: Mr. Mark Scholz (by FedEx w/copy of enc.)
Ms. Diane Cortese (by FedEx w/copy of enc.)
Mr. Eduardo Otero (by FedEx w/copy of enc.)
Mr. David Pfifferling (by FedEx w/copy of enc.)
Mr. Edward Snider (by e-mail with copy of Items 3, 4, and 5 only)
Mr. John Cummings (by e-mail with copy of Items 3, 4, and 5 only)
Mr. Steven Seay (by e-mail with copy of Items 3, 4, and 5 only)

ATTACHMENT II

NOTICE OF INTENT TO ABANDON

A PORTION OF WILLARD ROAD (ROUTE 607)

SULLY DISTRICT
Fairfax County, Virginia

Notice is hereby given that the Board of Supervisors of Fairfax County, Virginia, will hold a public hearing on July 28, 2015, at 5:00 PM during its regular meeting in the Board Auditorium of the Fairfax County Government Center, 12000 Government Center Parkway, Fairfax, VA, pursuant to Virginia Code Ann. § 15.2-2204 on the proposed abandonment of a portion of the public road known as Willard Road (Route 607), from the cul-de-sac immediately north of Route 50 north to Stonecroft Boulevard, a distance of approximately 626 feet, pursuant to Virginia Code § 33.2-909. The road is located on Tax Map 33-2, and is described and shown on the metes and bounds schedule and plat prepared by Rinker Design Associates, P.C., dated February 26, 2009, and last revised May 4, 2015, both of which are on file with the Fairfax County Department of Transportation, 4050 Legato Road, Suite 400, Fairfax, Virginia 22033, Telephone Number (703) 877-5600.

SULLY DISTRICT.

§ 33.2-909

ATTACHMENT III

ORDER OF ABANDONMENT

A PORTION OF WILLARD ROAD (ROUTE 607)

SULLY DISTRICT
Fairfax County, Virginia

At a regular meeting of the Board of Supervisors of Fairfax County, Virginia, held this 28th day of July, 2015, it was duly moved and seconded that:

WHEREAS, after conducting a public hearing pursuant to notice as required by Virginia Code §33.2-909, and after giving due consideration to the historic value, if any, of such road, the Board has determined that no public necessity exists for continuance of this road as a public road, and that the safety and welfare of the public will be served best by an abandonment,

WHEREFORE, BE IT ORDERED:

That Willard Road (Route 607), from the cul-de-sac immediately north of Route 50 north to Stonecroft Boulevard, a distance of approximately 626 feet, located on Tax Map 33-2, and described on the plat and metes and bounds schedule prepared by Rinker Design Associates, P.C., dated February 26, 2009, and last revised May 4, 2015, both of which are attached hereto and incorporated herein, be and the same is hereby abandoned as a public road pursuant to Virginia Code §33.2-909.

This abandonment is subject to any right, privilege, permit, license, or easement in favor of any public service company, utility, or other person or entity, including any political subdivision, whether located above, upon, or under the surface, either presently in use or of record, including the right to operate, maintain, replace, alter, extend, increase or decrease in size any facilities in the abandoned roadway, without any permission of the landowner(s).

A Copy Teste:

_____
Catherine A. Chianese
Clerk to the Board

§33.2-909

RINKER DESIGN ASSOCIATES, P.C.
Engineering · Surveying · Land Planning
Transportation · Environmental

May 4, 2015

METES AND BOUNDS DESCRIPTION
ON A PORTION OF WILLARD ROAD
TO BE ABANDONED
SULLY DISTRICT
FAIRFAX COUNTY, VIRGINIA

97-065-QT

Beginning at a point lying in the cul-de-sac right-of-way line of Willard Road, State Route Number 607 (width varies), said point being a common corner with Parcel "E" Avion Development of the land of Avion Holdings, LLC formerly known as CH4, LLC;

Thence running with the cul-de-sac right-of-way line of Willard Road with a curve to the left of radius 55.00 feet having a central angle of 31°58'32", chord of 30.30 feet, chord bearing of N81°01'36"W and an arc length of 30.69 feet to a point;

Thence running consecutively with the line of Parcel 2 of the land of Prologis Development Services, LLC formerly known as Prologis Development Services Incorporated formerly known as SCI Development Services Incorporated, Parcel 1A of the land of CLPF-Chantilly, L.P., and Parcel 1B of the land of IIT Chantilly DC LLC N09°20'13"E 677.43 feet to a point;

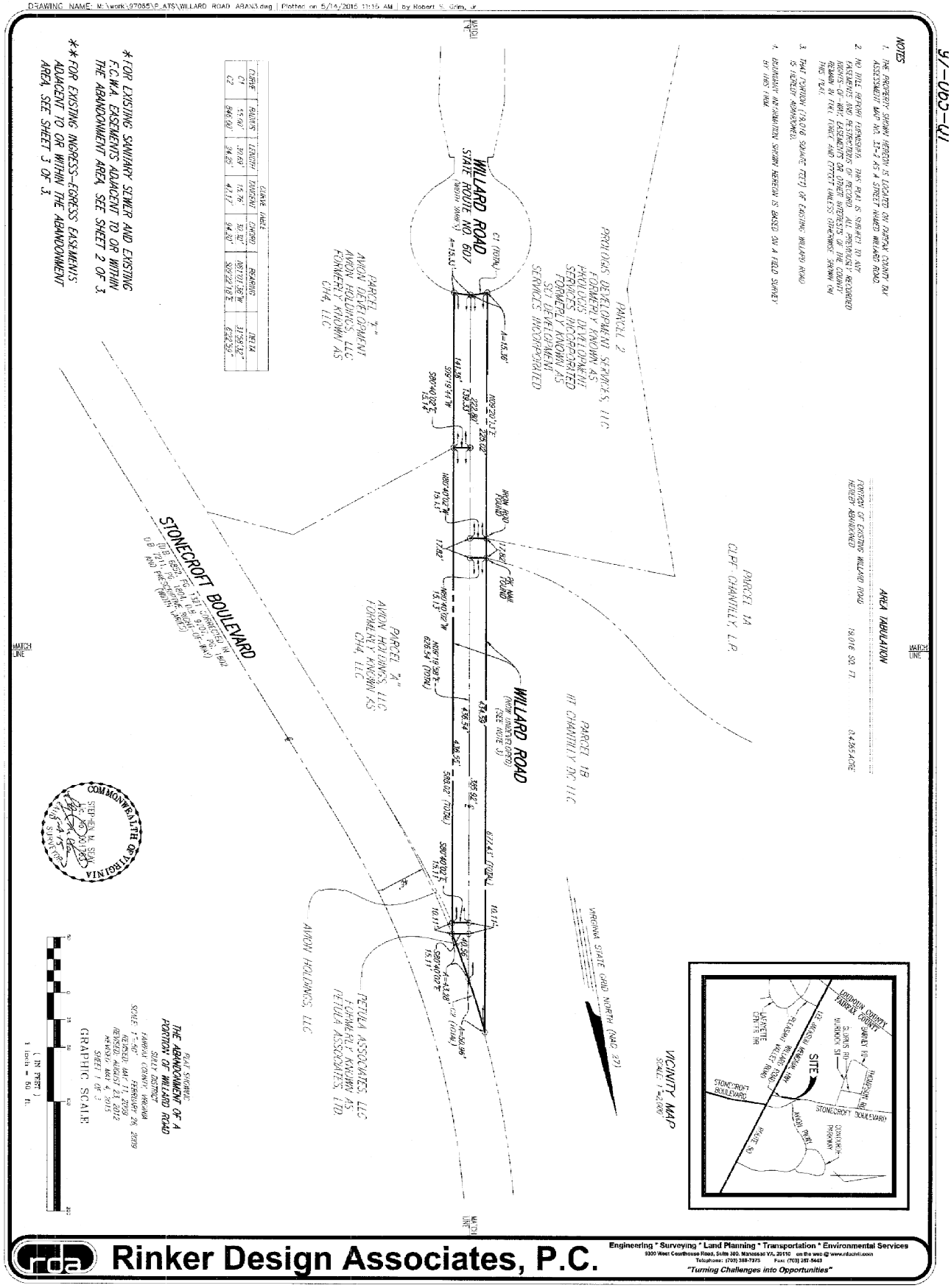
Thence running with the westerly right-of-way line of Stonecroft Boulevard (width varies) with a curve to the left of radius 846.00 feet having a central angle of 6°22'59", chord of 94.20 feet, chord bearing of S09°22'18"E and an arc length of 94.25 feet to a point;

Thence running consecutively with the line of the land of Petula Associates, LLC formerly known as Petula Associates, Ltd., the line of the land of Avion Holdings, LLC, Parcel "A" of the land of Avion Holdings, LLC formerly known as CH4, LLC, and the aforementioned Parcel "E" Avion Development of the land of Avion Holdings, LLC formerly known as CH4, LLC S09°19'44"W 588.02 feet to the point and place of beginning and containing 19,016 square feet or 0.4365 acres of land more or less.

5-4-15

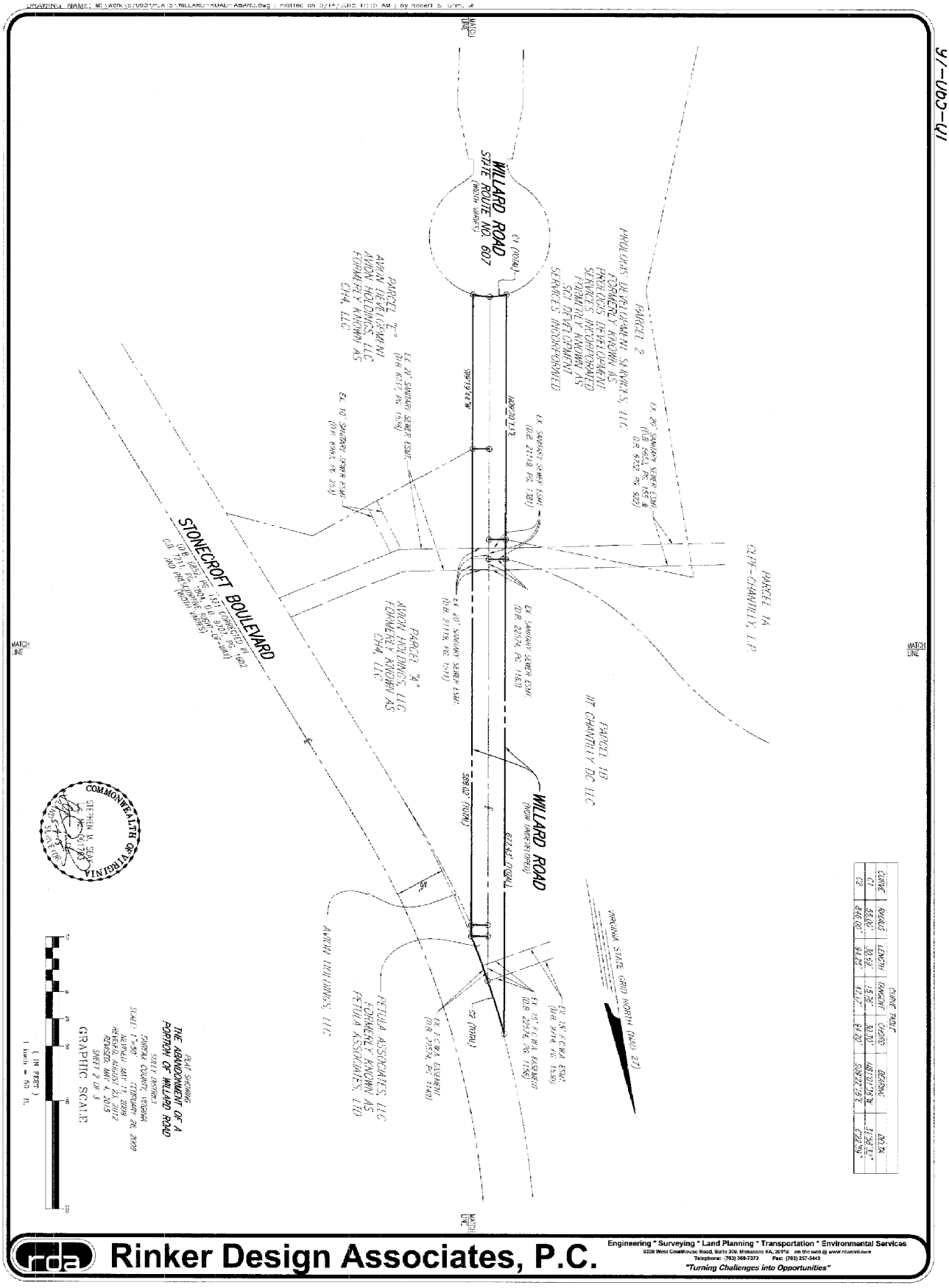
Stephen M. Seay
Land Surveyor

927 Main Street Ste. 105 · Fredericksburg, VA 22401 · Tel 540.548.9170 · Fax 540.548.9171 · www.rinkerdesign.com

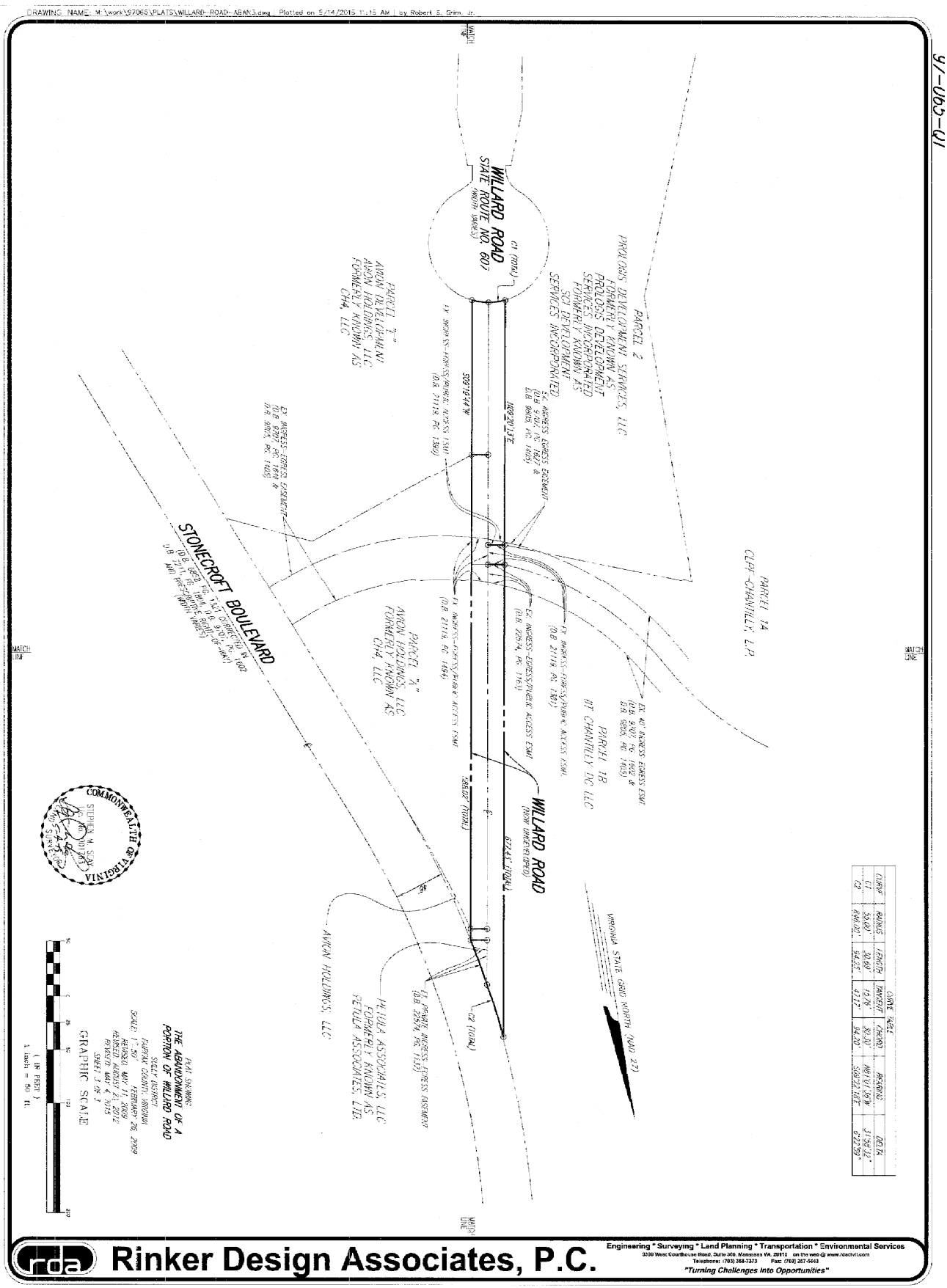


97-VOC-VI

97-VOC-VI



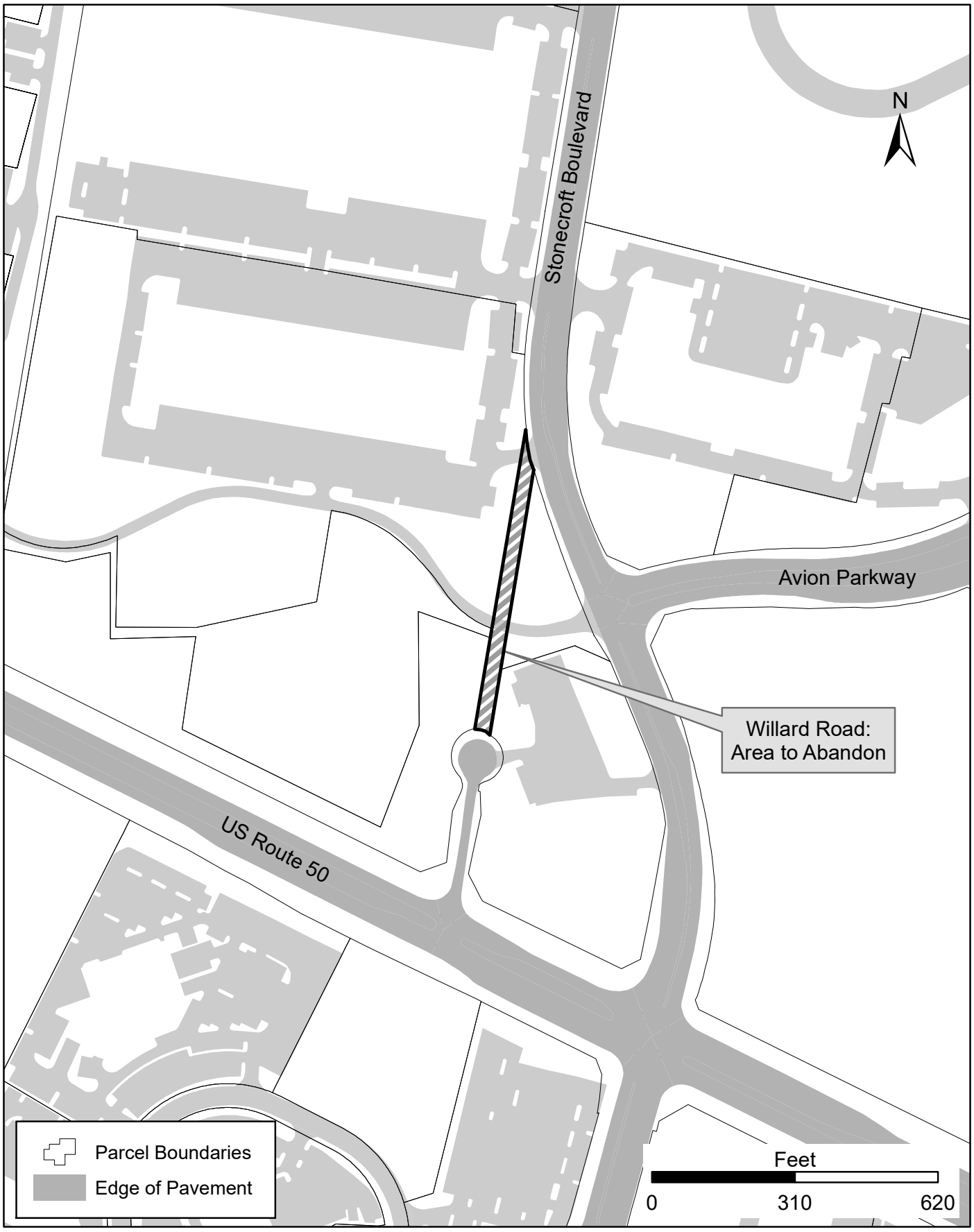
CURVE	RADIUS	LENGTH	CHORD	CHORD BEARING	DELTA
C1	5530.00'	308.12'	308.08'	N87°51'36"W	3°11'34"
C2	840.00'	94.42'	94.37'	S86°22'16"E	6°26'59"



CURVE	RADIUS	LENGTH	TANGENT	CHORD	BEARING	DELTA
C1	55.00'	30.89'	15.78'	30.50'	N81°01'06"W	32°10'32"
C2	890.00'	94.35'	47.17'	94.00'	S89°32'18"E	6°04'09"

97-065-01

Vicinity Map - Tax Maps 33-2 & 34-1



DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (this "**Agreement**") is made this 23 day of December, 2014, by and among Petula Prolix Development Company, an Iowa corporation ("**Petula Prolix**"), the Commonwealth of Virginia, Department of Transportation ("**VDOT**"), and the Board of Supervisors of Fairfax County, Virginia (the "**County**").

WITNESSETH:

WHEREAS, Petula Prolix, successor-in-interest to Crow-Avion Associates, a joint venture of (a) Petula Associates, Ltd., an Iowa corporation ("**Associates**") and (b) Crow-Avion Limited Partnership, a Texas limited partnership, is the developer of Avion Business Park, a 158 acre commercial office park located on Virginia Route 50 ("**Route 50**") in Chantilly, Fairfax County, Virginia ("**Avion**") and is the fee simple owner of Lot 1 (Tax Map ID No. 34-1 ((3)) - 1), Parcel B-2B (Tax Map ID No. 34-1 ((3)) - B4), and Parcel B-2C (Tax Map ID No. 34-1 ((3)) - B5), which Lot 1, Parcel B-2B, and Parcel B-2C are hereinafter referred to collectively as the "**Property**" and defined in **Exhibit A-1** hereto, the fee simple owner(s) of the Property from time to time being hereinafter referred to individually and collectively as the "**Developer**"; and

WHEREAS, as of the date hereof, Avion Parkway, Concorde Parkway, the Eastern Stonecroft Dedication, the Eastern Willard Dedication, the Parcel D-1A Lane, Virginia Mallory Drive, Westfax Drive, the Lot 4A/5A Lane, and the Parcel B-2C Lane (each, a "**Dedicated Street**") have been dedicated for public street purposes in connection with the development of Avion, all such capitalized terms being defined in **Exhibit A-1** hereto; and

WHEREAS, as of the date hereof, street improvements have been constructed within Avion Parkway, Concorde Parkway, the Eastern Stonecroft Dedication, the Eastern Willard Dedication, Virginia Mallory Drive, the Parcel D-1A Lane, and the Lot 4A/5A Lane (individually, a "**Constructed Street**", and collectively, the "**Constructed Streets**"), and none of the street improvements within the Constructed Streets have been accepted into the Virginia state highway system for maintenance by VDOT ("**Accepted**"); and

WHEREAS, VDOT has contracted for the redesign and reconstruction of portions of Route 50, including without limitation those portions of Route 50 that abut the Property to the south (the "**Route 50 Project**"), which Route 50 Project (a) requires the acquisition of interests in property, by eminent domain or otherwise, of portions of certain parcels of real property, including without limitation portions of the Property, and (b) necessitated the redesign and reconstruction of certain streets within Avion to conform to such redesign and reconstruction of portions of Route 50; and

WHEREAS, such redesign of Route 50 and the redesign of certain streets within Avion are shown on the construction plans for the Route 50 Project, which plans are hereinafter referred to collectively as the "**Route 50 Plans**" and defined in **Exhibit A-1** hereto; and

WHEREAS, this Agreement represents the entire understanding of the parties hereto with respect to the subject matter hereof and, as further set forth in paragraph 7.2 below, is intended to supersede and replace the Agreement dated February 25, 1987, and recorded among the Land Records in Deed Book 6678 at Page 1685 ("**Prior Agreement**").

NOW, THEREFORE, in consideration of the sum of Ten and 00/100 Dollars ($10.00), cash in hand paid, the mutual promises herein contained, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, hereby agree as follows:

1. Street Construction Obligations. VDOT hereby agrees to construct or cause to be constructed, at no cost or expense to the Developer or the Parcel E Owner (as hereinafter defined), the streets and other improvements listed herein and as shown on VDOT's Route 50 Plans (the **"Construction Obligations"**), such streets and other improvements being hereinafter referred to as the **"Street Improvements"**. The Construction Obligations shall include the timely completion of the Street Improvements and any and all utility relocations associated with the Street Improvements, which are currently estimated to be completed by November 20, 2015. The Developer hereby acknowledges that, in the performance of the Construction Obligations, VDOT may be required to remove the existing entrance signs, fencing, landscaping, and similar improvements that are located within the Construction Easement Areas (as hereinafter defined), and agrees that in no event shall the work required to be performed by VDOT hereunder include the relocation, repair, or reconstruction of any such entrance signs, fencing, landscaping, and similar improvements.

1.1 Additional Westbound Lane on Route 50.

(a) The parties hereby acknowledge and agree that the Construction Obligations include the construction of an additional (fourth) westbound lane between Avion Parkway and Stonecroft Boulevard, (the **"Additional Westbound Lane"**), including a right-in entrance onto, and a right-out exit off of, Westfax Drive (the **"Westfax Entrance"**). In the event that the Developer does not complete the construction of Westfax Drive in accordance with Modified Street Plans (as hereinafter defined) on or before the completion of the Additional Westbound Lane, (a) the Westfax Entrance shall not include those improvements for the Westfax Entrance that lie within the Additional Westbound Lane (the **"Encroaching Improvements"**); (b) the Additional Westbound Lane shall be continuous between Avion Parkway and Stonecroft Boulevard; and (c) the Developer shall thereafter have the continuing right, until ten (10) years after the completion certification of the Route 50 Project (the **"Westfax Deadline"**) (i) to construct the Encroaching Improvements in accordance with construction plans that are consistent with the Route 50 Plans, which construction plans are subject to approval by VDOT and the County per standard plan approval processes, and which construction is subject to the Developer (i) obtaining all necessary permits, including without limitation permits to work in the right-of-way, and (ii) securing its obligation to construct the Encroaching Improvements in accordance with such approved plans.

1.2 Additional Southbound Lane on Stonecroft Boulevard.

(a) The parties hereby acknowledge that the Construction Obligations include the construction of three (3) left turn lanes, a through lane, and a continuous right turn lane on southbound Stonecroft Boulevard (the **"Stonecroft Lanes"**), contingent on the conditions below.

(b) The parties acknowledge and agree that the construction of the Stonecroft Lanes requires the dedication, by Avion Holdings, LLC, a Virginia limited liability company, as the fee simple owner of Parcel E, as defined in **Exhibit A-1** hereto (the **"Parcel E Owner"**), of that certain portion of Parcel E, shown on that certain Commonwealth of Virginia, Department of Transportation, Acquisition Plat, dated October 8, 2013, and sealed November 19, 2014, prepared by Dewberry Consultants LLC, and entitled "COMPILED PLAT SHOWING 0.108 ACRE FEE TAKE AREA BEING GRANTED TO COMMONWEALTH OF VIRGINIA, PROPERTY OF AVION HOLDINGS, LLC (Formerly known as CH4, LLC), SULLY MAGISTERIAL DISTRICT, FAIRFAX COUNTY, VIRGINIA," (the **"Parcel E Plat"**), a reduced copy of which Parcel E Plat is attached as **Exhibit C-1** hereto, pursuant to that certain Deed of Dedication, by the Parcel E Owner to VDOT (the **"Parcel E Deed"**), the form of which Parcel E Deed is attached as **Exhibit C-2** hereto, along with a release of any liens of any deeds of trust encumbering Parcel E pursuant to one (1) or more Certificates of Partial Satisfaction (or similar documents) from the trustees or beneficiary under such deeds of trust (the **"Certificates"**).

(c) If an executed and notarized original of the Parcel E Deed and executed and notarized originals of the Certificates have not been delivered to VDOT (or its counsel) on or before December 23, 2014 (the **"Dedication Deadline"**), which originals are to be held in escrow pending Recordation, the Route 50 Plans shall be modified and the Construction Obligations shall be deemed modified, such that the Stonecroft Lanes consist of one (1) continuous right turn lane, two (2) left turn lanes, and one (1) through lane, all as shown on **Exhibit C-3** attached hereto. In no event shall the Parcel E Deed, the Parcel E Plat, or any of the Certificates be recorded prior to Recordation.

1.3 Reconfiguration of Trails. The parties hereby acknowledge and agree (a) that, as of the date hereof, a network of trails has been constructed within the Property (such trails, the **"Existing Trails"**), including without limitation along Avion Parkway, Stonecroft Boulevard, and Route 50, (b) that the Route 50 Project includes the widening of portions of Avion Parkway, Stonecroft Boulevard, and Route 50 and the construction of a shared use path immediately north of and along Route 50 (the **"Shared Use Path"**), and (c) that a substantial portion of the Existing Trails either (i) will be destroyed by such widening, by such relocation of utilities, or (with respect to existing trails constructed along Route 50 only) by the construction of the Shared Use Path, or (ii) will be rendered obsolete by the Shared Use Path. Accordingly, the Construction Obligation is hereby deemed to include the demolition of portions of the Existing Trails and the construction of new trails, in each case as shown on **Exhibit D** hereto, such Existing Trails to be so demolished being hereinafter referred to collectively as the **"Obsolete Trails"**, all other Existing Trails being hereinafter referred to collectively as the

"Remaining Trails", and all trails to be so constructed being hereinafter referred to collectively as the **"Future Trails"**.

1.4 Additional Asphalt Milling and Overlay. The parties hereby agree that, provided the Developer and Shirley enter into a mutually acceptable written contract for Shirley to perform a portion of any asphalt milling and overlay that is within the scope of any Punch List Item for Avion Parkway and, if applicable, the Eastern Stonecroft Dedication, at no cost or expense to VDOT, on or before May 1, 2015, VDOT shall cause such additional asphalt milling and overlay to be added to the Route 50 Plans. In such event, VDOT shall issue a zero dollar ($0.00) change order adding such additional asphalt milling and overlay to the Construction Obligations.

2. Dedications and Easements by Developer.

(a) The Developer will dedicate in fee simple to the County certain portions of the Property (collectively, the **"Dedications"**), in each case for no monetary compensation and pursuant to deeds in the form attached as **Exhibit E-1**, **Exhibit E-2,** and **Exhibit E-3** hereto (individually, a **"Dedication Deed"** and, collectively, the **"Dedication Deeds"**), which Dedications are required for the Route 50 Project and are more particularly bounded and described on:

(i) that certain plat, dated August 12, 2014, prepared by Rinker Design Associates, P.C., and entitled "PLAT SHOWING A PUBLIC STREET DEDICATION AND THE VACATION OF VARIOUS COUNTY EASEMENTS ON LOT 1, AVION DEVELOPMENT, SULLY DISTRICT, FAIRFAX COUNTY, VIRGINIA," a reduced copy of which plat is attached as **Exhibit E-4** hereto (the **"Lot 1 Dedication Plat"**),

(ii) that certain plat, dated August 12, 2014, prepared by Rinker Design Associates, P.C., and entitled "PLAT SHOWING A PUBLIC STREET DEDICATION AND THE VACATION OF VARIOUS COUNTY EASEMENTS ON "PARCEL B-2B", AVION DEVELOPMENT, SULLY DISTRICT, FAIRFAX COUNTY, VIRGINIA," a reduced copy of which plat is attached as **Exhibit E-5** hereto (the **"Parcel B-2B Dedication Plat"**), and

(iii) that certain plat, dated August 12, 2014, prepared by Rinker Design Associates, P.C., and entitled "PLAT SHOWING A PUBLIC STREET DEDICATION AND THE VACATION OF VARIOUS COUNTY EASEMENTS ON "PARCEL B-2C", AVION DEVELOPMENT, SULLY DISTRICT, FAIRFAX COUNTY, VIRGINIA," a reduced copy of which plat is attached as **Exhibit E-6** hereto (the **"Parcel B-2C Dedication Plat"**),

(the Lot 1 Dedication Plat, the Parcel B-2B Dedication Plat, and the Parcel B-2C Dedication Plat being hereinafter referred to individually as a **"Dedication Plat"** and collectively as the **"Dedication Plats"**). The Dedication Plats to be attached to the Dedication Deeds include an award to the Developer of an intensity credit for each subdivided parcel comprising the Property

that meets the Zoning Ordinance requirements for intensity credit, which credit shall, in the aggregate, be equal to the total intensity allocable to those portions of the Property that are dedicated in fee simple for public street purposes.

(b) The Developer will grant to VDOT over certain portions of the Property, certain temporary construction easements, certain perpetual street easements, certain perpetual drainage easements, and (with respect to Lot 1 only) a certain permanent sign easement (collectively, the **"VDOT Easements"**), in each case for no monetary compensation and pursuant to the deeds in the forms attached as **Exhibit E-7**, **Exhibit E-8**, and **Exhibit E-9** hereto (individually, an **"Easement Deed"** and, collectively, the **"Easement Deeds"**), which VDOT Easements are being granted to VDOT under threat of eminent domain and are more particularly bounded and described on:

(i) that certain Commonwealth of Virginia, Department of Transportation, Acquisition Plat, dated November 19, 2014, prepared by Dewberry Consultants LLC, formerly known as Dewberry & Davis LLC, and entitled "COMPILED PLAT SHOWING VARIOUS EASEMENTS BEING GRANTED TO, COMMONWEALTH OF VIRGINIA, PROPERTY OF PETULA PROLIX DEVELOPMENT COMPANY, SULLY MAGISTERIAL DISTRICT, FAIRFAX COUNTY, VIRGINIA," a reduced copy of which plat is attached as **Exhibit E-10** hereto (the **"Lot 1 Easement Plat"**),

(ii) that certain Commonwealth of Virginia, Department of Transportation, Acquisition Plat, dated November 19, 2014, prepared by Dewberry Consultants LLC, formerly known as Dewberry & Davis LLC, and entitled "COMPILED PLAT SHOWING VARIOUS EASEMENTS BEING GRANTED TO COMMONWEALTH OF VIRGINIA, PROPERTY OF PETULA PROLIX DEVELOPMENT COMPANY, SULLY MAGISTERIAL DISTRICT, FAIRFAX COUNTY, VIRGINIA," a reduced copy of which plat is attached as **Exhibit E-11** hereto (the **"Parcel B-2B Easement Plat"**), and

(iii) that certain Commonwealth of Virginia, Department of Transportation, Acquisition Plat, dated November 19, 2014, prepared by Dewberry Consultants LLC, formerly known as Dewberry & Davis LLC, and entitled "COMPILED PLAT SHOWING VARIOUS EASEMENTS BEING GRANTED TO, COMMONWEALTH OF VIRGINIA, PROPERTY OF PETULA PROLIX DEVELOPMENT COMPANY, SULLY MAGISTERIAL DISTRICT, FAIRFAX COUNTY, VIRGINIA," a reduced copy of which plat is attached as **Exhibit E-12** hereto (the **"Parcel B-2C Easement Plat"**),

(the Lot 1 Easement Plat, the Parcel B-2B Easement Plat, and the Parcel B-2C Easement Plat being hereinafter referred to individually as an **"Easement Plat"** and collectively as the **"Easement Plats"**).

(c) The parties hereby acknowledge (i) that the Developer has granted to Virginia Electric and Power Company, a Virginia public service corporation (**"VEPCO"**),

certain easements for transmitting and distributing electric power over certain portions of the Property pursuant to (A) with respect to Lot 1, that certain Right of Way Agreement by the Developer to VEPCO, dated October 7, 2013, and recorded among the Land Records in Deed Book 23426 at Page 105 (the **"Lot 1 VEPCO Easement"**), (B) with respect to Parcel B-2B, that certain Right of Way Agreement by the Developer to VEPCO, dated October 7, 2013, and recorded among the Land Records in Deed Book 23426 at Page 123, and (C) with respect to Parcel B-2C, that certain Right of Way Agreement by the Developer to VEPCO, dated October 7, 2013, and recorded among the Land Records in Deed Book 23426 at Page 114 (the **"Parcel B-2C VEPCO Easement"**), and (ii) that neither the Lot 1 VEPCO Easement nor the Parcel B-2C VEPCO Easement, each as granted, clearly conform to the Route 50 Plans.

The parties hereby agree that (i) VDOT, or its contractor, Shirley shall correct and re-record the Lot 1 VEPCO Easement, (ii) VDOT shall cause VEPCO to vacate the existing Parcel B-2C VEPCO Easement, and (iii) the Developer shall promptly re-grant the Parcel B-2C VEPCO Easement, such correction and re-granting being bounded and described on the Easement Plats and such correction, vacating, and re-granting being pursuant to deeds generally in the form of such Right of Way Agreements (with such additional language as may be necessary to effect the aforementioned correction and vacation) and subject to a prohibition against the installation of any VEPCO utility line within that certain easement granted by that certain Fairfax County Water Authority Easement Agreement, dated July 25, 1994, and recorded among the Land Records in Deed Book 9206 at Page 98. Such easements to VEPCO (as corrected, vacated, and re-granted) are hereinafter referred to collectively as the **"VEPCO Easements"**, and those portions of the Property encumbered by the VEPCO Easements being hereinafter referred to collectively as the **"VEPCO Easement Area"**.

3. Additional Easement Provisions and Conditions.

3.1 Trail Easements. The Developer hereby agrees that, following the demolition of the Obsolete Trails by VDOT and the construction of the Future Trails by VDOT, all as shown on **Exhibit D** hereto, the Developer, at no cost or expense to the County or VDOT, shall grant easements over, and for the maintenance of, (a) any and all Remaining Trails and (b) any and all Future Trails, such easements to be granted being hereinafter referred to as the **"New Trail Easements"**, regardless of whether any Remaining Trails or any Future Trails are or would be located within any easements for the maintenance of trails that encumber the Property as of the date hereof (the **"Existing Trail Easements"**), all of which Existing Trail Easements shall be vacated by the County in accordance with this Agreement. The County hereby agrees to accept such easements over the Remaining Trails and the Future Trails provided that such easements are granted pursuant to the County's standard form therefor.

3.2 Rt. 50 Landscaping and Streetscape Improvements. The parties hereby acknowledge (i) that Section 13-203 of the Fairfax County Zoning Ordinance (the **"Zoning Ordinance"**) requires that, where a property line abuts the right-of-way of a street, a landscaping strip ten (10) feet in width, which shall not include a sidewalk or trail, shall be located between the parking lot and the property line and that trees are required to be planted in the Landscaping Strip and (ii) that, in reliance on such section and the Proffer Determination (as defined in Section 5.9, below), the Developer has agreed to grant the VDOT Easements, and the VEPCO

Easements, and has negotiated the location of certain additional easements to Fairfax County Water Authority (**"FCWA"**). The parties hereto agree that, unless and until altered by a proffer condition amendment or rezoning of the Property, the Rt. 50 frontage of the Property shall be developed in a manner consistent with the Avion Route 50 Frontage Landscape Plan which is included in the Proffer Determination.

Notwithstanding any provision of this Agreement to the contrary, VDOT and the County hereby acknowledge and agree that the Developer intends, and shall have the right, to construct, within those portions of the Property north of the Rt. 50 frontage landscaping improvements (and within certain of the easements to be granted by the Developer hereunder), parking areas, associated travelways, and the like, other than existing public structures (collectively, **"Site Improvements"**), regardless of whether any such Site Improvements would be located within any portion of the Property encumbered by an easement granted pursuant to this Agreement, which construction shall be subject to the terms of any applicable easements.

4. Vacation of Certain Easements.

(a) The County hereby agrees to vacate or quitclaim any and all Existing Trail Easements, regardless of whether the entirety or any portion of any Obsolete Trail, any Remaining Trail, or any Future Trail has been constructed within any Existing Trail Easements, which vacation or quitclaim shall take place concurrently with the granting of the New Trail Easements and be at the sole cost and expense of the Developer.

(b) VDOT and the County each hereby agrees that the Developer shall have no responsibility to vacate or quitclaim (or cause to be vacated or quitclaimed by others) any easements for the benefit of the County or any party other than the County to the extent that such easements are located within any dedication of any portion of the Property (as defined in **Exhibit A-1** hereto) that is required or may otherwise be contemplated by this Agreement.

5. Other Street Improvements.

5.1 Virginia Mallory Drive and Westfax Drive. The parties hereby:

(a) acknowledge

(i) that the Developer has prepared plans for street improvements within those certain dedicated rights of way within Avion known as Virginia Mallory Drive and Westfax Drive,

(ii) that such plans were approved by VDOT and the County,

(iii) that the Developer secured its obligation to construct such streets in accordance with such plans by a bond for the benefit of the County,

(iv) that, as of the date hereof, no street improvements within Westfax Drive have been constructed, the street improvements within Virginia Mallory Drive

(other than the installation of street lights) have been constructed in accordance with such plans, and none of the street improvements that have been constructed have been Accepted,

(v) that the Developer has modified such plans as and to the extent shown and described on those certain plans prepared by Rinker Design Associates, P.C. and dated April 2, 2013 (the **"Modified Street Plans"**), a schedule of which Modified Street Plans is attached as **Exhibit F-1** hereto, to provide, inter alia, for

(A) a designated right turn lane from the Additional Westbound Lane onto northbound Westfax Drive,

(B) a designated right turn lane from southbound Westfax Drive onto the Additional Westbound Lane,

(C) a grass median between portions of the northbound and southbound lanes of Westfax Drive, and

(D) various entrances providing access to and egress from Parcel B-2B and Parcel B-2C from and onto Virginia Mallory Drive and Westfax Drive, and

(vi) that the Modified Street Plans have been approved by VDOT and the County, which approval expires April 26, 2018, and

(b) agree:

(i) that the Developer shall have the right to commence the construction of Westfax Drive and other improvements shown on the Modified Street Plans until the Westfax Deadline, pursuant to all necessary approvals and permits, including, but not limited to, a permit to work in the right-of-way,

(ii) that the Developer shall have the right to request a reduction of the bond securing the Developer's obligation to construct Virginia Mallory Drive and Westfax Drive in accordance with the Modified Street Plans and as otherwise provided in this Agreement,

(iii) that VDOT and the County shall, upon request,

(A) extend its approval of the Modified Street Plans for periods of five (5) years from the then current expiration of such approval until a date that shall be no later than the Westfax Deadline, and

(B) approve, in the course of reviewing any site plan for any portion of Parcel B-2B or Parcel B-2C, any entrance shown on the Modified Street Plans; provided, however, that in no event will VDOT and the County be obligated to extend its approval of the Modified Street Plans beyond the Westfax Deadline or to approve any entrance

shown on the Modified Street Plans in its review of any site plan submitted after the Westfax Deadline, and

(iv) that the Developer will, concurrently with the extension of the approval of the Modified Street Plans by VDOT and the County, extend the bonding agreements applicable to such plans.

5.2 Avion Parkway U-Turn Lane.

(a) The Developer shall have the right to add to the Route 50 Project an additional northbound lane on Avion Parkway to facilitate vehicles travelling on northbound Avion Parkway making a U-turn onto southbound Avion Parkway at the median break adjacent to the existing entrance to Lot 2 (as defined in **Exhibit A-1** hereto), as shown on **Exhibit F-2** hereto (such lane, the **"U-Turn Lane"**), which right may be exercised by the Developer delivering written notice of such exercise to VDOT and Shirley Contracting Company, LLC, a Virginia LLC ("**Shirley**") within thirty (30) days after Recordation. Following the exercise of such right by the Developer and the Developer and Shirley entering into a mutually acceptable written contract for the construction of the U-Turn Lane, (i) the Construction Obligations shall be deemed to include the U-Turn Lane, and (ii) VDOT shall issue a zero dollar ($0.00) change order to incorporate plans for the U-Turn Lane into the Route 50 Plans and construct the U-Turn Lane as part of the Construction Obligations.

(b) In the event that the Developer does not exercise the foregoing right to add the U-Turn Lane to the Route 50 Project, the Developer shall thereafter have the continuing right, until the Westfax Deadline, to construct the U-Turn Lane in accordance with construction plans that are consistent with **Exhibit F-2** hereto, which construction plans shall be subject to approval by VDOT and the County per standard plan approval processes, and which construction shall be subject to the Developer (i) obtaining all necessary permits, including without limitation permits to work in the right-of-way, and (ii) securing its obligation to construct the U-Turn Lane in accordance with such approved plans.

5.3 Continuous Right Turn onto Northbound Stonecroft. The Developer shall have the continuing right, until the Westfax Deadline, to construct an additional northbound lane on Stonecroft Boulevard (such lane, the **"Right Turn Lane"**), the primary purpose of which Right Turn Lane is to provide a continuous right turn lane from the Additional Westbound Lane onto northbound Stonecroft Boulevard, as shown on **Exhibit F-3** hereto. Such construction shall be (i) in accordance with construction plans that are consistent with **Exhibit F-3** hereto, which construction plans shall be subject to approval by VDOT and the County per standard plan approval processes, and (ii) subject to the Developer (A) obtaining all necessary permits, including without limitation permits to work in the right-of-way, and (B) securing its obligation to construct the Right Turn Lane in accordance with such approved plans.

5.4 Future Traffic Signals. VDOT and the County hereby agree that the Developer shall have the right to install, at the Developer's sole cost and expense, traffic signals at the following intersections only upon satisfaction of signal warrant conditions and in compliance with all applicable federal, state, and County laws and regulations:

(a) the intersection of Avion Parkway with the eastern termination of Virginia Mallory Drive and the entrance to Lot 4A (as defined in **Exhibit A-1** hereto) and Lot 5A (as defined in **Exhibit A-1** hereto);

(b) the intersection of Avion Parkway with the western termination of Virginia Mallory Drive and the entrance to Parcel D-1B;

(c) the intersection of Stonecroft Boulevard with the western termination of Avion Parkway and the eastern termination of Avion Park Court;

(d) the intersection of Virginia Mallory Drive with the northern termination of Westfax Drive; and

(e) the intersection of Avion Parkway with the entrance to Lot 2.

5.5 Site Plan Waivers. For all site plans and minor site plans for the future development of the Property or any portion thereof filed pursuant to its current I-5 zoning, the County hereby agrees:

(a) to waive:

(i) those provisions under §17-201(3)(A) of the Zoning Ordinance that would otherwise require the construction of service drives adjacent and generally parallel to primary highways, the dedication of such service drives for public use as a public road, and/or the conveyance of the underlying land to the County for a service drive, in consideration of the developer having constructed Avion Parkway in lieu of service drives, and

(ii) those provisions under §17-201(4) of the Zoning Ordinance that would otherwise require the dedication and construction of a widening or realignment of Route 50, because the Route 50 Project and the Additional Westbound Lane result in the establishment of westbound lanes across the frontage of the Property, which are in excess of the current adopted Comprehensive Plan designation of three westbound lanes,

(b) that all such improvements described in Clause (a)(i) above, are unnecessary and contrary to the Proffer Determination (as defined in Section 5.9, below),

(c) that the waiver set forth in Clause (a)(ii) above shall remain in effect until such time as the Comprehensive Plan (if ever) is amended to show Route 50, along the Property's frontage, as more than an eight lane arterial highway, further dedication from and frontage improvements along the Route 50 frontage being otherwise unnecessary,

(d) that neither such waiver adversely affects any other required improvements and/or compliance with any other applicable requirements, and

(e) not to attach to any site plan or minor site plan approval, or otherwise impose on any fee simple owner of the Property, any conditions to either such waiver.

5.6 Willard Road North of Route 50. VDOT and the County hereby agree that in no event will the Developer or the fee simple owner or the developer of any real property within Avion have any obligation, responsibility, or liability whatsoever (other than that arising out of their respective negligence) with respect to the Willard Road Stub (as defined in **Exhibit A-1** hereto), including without limitation any obligation (a) to make or cause to be made any dedication of (i) any additional right-of-way, (ii) any existing right-of-way, or (iii) any portion of any existing right-of-way, (b) to vacate or cause to be vacated any right-of-way or any portion of any right-of-way, (c) to acquire or cause to be acquired any right-of-way or any portion of any right-of-way, (d) to abandon or cause to be abandoned any right-of-way or any portion of any right-of-way, or (e) to have Accepted or cause to have Accepted the street improvements within any right-of-way or any portion of any right-of-way.

5.7 Additional Dedications. The County hereby agrees to accept, on or before the Anniversary Date, the dedication for public street purposes of (a) the parcel shown as Area 1 on Exhibit G hereto (the **"Cul-de-Sac Parcel"**), which Cul-de-Sac Parcel comprises a portion of the Eastern Willard Prescription, as defined in **Exhibit A-1** hereto, and (b) the Eastern Stonecroft Prescription, as defined in **Exhibit A-1** hereto (collectively, the **"Dedication Parcels"**), which Dedication Parcels have not, as of the date hereof, been dedicated for public street purposes, which dedication shall be expressly without any representation or warranty whatsoever as to title to the Dedication Parcels or as to the ownership of the Dedication Parcels by the Developer, by the party making such dedication, or by any other party, and the County and VDOT hereby agree that, following any such dedication, neither the Developer, Associates, nor any affiliate of either shall have any obligation arising from development of the Property (a) to submit, or obtain the approval of VDOT and/or the County to, any plan for improvements to either or both of the Dedication Parcels, (b) to bond or otherwise secure the completion of any such improvements, or (c) to have the street improvements within either or both of the Dedication Parcels Accepted.

5.8 West of Stonecroft Boulevard Centerline. VDOT and the County hereby agree that in no event will the Developer have any right-of-way dedication, vacation or construction obligation or responsibility whatsoever with respect to any portion of Stonecroft Boulevard west of the centerline of that certain right of way that, immediately prior to the recordation of the Original Dedication Deed (as defined in **Exhibit A-1** hereto) among the Land Records, was known as "Willard Road" (the **"Centerline"**), which portion of Stonecroft Boulevard shall include without limitation the Western Stonecroft Dedication (as defined in **Exhibit A-1** hereto) and the Western Stonecroft Prescription (as defined in **Exhibit A-1** hereto), and which obligation, responsibility, and liability shall arise from development of the Property and include without limitation any obligation (a) to make or cause to be made any dedication of (i) any additional right-of-way, (ii) any existing right-of-way, or (iii) any portion of any existing right-of-way, (b) to vacate or cause to be vacated any right-of-way or any portion of any right-of-way, (c) to acquire or cause to be acquired any right-of-way or any portion of any right-of-way, (d) to abandon or cause to be abandoned any right-of-way or any portion of any right-of-way, or (e) to have Accepted or cause to have Accepted the street improvements within any right-of-way or any portion of any right-of-way; provided, however, that the Developer agrees to use

reasonable efforts to cooperate with the County in the resolution of any dispute arising out of the location of the Centerline.

5.9 Proffer Determination. The parties hereby acknowledge that the Property is subject to certain proffers to Fairfax County, dated December 30, 1975, from Richard J. Utz, Trustee, which proffers were made pursuant to rezoning applications number 74-2-082, 74-2-083, 74-2-084, and 74-2-085. Proffer number two states as follows: "To avoid what might be deemed undesirable commercial strip development on Route 50, we would be willing to move the Route 50 parallel access road farther in, so the commercial development would back on Route 50 and would be screened, in accordance with applicable county ordinances and a 100' setback." The Developer has applied for and the County has issued a proffer interpretation and determination of substantial compliance, which is attached as **Exhibit E-13** (the **"Proffer Determination"**). The Proffer Determination establishes an Avion Route 50 Frontage Landscape Plan, which the parties hereby agree shall guide the development of the Rt. 50 frontage of the Property, until the Property is rezoned.

5.10 Bonding.

(a) The parties hereby acknowledge that:

(i) the Developer (A) has entered into certain bonding and other agreements with the County under which the Developer is required to complete certain improvements shown on the overall site plan for Avion, known as Avion Development, Plan No. 6455-SP-01, which site plan includes Avion Parkway, Concorde Parkway, and the Eastern Stonecroft Dedication (such agreements, the **"Avion Development Agreements"**) and (B) has secured its obligations under such agreements, inter alia, with a surety bond for the benefit of the County (the **"Avion Development Bond"**), which Avion Development Agreements and which Avion Development Bond have, as of the date hereof, expired;

(ii) the Developer (A) has entered into certain bonding and other agreements with the County under which the Developer is required to complete certain improvements shown on the site plan for Lot 4A and Lot 5A, known as Avion Development Office Buildings Lots 4 & 5, Plan No. 6455-SP-20, which site plan includes the Lot 4A/5A Lane (such agreements, the **"Lots 4 & 5 Agreements"**) and (B) has secured its obligations under such agreements, inter alia, with a surety bond for the benefit of the County (the **"Lot 4 & 5 Bond"**), which Lot 4 & 5 Agreements and which Lots 4 & 5 Bond have, as of the date hereof, expired; and

(iii) the Developer (A) has entered into certain bonding and other agreements with the County under which the Developer is required to complete certain improvements shown on the plan for Virginia Mallory Drive and Westfax Drive, which Plan has been modified by the Modified Street Plans (such agreements, the **"Loop & Stub Road Agreements"**), and (B) has secured its obligations under such agreements, inter alia, with a surety bond for the benefit of the County (the **"Loop & Stub Road Bond"**), which Loop & Stub Road Agreements and which Loop & Stub Road Bond have, as of the date hereof, expired.

(b) The parties hereby agree that:

(i) If the street improvements within Avion Parkway, Concorde Parkway, and the Eastern Stonecroft Dedication have not been Accepted by the date that is one (1) year after the date of Recordation (such later date, the **"Anniversary Date"**), within thirty (30) days after the Anniversary Date, the Developer (A) shall extend the Avion Development Agreements to a date no earlier than the date that is one (1) year after the Anniversary Date, (B) shall pay, in addition to all customary fees and expenses for such extension, all fees and expenses payable for the period beginning on the current expiration of the Avion Development Agreements and ending on the date on which the Avion Development Agreements are extended, and (C) shall secure its obligations under the Avion Development Agreements with a surety bond, the amount of which shall be equal to the current or reduced amount of the Avion Development Bond.

(ii) If the street improvements within the Lot 4A/5A Lane have not been Accepted by the Anniversary Date, within thirty (30) days after the Anniversary Date, the Developer (A) shall extend the Lots 4 & 5 Agreements to a date no earlier than the date that is one (1) year after the Anniversary Date, (B) shall pay, in addition to all customary fees and expenses for such extension, all fees and expenses payable for the period beginning on the current expiration of the Lots 4 & 5 Agreements and ending on the date on which the Lots 4 & 5 Agreements are extended, and (C) shall secure its obligations under the Lots 4 & 5 Agreements with a surety bond, the amount of which shall be equal to the current or reduced amount of the Lots 4 & 5 Bond.

(iii) Within thirty (30) days after Recordation, the Developer (A) shall modify the Loop & Stub Road Agreements to incorporate the Modified Street Plans and extend such modified Loop & Stub Road Agreements to April 26, 2018, (B) shall pay, in addition to all customary fees and expenses for such extension, all fees and expenses payable for the period beginning on the current expiration of the Loop & Stub Road Agreements and ending on the date on which such modified Loop & Stub Road Agreements are extended, and (C) shall secure its obligations under such modified Loop & Stub Road Agreements with a surety bond, the amount of which shall be based on the applicable surety value estimate.

(c) Upon Acceptance prior to the Anniversary Date of the street improvements within (i) Avion Parkway, Concorde Parkway, and the Eastern Stonecroft Dedication and/or (ii) the Lot 4A/5A Lane, the Developer shall pay all customary fees and expenses payable for the period (A) beginning on the current expiration of the Avion Development Agreements and/or Lots 4 & 5 Agreements, respectively, and (B) ending on the date on which the applicable surety or bond projects are released.

(d) In no event shall the Developer be obligated (i) to extend or replace its development agreement or surety bond under the Main Agreements prior to the Anniversary Date, (ii) to extend or replace its development agreement or surety bond under the Lots 4 & 5 Agreements prior to the Anniversary Date, (iii) to construct any frontage improvements to Route 50, or to extend or replace any bonding or development agreement with respect to any improvements to Route 50.

(e) The County shall (i) issue a Letter 18 and (ii) return all surety bonds and other security for the Avion Development Agreements, the Lots 4 & 5 Agreements, and the modified Loop & Stub Road Agreements, in each case within thirty (30) days after a County determination of project completion with respect to the plan covered by the applicable agreements.

(f) The County shall return all surety bonds and other security for any improvements to Route 50 within thirty (30) days after Recordation.

6. Agreements Regarding Street Acceptance.

6.1 Abandonment of Willard Road. The parties hereby (a) acknowledge that the abandonment of that portion of Willard Road (Virginia Route 607) that lies north of the Willard Road Stub and south of that certain right of way known as Stonecroft Boulevard (such portion, **"Old Willard Road"**) was made a condition of the Acceptance of the street improvements within the Eastern Stonecroft Dedication and (b) agree that such condition is hereby deemed satisfied only with respect thereto. VDOT and the County hereby further agree that neither the abandonment, the vacation, nor any similar process, in each case with respect to Old Willard Road or any portion thereof, shall be made a condition (i) of the Acceptance of any streets improvements within Avion, including without limitation any merge lane, deceleration lane, turn lane, widening, or the like (A) that is ancillary to any of the streets within Avion or otherwise serves any land within Avion and (B) that has, as of the date hereof, been dedicated or may hereafter be dedicated or (ii) of any approval, permit, bond or the like, including any extension of any existing approval, permit, bond, or the like, in each case that may be requested from the County and/or VDOT, including without limitation any grading permit, sitework permit, building permit, or non-residential use permit, in each case with respect to any land within Avion. Within thirty (30) days following Recordation, the developer hereby agrees to reinitiate and diligently pursue the abandonment of Old Willard Road through a County Board of Supervisors public hearing on the same.

6.2 Acceptance of Constructed Streets.

(a) The parties hereby acknowledge that, as of the date hereof, (i) the Initial Street Acceptance Package, the As-Built Utility Package, and the Post-Construction Package for all Constructed Streets, other than Virginia Mallory Drive, have been submitted to and are deemed accepted and approved by VDOT and the County, and all other requirements for the Acceptance of the street improvements within the aforementioned streets have been satisfied except for the completion of all of the punch list items established and agreed to by the inspection of the street improvements within the aforementioned streets and the storm drainage lines under the aforementioned streets (collectively, the **"Original Storm Drains"**), each such punch list item being hereinafter referred to as an **"Original Punch List Item"** and all Original Punch List Items being described on and attached as Exhibits A, B-1 through B-7, and C of that certain Punch List Agreement, dated of even date herewith and entered into by the parties (the **"Punch List Agreement"**) and (ii) the Initial Street Acceptance Package, and the As-Built Utility Package for Virginia Mallory Drive have been submitted and are deemed accepted and

approved by VDOT and the County. The parties agree that when the Post-Construction Package for Virginia Mallory Drive has been submitted and deemed accepted and approved by VDOT, all requirements for the Acceptance of the street improvements within Virginia Mallory Drive will have been satisfied except for the completion of all punch list items established and agreed to by the inspection of the street improvements within Virginia Mallory Drive and the storm drainage lines under Virginia Mallory Drive (collectively, the **"Additional Storm Drains"**), each such punch list item being (hereinafter referred to as an **"Additional Punch List Item"**) and all Additional Punch List Items being described on and attached as Exhibits D and E-1 through E-3 of the Punch List Agreement. For all purposes of this Agreement, (a) **"Punch List Item"** shall mean and refer to (i) an Original Punch List Item, with respect to any Constructed Street other than Virginia Mallory Drive, or (ii) an Additional Punch List Item, with respect to Virginia Mallory Drive, and (b) **"Storm Drains"** shall collectively mean and refer to (a) the Original Storm Drains, with respect to the storm drainage lines under any Constructed Street other than Virginia Mallory Drive, and (b) the Additional Storm Drains, with respect to the storm drainage lines under Virginia Mallory Drive.

(b) VDOT and the County hereby agree that, upon the satisfactory completion of all of the Punch List Items with respect to the street improvements within any Constructed Street that are contiguous with any other street or portion thereof that has been Accepted or that is within the Route 50 Project, regardless of whether such portion of the Route 50 Project has then been completed, (i) the street improvements within such Constructed Street shall be Accepted and (ii) the County shall approve, if approvable in accordance with the Public Facilities Manual, the Developer's application(s) to reduce or, if applicable, release any bond securing the Developer's obligation to construct such Constructed Street. Notwithstanding the foregoing, neither the completion of any of the Construction Obligations nor the completion of any other improvements with respect to the Route 50 Project shall be a condition to, or delay, the Acceptance of the street improvements within any Constructed Street, Westfax Drive, the Parcel B-2C Lane, or any other street now or hereafter constructed within Avion, nor shall the completion or Acceptance of the street improvements within Westfax Drive or the completion of any other improvements with respect thereto be a condition to the Acceptance of the street improvements within Virginia Mallory Drive, notwithstanding any Punch List Item. In addition, upon satisfaction of the permit requirements, VDOT agrees to issue a tie-in permit for the connection of any Dedicated Street for which the issuance of a tie-in permit may be required.

(c) VDOT and the County hereby further agree that, notwithstanding any provision of those certain Fairfax County Street Acceptance Guidelines in effect as of the date hereof, as the same may be amended from time to time after the date hereof, and subject to Paragraph (d), below, if all Punch List Items that relate to the street improvements within any Constructed Street, including any associated Storm Drains, are completed by the Anniversary Date, no further inspection of the street improvements within such Constructed Street and such Storm Drains and no completion of additional Punch List Items with respect to the street improvements within such Constructed Street and such Storm Drains will be required for the Acceptance of the street improvements within such Constructed Street, except that the Developer agrees to repair damage to the street improvements within any Constructed Street caused by weather conditions prior to the earlier of (i) the Anniversary Date or (ii) the date on which the Developer has complied with all applicable requirements for the Acceptance of the street

improvements within such Constructed Street; further provided that if such Punch List Items are not completed within such time frame, VDOT and the County shall have the right, by giving written notice thereof to the Developer within thirty (30) days after the Anniversary Date, to reinspect such Constructed Street and to require the Developer to have the associated Storm Drains reinspected by videotape. The parties hereby agree to negotiate any punch list established by any such reinspection of any Constructed Street and associated Storm Drains in good faith.

(d) Upon the completion of the Punch List Items with respect to any Constructed Street and associated Storm Drains, the Developer shall notify VDOT and the County of such completion in writing and otherwise in accordance with the notice requirements of this Agreement, within thirty (30) days after receipt by VDOT and the County of notice, VDOT and the County shall each notify the Developer either (i) that such Punch List Items have been completed to its satisfaction or (ii) which Punch List Items have not, in its reasonable discretion, been completed to its satisfaction, stating with particularity both (A) the manner and extent to which each such punch list has not been so completed and (B) such commercially reasonable measures that it desires the Developer to take with respect to such Punch List Item. If no such notice is received from VDOT or the County, respectively, within such thirty (30) day period, such Punch List Items shall be deemed to have been completed to the satisfaction thereof. In the event of a dispute between the Developer and either VDOT or the County with respect to any Punch List Item, the time for the completion of such Punch List Item shall be extended by a period equal to the sum of (I) thirty (30) days, (II) the period required to resolve such dispute, and (III) such additional period as may be reasonably necessary for the Developer to take such measures agreed to by the parties in the resolution of such dispute.

(e) VDOT and the County hereby further agree that the installation of any utility line within any right of way with respect to any Constructed Street shall not operate to delay the Acceptance of the street improvements within such Constructed Street in accordance herewith, regardless of whether such installation is pursuant to or not pursuant to a permit issued by VDOT or the County. In the event said utility installation or other events (including without limitation weather) outside the control of Developer damage any Constructed Street, the Developer shall be entitled to a reasonable extension of time beyond the Anniversary Date, so long as the Developer has diligently pursued its obligations for Acceptance of the Constructed Streets as set forth in this Agreement. The Developer hereby represents and warrants that it has not given, and that (except as reasonably necessary to complete any Punch List Item) it will not in the future give, any utility company permission to install, within any Constructed Street, any utility line that is not included in the As-Built Utility Package applicable to such Constructed Street.

7. Miscellaneous Provisions.

7.1 Agreement to Run with the Land. The rights and obligations of the parties hereunder may not be assigned by any party without the prior written consent of all other parties hereto, which consent shall not be unreasonably delayed but may be withheld or conditioned in each such other party's sole, absolute, and subjective discretion; provided, however, that the rights and obligations of the Developer hereunder shall run with the land that comprises the Property and shall be not be personal to Petula Prolix. The rights and obligations of VDOT and

the County shall be personal thereto and shall benefit and be binding upon their respective successors and assigns under any assignment permitted hereunder. If the Property is owned by more than one person, the rights of the Developer hereunder may be exercised by any such person, and the obligations of the Developer hereunder shall be joint and several with respect to all such persons. The foregoing shall not be deemed or otherwise construed to prohibit such persons from allocating by agreement or otherwise any rights and/or obligations of the Developer hereunder among such persons, and any such agreement or allocation thereunder or otherwise shall not be binding on VDOT or the County, except to the extent provided in such agreement and unless VDOT and/or the County, as applicable, are/is a party to such agreement.

7.2 Merger; Modification and Amendment. This Agreement represents the entire understanding of the parties hereto with respect to the subject matter hereof and all other contracts, agreements, understandings, and the like are hereby merged hereinto, including without limitation the Prior Agreement, and the parties hereby agree that this Agreement shall supersede the Prior Agreement in all respects. This Agreement may only be modified or amended by a writing executed on behalf of all parties hereto.

7.3 Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement.

7.4 Sovereign Immunity. Nothing in this Agreement shall constitute or be construed as a waiver of the sovereign immunity of VDOT or the County.

7.5 Third-Party Beneficiaries. This Agreement is not intended to give or to confer any benefits, rights, privileges, claims, actions, or remedies to any other party except the Parcel E Owner, which is an intended third-party beneficiary of only those provisions hereof that require VDOT to construct or cause to be constructed the Stonecroft Lanes.

8. Schedule of Exhibits. The following exhibits are attached hereto:

Exhibit A-1	Definitions
Exhibit A-2	Eastern Stonecroft Prescription
Exhibit A-3	Eastern Willard Prescription
Exhibit A-4	Western Stonecroft Prescription
Exhibit A-5	Western Willard Prescription
Exhibit B-1	Schedule of Route 50 Plans
Exhibit B-2	Reduced Copies of Route 50 Plans
Exhibit C-1	Parcel E Plat
Exhibit C-2	Parcel E Deed
Exhibit C-3	Modified Stonecroft Lanes
Exhibit D	Demolition and Construction of Trails
Exhibit E-1	Lot 1 Dedication Deed
Exhibit E-2	Parcel B-2B Dedication Deed
Exhibit E-3	Parcel B-2C Dedication Deed
Exhibit E-4	Lot 1 Dedication Plat

Exhibit E-5	Parcel B-2B Dedication Plat
Exhibit E-6	Parcel B-2C Dedication Plat
Exhibit E-7	Lot 1 Easement Deed
Exhibit E-8	Parcel B-2B Easement Deed
Exhibit E-9	Parcel B-2C Easement Deed
Exhibit E-10	Lot 1 Easement Plat
Exhibit E-11	Parcel B-2B Easement Plat
Exhibit E-12	Parcel B-2C Easement Plat
Exhibit E-13	Proffer Determination
Exhibit F-1	Schedule of Modified Street Plans
Exhibit F-2	U-Turn Lane Plan
Exhibit F-3	Right Turn Lane Plan
Exhibit G	Cul-de-Sac Parcel

9. All notices under this Agreement shall be in writing and shall be sent by electronic mail or certified U.S. Mail, return receipt request, addressed as follows:

As to County:

Director, Department of Public Works and Environmental Services
12055 Government Center Parkway
Fairfax, Virginia 22035

With a copy to:

Fairfax County Attorney
12000 Government Center Parkway, Suite 549
Fairfax, Virginia 22035-0064
Fax; 703.324.2665

As to the Developer:

Petula Prolix Development Company
c/o Principal Real Estate Investors
711 High Street – Department H-137
Des Moines, IA 50392-1370
Attention: Eastern CRE-Equities Team

with a copy to:

Trammell Crow Company
1055 Thomas Jefferson Street, NW
Suite 600
Washington, DC 20007
Attention: Avion Development Manager

and

Thomas W. Myers, Jr., Esquire
Law Office of Thomas W. Myers, LLC
4800 Hampden Lane
Suite 200
Bethesda, Maryland 20814

As to VDOT:
4975 Alliance Drive
Fairfax, Virginia 22030
Attn: Susan Shaw, P.E.

As to Shirley:
Shirley Construction
45240 Business Court, Suite 100
Dulles, Virginia 22079
Attn: Jeffrey S. Austin

Such notices shall be effective when delivered (in the case of hand-delivery), the business day after mailing (in the case of overnight express delivery) or electronic mail, or three (3) business days after mailing (in the case of certified mail). Either party may change its addresses or addressees for notice by given notice to the other party in accordance with this paragraph.

[The remainder of this page has been left blank intentionally.]

IN WITNESS WHEREOF, the parties have executed this agreement as of the day and year first above written.

PETULA PROLIX:

Petula Prolix Development Company, an Iowa corporation

By: Principal Real Estate Investors, LLC, a Delaware limited liability company, its authorized signatory

By: _____
Name: Dennis J. Tinker
Title: Assistant Managing Director Asset Management

By: _____
Name: Robert T. Klinkner
Title: Managing Director Asset Management

STATE OF IOWA)
) to wit:
COUNTY OF POLK)

I, the undersigned, a Notary Public in and for the jurisdiction aforesaid, do hereby certify that Dennis J. Tinker and Robert T. Klinkner, who are respectively a Asst Mg Dir - Am and a Mg Dir - Am of Principal Real Estate Investors, LLC, a Delaware limited liability company, which is an authorized signatory of Petula Prolix Development Company, an Iowa corporation, whose name is signed to the foregoing instrument, have acknowledged the same before me in the aforesaid jurisdiction as duly authorized officers of Principal Real Estate Investors, LLC, on behalf of said corporation.

GIVEN under my hand and seal on this 16th day of December, 2014.

Amy S Todhunter
Notary Public

My commission expires: _____

AMY S. TODHUNTER
Commission Number 754308
My Commission Expires
August 19, 2017

[Signatures continue on the following page.]

CERTIFICATE

STATE OF IOWA)
) SS.
COUNTY OF POLK)

I, Karen A. Pearston, after being duly sworn upon my oath, depose and state:

1. That I am the duly elected and currently acting Vice President and Associate General Counsel of Petula Prolix Development Company, an Iowa corporation (the "Company").

2. That the following is a true and correct copy of Resolution No. 5 which was duly adopted by the Board of Directors of the Company on April 6, 2001, and remains currently in effect on the date hereof, which authorizes the execution of documents described herein by officers of the Company and by Principal Global Investors, LLC, including Principal Real Estate Investors, LLC (collectively "Principal Global Investors") as authorized signatory for the Company, through certain of Principal Global Investors' officers or employees as named in a control plan on file with the Corporate Secretary of the Company.

RESOLVED, that:
A. Any two of the following officers of Petula Prolix Development Company ("COMPANY"): Chairman, Chief Executive Officer, President, Chief Operating Officer, any Division President, any Executive Vice President, any Senior Vice President, any Vice President, any Counsel, Treasurer, any Director – Treasury, or any Assistant Treasurer, or;
B. Principal Global Investors, LLC, or its subsidiaries including Principal Real Estate Investors, LLC ("Principal Global Investors"), as authorized signatory for COMPANY, by such officers or employees of Principal Global Investors as shall be named in a control plan which is approved by any two of the following officers of Principal Global Investors, LLC: Chief Executive Officer, Chief Compliance Officer, Chief Financial Officer, Executive Director - Fixed Income, Executive Director-Equities, or Executive Director - Real Estate and is kept on file with the Corporate Secretary of Principal Life Insurance Company and/or COMPANY; or
C. Designees of the Chief Investment Officer of COMPANY as shall be named in a control plan that is approved by the Chief Investment Officer and any other member of the Principal Life Investment Committee and is kept on file with the Corporate Secretary of Principal Life Insurance Company and/or COMPANY;
be and are hereby authorized to act on behalf of COMPANY as follows:
1. Execute, or appoint an attorney or attorneys in fact to execute, for and on behalf of COMPANY instruments affecting or in any manner relating to the purchase, servicing, subscription, holding, sale, assignment, exchange, release or transfer of, or exercise of ownership rights with respect or incidental to, notes, bonds, debentures, stock and other securities, investment contracts, foreign exchange or currency, futures, options, swaps and other derivatives now owned or which may hereafter be owned or acquired by or on behalf of COMPANY, regardless of whether such securities are registered or payable to bearer, as well as liens or security interests with respect to such securities or assets.
2. Execute, or appoint an attorney or attorneys in fact to execute, for and on behalf of COMPANY, mortgages; conveyances or leases of land, oil, gas, mineral or other property rights; easements; subordination agreements; substitution of trustees; lease agreements and service contracts or amendments thereto; assignments and releases of mortgages, trust deeds and other encumbrances; powers of attorney in connection with the foreclosure of mortgages and trust deeds; any and all other instruments affecting or in any manner relating to real estate, or any interest therein or lien thereon owned by COMPANY.
RESOLVED FURTHER, that any management or leasing company specifically granted the written authority from COMPANY in its management and/or leasing contract shall have the power on behalf of COMPANY to execute, or to appoint an attorney or attorneys in fact to execute, service contracts and lease agreements or amendments thereto for aggregate dollar amounts of less than $100,000 in connection with projects owned in whole or in part by COMPANY provided that the procurement cost for the service contract, lease or amendment does not exceed $50,000.
RESOLVED FURTHER, the Corporate Secretary, or any Assistant Secretary, is hereby authorized to certify the authority of persons and entities pursuant to this resolution.

3. That the persons listed below are duly elected and currently acting officers of or authorized employees of Principal Real Estate Investors who are authorized to execute the (i) Development Agreement, by and among the Company, the Commonwealth of Virginia, Department of Transportation, and the Board of Supervisors of Fairfax County, Virginia, (ii) Punch List Agreement by and among the Company, the Commonwealth of Virginia, Department of Transportation, and the Board of Supervisors of Fairfax County, Virginia, (iii) Deed Of Dedication And Vacation (Lot 1), by and between the Company and the Board of Supervisors of Fairfax County, Virginia, a body corporate and politic, (iv) Deed Of Dedication And Vacation (Parcel B-2B), by and between the Company and the Board of Supervisors of Fairfax County, Virginia, a body corporate and politic, (v) Deed Of Dedication And Vacation (Parcel B-2C), by and between the Company and the Board of Supervisors of Fairfax County, Virginia, a body corporate and politic, (vi) Deed of Easement (Lot 1), by and between the Company and the Commonwealth of Virginia, acting by and through its Department of Transportation, (vii) Deed of Easement (Parcel B-2B), by and between the Company and the Commonwealth of Virginia, acting by and through its Department of Transportation and (viii) Deed of Easement (Parcel B-2C), by and between the Company and the Commonwealth of Virginia, acting by and through its Department of Transportation.

Kevin Anderegg	Jeffrey A. Frey	Dana Maudlin-Frey	Mary E. Schwarze
Dennis D. Ballard	Dave Graves	Casey Miller	Dennis J. Tinker
Michael S. Benson	James J. Halliwell	Thomas R. Pospisil	Cara A. Underwood
Robin Cheek	Mark A. Hanrahan	Robert Roepsch	Stacia L. VanCleave
Jeff Clement	Emily Kell	Donisue Rupp	Rodney R. Vogel
Morgan Deal	Robert T. Klinkner	Brian Sandfort	Joseph Wanninger
Johnna Donahue	Jill Lauckner	Linda Woofter	Ben Wobschall
Jeremy Dunlavey	Alex Mather	Kristine Soliday	

4. That this Certificate is made and delivered for the benefit of appropriate parties involved with the transaction described herein

5. That the statements contained herein are true and correct, as I verily believe.

Dated at Des Moines, Iowa, this 15th day of December 2014.

Karen A. Pearston

Karen A. Pearston, Vice President and Associate General Counsel
Petula Prolix Development Company

RENEE J. NESTVEDT
Commission Number 754758
My Commission Expires
September 15, 2017

State of Iowa
County of Polk
This instrument was acknowledged before me on December 15, 2014, by Karen A. Pearston.

Renee J. Nestvedt
NOTARY PUBLIC IN AND FOR THE STATE OF IOWA

21

VDOT:

Commonwealth of Virginia, Department of Transportation

By: _____
Name:
Title: Commissioner

COMMONWEALTH OF VIRGINIA)
) to wit:
CITY OF RICHMOND)

I, the undersigned, a Notary Public in and for the jurisdiction aforesaid, do hereby certify that Charles Kilpatrick, whose name is signed to the foregoing writing has acknowledged the same before me in the jurisdiction aforesaid.

GIVEN under my hand and seal on this 23rd day of December, 2014.

Brenda P. Crouch
Notary Public

BRENDA P CROUCH NOTARY PUBLIC REG # 7030565 MY COMMISSION EXPIRES 12/31/2017 COMMONWEALTH OF VIRGINIA

My commission expires: 12/31/2017

[Signatures continue on the following page.]

21 22

COUNTY:

Board of Supervisors of Fairfax County, Virginia

Approved as to form.

Laura S. Gori.
Name:
Title: Assistant County Attorney

By: Edward L Long Jr.
Name:
Title: County Executive

COMMONWEALTH OF VIRGINIA)
) to wit:
COUNTY OF FAIRFAX)

The foregoing instrument was acknowledged before me by EDWARD L. LONG JR., County Executive, this 17TH day of DECEMBER, 2014.

Jo Ann Havach Bakos
Notary Public

My commission expires: JULY 31, 2016.

#2569079v1 52296/00001

JO ANN HAVACH NOTARY PUBLIC COMMONWEALTH OF VIRGINIA

Jo Ann Havach
NOTARY PUBLIC
Commonwealth of Virginia
Reg. #178038
My Commission Expires
July 31, 2016

JoAnn Havach Bakos
was commissioned a notary public
as JoAnn Havach.

22 23

Board Agenda Item
June 23, 2015

ADMINISTRATIVE - 7

Installation of "Watch for Children" Signs as Part of the Residential Traffic Administration Program (Mount Vernon District)

ISSUE:
Board endorsement for the installation of a "Watch for Children" sign, as part of the Residential Traffic Administration Program (RTAP)

RECOMMENDATION:
The County Executive recommends that the Board endorse the installation of a "Watch for Children" sign on the following road:

- Rolling Road at the intersection of Spring Tree Drive (Mount Vernon District)

TIMING:
Board action is requested on June 23, 2015.

BACKGROUND:
The RTAP allows for installation of "Watch for Children" signs at the primary entrance to residential neighborhoods, or at a location with an extremely high concentration of children relative to the area, such as playgrounds, day care centers, or community centers. FCDOT reviews each request to ensure the proposed sign will be effectively located and will not be in conflict with any other traffic control devices. On April 27, 2015, FCDOT received written verification from the Mount Vernon district supervisor confirming community support for the referenced "Watch for Children" sign.

FISCAL IMPACT:
The cost for a sign at one location is approximately $150. Funding in the amount of $150 is available in Fund100-C10001, General Fund, under Job Number 40TTCP.

ENCLOSED DOCUMENTS:
None

STAFF:
Robert A. Stalzer, Deputy County Executive
Tom Biesiadny, Director, Fairfax County Department of Transportation (FCDOT)
Eric Teitelman, Chief, Capital Projects and Traffic Operations Division, FCDOT
Neil Freschman, Chief, Traffic Operations Section, FCDOT
Steven K. Knudsen, Transportation Planner, FCDOT

Board Agenda Item
June 23, 2015

ADMINISTRATIVE – 8

Extension of Review Period for 2232 Application (Hunter Mill District)

ISSUE:
Extension of review period for 2232 application to ensure compliance with review requirements of *Section* 15.2-2232 of the *Code of Virginia.*

RECOMMENDATION:
The County Executive recommends that the Board extend the review period for the following application: 2232-H15-8

TIMING:
Board action is required June 23, 2015, to extend the review period of the application noted above before its expiration date.

BACKGROUND:
Subsection B of *Section* 15.2-2232 of the *Code of Virginia* states: "Failure of the commission to act within 60 days of a submission, unless the time is extended by the governing body, shall be deemed approval." The need for the full time of an extension may not be necessary, and is not intended to set a date for final action.

The review period for the following application should be extended:

2232-H15-8	Metropolitan Washington Airports Authority/Virginia DRPT/WMATA 12530 Sunrise Valley Drive Herndon, VA (Hunter Mill District) Accepted May 7, 2015 / Extend to July 6, 2015

FISCAL IMPACT:
None

ENCLOSED DOCUMENTS:
None

STAFF:
Robert A. Stalzer, Deputy County Executive
Fred R. Selden, Director, Department of Planning and Zoning, DPZ
Chris B. Caperton, Chief, Facilities Planning Branch, Planning Division, DPZ
Douglas W. Hansen, Senior Planner, Facilities Planning Branch, Planning Division, DPZ

Board Agenda Item
June 23, 2015

ADMINISTRATIVE - 9

Supplemental Appropriation Resolution AS 15275 for the Fairfax County Economic Development Authority to Accept Grant Funding from the Commonwealth of Virginia – Governor's Opportunity Fund (GOF) for Bechtel Corporation

ISSUE:
Board of Supervisors' approval of Supplemental Appropriation Resolution AS 15275 for the Fairfax County Economic Development Authority (FCEDA) to accept grant funding in the amount of $500,000 from the Commonwealth of Virginia as part of the Governor's Opportunity Fund for Bechtel Corporation. This grant will assist the County with the relocation of Bechtel's operations from Frederick, Maryland to Reston, Virginia. No Local Cash Match is required. However, Fairfax County will provide transportation improvements scheduled in the Hunter Mill District.

RECOMMENDATION:
The County Executive recommends that the Board approve Supplemental Appropriation Resolution AS 15275 for the FCEDA to accept the grant funding in the amount of $500,000 to convey to Bechtel Corporation as the state portion of the grant. No Local Cash Match is required. Fairfax County will provide transportation improvements in the Hunter Mill District. The transportation improvements identified for the GOF match are already planned and funded within the Fairfax County Department of Transportation, and will not require any additional County funding.

TIMING:
Board approval is requested on June 23, 2015.

BACKGROUND:
Fairfax County competed with other jurisdictions for the relocation of a majority of Bechtel's operations from Frederick, Maryland. As part of the negotiations, the Commonwealth of Virginia supported the relocation of the business units to Fairfax County, with a Governor's Opportunity Fund grant. The grant is a Performance Grant and a performance agreement has been executed to ensure, on behalf of Fairfax County and the Commonwealth of Virginia that the projected growth occurs.

As part of the Governor's Opportunity Fund grant, Fairfax County must provide a local match which will be in the form of a road improvement relevant to the firm's new location in Reston, Virginia, which is already planned and funded in the County budget. The road improvement was identified by coordinating with Fairfax County Department of Transportation.

In addition, as stated in the Performance Agreement, the Commonwealth of Virginia will provide the following incentive. Please note that this does not pass through the County nor does it require a County match.

- Estimated funding of $4,000,000 from the Virginia Economic Development Incentive (VEDIG).

FISCAL IMPACT:
Funding in the amount of $500,000 will be provided to Fairfax County to be made available to Bechtel Corporation for the costs of the tenant build-out of the new facility in Reston as permitted by Section 2.2-115(C) of the Virginia Code and as permitted by the current GOF statute. There is no Local Cash Match required. However, Fairfax County must provide a road improvement relevant to the firm's new location. This improvement has already been identified, planned, and funded within the Fairfax County Department of Transportation. This action does not increase the expenditure level of the Federal-State Grant Fund, as funds are held in reserve for unanticipated grant awards. A schedule of GOF payments has been set forth in the Performance Agreement with metrics that have been agreed upon.

If Bechtel Corporation does not achieve its performance metrics as described in the Performance Agreement executed between Fairfax County and Bechtel Corporation, then Bechtel Corporation is responsible for paying that portion of the grant that it did not achieve back to Fairfax County. Fairfax County, in turn, will then refund to the Commonwealth of Virginia, the funds it received from Bechtel Corporation. Fairfax County will not be held responsible for the financial shortfalls associated with performance metrics not met. The FCEDA will monitor the performance metrics and will provide to the Office of the County Executive information annually on the number of jobs and capital investment achieved during that time.

CREATION OF NEW POSITIONS:
No positions will be created by this grant.

ENCLOSED DOCUMENTS:
Attachment 1: Supplemental Appropriation Resolution AS 15275
Attachment 2: Governor's Development Opportunity Fund Performance Agreement and Governor's Development Opportunity Fund Grant – First Amendment to Performance Agreement
Attachment 3: Notification of GOF Award from the Commonwealth of Virginia

STAFF:
Gerald L. Gordon, President, FCEDA
Catherine Riley, Vice President, FCEDA

SUPPLEMENTAL APPROPRIATION RESOLUTION AS 15275

At a regular meeting of the Board of Supervisors of Fairfax County, Virginia, held in the Board Auditorium in the Government Center at 12000 Government Center Parkway, Fairfax Virginia on June 23, 2015, at which a quorum was present and voting, the following resolution was adopted:

BE IT RESOLVED by the Board of Supervisors of Fairfax County, Virginia, that in addition to appropriations made previously for FY 2015, the following supplemental appropriation is authorized and the Fiscal Planning Resolution is amended accordingly:

Appropriate to:

Fund:	500-C50000, Federal-State Grant Fund	
Agency:	G1616, Economic Development Authority	$500,000
Grant:	1160006-2015, Governor's Opportunity Fund–Bechtel Corporation	

Reduce Appropriation to:

Agency:	G8787, Unclassified Administrative Expenses	$500,000
Fund:	500-C50000, Federal-State Grant Fund	

Source of Funds: Virginia Economic Development Partnership, $500,000

A Copy - Teste:

Catherine A. Chianese
Clerk to the Board of Supervisors

GOVERNOR'S DEVELOPMENT OPPORTUNITY FUND

PERFORMANCE AGREEMENT

This **PERFORMANCE AGREEMENT** made and entered this ____ day of May, 2015, by and between the **COUNTY OF FAIRFAX, VIRGINIA** (the "Locality"), a political subdivision of the Commonwealth of Virginia (the "Commonwealth"), and **BECHTEL CORPORATION** (the "Company"), a Nevada corporation authorized to transact business in the Commonwealth.

WITNESSETH:

WHEREAS, the Locality has been awarded a grant of and expects to receive $500,000 from the Governor's Development Opportunity Fund (a "GOF Grant") through the Virginia Economic Development Partnership Authority ("VEDP") for the purpose of inducing the Company to relocate its infrastructure business unit and certain other business operations from Maryland to its facilities located in the Locality at Reston Overlook I and II at 12011 and 12021 Sunset Hills Road (as further identified by Fairfax County Tax Map No. 0173 01 0035B) and at Plaza America at 11720 Plaza America Drive (as further identified by Fairfax County Tax Map No. 0174 27 0002), and at such other facilities as may be necessary to accommodate New Jobs in the County of Fairfax (collectively, the "Facility"), thereby making a significant Capital Investment and creating and Maintaining a significant number of New Jobs, as such capitalized terms are hereinafter defined;

WHEREAS, the Locality is willing to provide the funds to the Company with the expectation that the Company will meet certain criteria relating to Capital Investment and New Jobs;

WHEREAS, the Locality and the Company desire to set forth their understanding and agreement as to the payout of the GOF Grant, the use of the GOF Grant proceeds, the obligations of the Company regarding Capital Investment and New Job creation and Maintenance, the obligation of the Locality to provide a local match for the GOF Grant, and the obligation of the Company to repay all or part of the GOF Grant under certain circumstances;

WHEREAS, it is anticipated that the expansion, improvement, equipping, and operation of the Facility will entail a capital expenditure by or on behalf of the Company of approximately $10,000,000, of which approximately $1,500,000 will be invested in furniture, fixtures, and equipment, and approximately $8,500,000 will be invested in the up-fit of existing buildings;

WHEREAS, it is anticipated that the expansion, improvement, equipping, and operation of the Facility will further entail the creation and Maintenance of 700 New Jobs in the Locality;

WHEREAS, the Locality has determined that the current average annual wage in the Locality is $78,310 and the average annual wage required for a New Job will be $129,000; and

WHEREAS, the Locality has determined that the stimulation of the additional tax revenue and economic activity to be generated by the Capital Investment and New Jobs

constitutes a valid public purpose for the expenditure of public funds and is the animating purpose for the GOF Grant:

NOW, THEREFORE, in consideration of the foregoing, the mutual benefits, promises and undertakings of the parties to this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties covenant and agree as follows.

Section 1. Definitions.

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

"Average Annual Wage" means the average salary of all New Jobs as determined by dividing total payroll (W-2 compensation) for New Jobs divided by total New Jobs.

"Capital Investment" means a capital expenditure by or on behalf of the Company in taxable real property, taxable tangible personal property, or both, at the Facility, excluding the purchase of land or existing real property improvements. A capital expenditure related to a leasehold interest in real property will be considered to be made "on behalf of the Company" if a lease between a developer and the Company is a capital lease, or is an operating lease having a term of at least ten years, including renewal options, and the real property would not have been constructed or improved but for the Company's interest in leasing some or all of the real property. Only the capital expenditures allocated to the portion of the real property to be leased by the Company will count as "Capital Investment." The purchase or lease of furniture, fixtures, machinery and equipment, including under an operating lease, and expected building up-fit and tenant improvements by or on behalf of the Company will qualify as Capital Investment. The total expected capital expenditure of $10,000,000 is referred to in this Agreement as the "Capital Investment." The Capital Investment must be in addition to the capital improvements at the Facility as of February 1, 2015.

"Company" includes Bechtel Corporation and its related or affiliated entities.

"Maintain" means that the New Jobs created pursuant to the GOF Grant will continue without interruption from the date of creation through the Performance Date. Positions for the New Jobs will be treated as Maintained during periods in which such positions are not filled due to (i) temporary reductions in the Company's employment levels (so long as there is active recruitment for open positions), (ii) strikes and (iii) other temporary work stoppages.

"New Job" means new permanent full-time employment for a position of an indefinite duration by the Company or its subsidiaries in the Locality for which the standard fringe benefits are provided by the Company for the employee, and for which the Company pays an Average Annual Wage of at least $129,000. Each New Job must require a minimum of either (i) 35 hours of an employee's time per week for the entire normal year of the Company's operations, which "normal year" must consist of at least 48 weeks, or (ii) 1,680 hours per year. Seasonal or temporary positions, positions created when a job function is shifted from an existing location in

the Commonwealth, and positions with construction contractors, vendors, suppliers and similar multiplier or spin-off jobs shall not qualify as New Jobs. Net new jobs in the Commonwealth for contractors or employees of contractors who provide dedicated full-time service to the Company (such as maintenance or security contractors) may count as New Jobs, even though the Company is not directly paying the wages or providing the fringe benefits, if the other conditions set forth in this paragraph have been satisfied. The New Jobs must be in addition to the 861full-time jobs in the Locality at the Facility as of February 1, 2015.

"Performance Date" means July 1, 2018. If the Locality, in consultation with the VEDP, deems that good faith and reasonable efforts have been made and are being made by the Company to achieve the Targets, the Locality may agree to extend the Performance Date by up to 15 months. If the Performance Date is extended, the Locality shall send written notice of the extension to the Company and VEDP and the date to which the Performance Date has been extended shall be the "Performance Date" for the purposes of this Agreement.

"Targets" means the Company's obligations to make or cause to be made Capital Investments at the Facility of at least $10,000,000 and to create and Maintain at least 700 New Jobs in the Locality, all as of the Performance Date.

"Virginia Code" means the Code of Virginia of 1950, as amended.

Section 2. Targets; Statutory Criteria.

The Target obligations of the Company are to expand, improve, equip, and operate the Facility in the Locality, relocate and maintain its infrastructure business unit and certain other business operations at the Facility, make or cause to be made a Capital Investment of at least $10,000,000, and create and Maintain at least 700 New Jobs in the Locality, all as of the Performance Date. In the event of failure to meet the Targets, the Company's sole obligation shall be to make repayments as specified in Section 5 of this Agreement.

The Locality hereby strongly encourages the Company to ensure that at least 30% of the New Jobs are offered to "Residents" of the Commonwealth, as defined in Virginia Code Section 58.1-302. In pertinent part, that definition includes natural persons domiciled in Virginia or natural persons who, for an aggregate of more than 183 days of the year, maintained a place of abode within the Commonwealth, whether domiciled in the Commonwealth or not.

The average annual wage of the New Jobs of at least $129,000 is more than the prevailing average annual wage in the Locality of $78,310. The Locality is not a high-unemployment locality, with an unemployment rate for 2013, which is the last year for which such data is available, of 4.3% as compared to the 2013 statewide unemployment rate of 5.5%. The Locality is not a high-poverty locality, with a poverty rate for 2013, which is the last year for which such data is available, of 6.0% as compared to the 2013 statewide poverty rate of 11.7%.

Section 3. Disbursement of GOF Grant.

By its signature below, the Locality requests VEDP to disburse the GOF Grant to the Locality in the amount of $500,000. VEDP has informed the Locality and the Company that the time period for the disbursement of the GOF Grant from the Commonwealth to the Locality is likely to be 30-45 days.

Within 30 days of its receipt of the GOF Grant proceeds, the Locality will disburse the GOF Grant proceeds to the Company as an inducement to the Company to achieve the Targets at the Facility. If payment is not received by September 1, 2015, then the Company will have the option to terminate this Agreement. The Company will use the GOF Grant proceeds for build-out and tenant improvements at the Facility, as permitted by Section 2.2-115(D) of the Virginia Code.

Section 4. Break-Even Point; State and Local Incentives.

VEDP has estimated that the Commonwealth will reach its "break-even point" by the Performance Date. The break-even point compares new revenues realized as a result of the Capital Investment at the Facility and New Jobs in the Locality with the Commonwealth's expenditures on incentives, including but not limited to the GOF Grant. With regard to the Facility, the Commonwealth expects to provide incentives in the following amounts:

Category of Incentive:	Total Amount
GOF Grant	$500,000
Virginia Economic Development Incentive Grant ("VEDIG")	$4,000,000

In addition to the GOF Grant to be provided by the Commonwealth, the Locality expects to provide the following incentives, as matching grants or otherwise, for the Facility:

Category of Incentive:	Total Amount
Acceleration of the Town Center Parkway Infrastructure Project (the "Parkway Project")	$1,000,000

If, by the Performance Date, the funds disbursed or committed to be disbursed by the Locality for the acceleration of the development of the Parkway Project provided as matching grants total less than the $500,000 GOF Grant local match requirement, the Locality, subject to appropriation, will make an additional non-cash grant to the Company in the nature of public infrastructure improvements to the benefit of the Company in the amount of the difference at the Performance Date, so long as the Company has met its Targets. Any changes to the Locality's incentives from the incentives described above will require the prior approval of the Company and VEDP.

The Company acknowledges that the Parkway Project was strongly considered as an important factor in the Company's decision to relocate and maintain its infrastructure business unit and certain other business operations at the Facility. The Locality believes that the Parkway

Project will improve access to public transportation near the Facility and improve vehicle and pedestrian traffic at the Facility.

The proceeds of the GOF Grant shall be used for the purposes described in Section 3. The VEDIG proceeds may be used by the Company for any lawful purpose. The Locality and the Company have agreed that the acceleration of the development of the Parkway Project is intended to provide a direct benefit to the Company.

To the extent that any of the incentives above are subject to appropriation by the Commonwealth or the Locality, the Commonwealth has agreed to use its best efforts to ensure that proper appropriation of Commonwealth incentives is made by the General Assembly, and the Locality agrees that its staff will recommend to the Locality's Board of Supervisors that it appropriate Locality incentives.

Section 5. Repayment Obligation.

(a) *If Statutory Minimum Eligibility Requirements are Not Met:* Section 2.2-115 of the Virginia Code requires that the Company make a Capital Investment of at least $5,000,000 in the Facility and create and Maintain at least 50 New Jobs in the Locality in order to be eligible for the GOF Grant. In the event of a failure by the Company to meet either of these statutory minimum eligibility requirements by the Performance Date, the entire GOF Grant must be repaid by the Company to the Locality.

(b) *If Statutory Minimum Eligibility Requirements are Met:* The provisions of this subsection (b) shall become applicable only if the Company has met the statutory minimum eligibility requirements set forth in subsection (a). Solely for purposes of repayment, the GOF Grant is to be allocated as $250,000 (50%) for the Capital Investment Target and $250,000 (50%) for the New Jobs Target. If the Company has met at least 90% of both of the Targets at the Performance Date, then and thereafter the Company is no longer obligated to repay any portion of the GOF Grant. If the Company has not met at least 90% of either or both of its Targets at the Performance Date, the Company shall repay to the Locality that part of the GOF Grant that is proportional to the Target or Targets for which there is a shortfall. For example, if at the Performance Date, the Capital Investment is only $7,500,000 (reflecting achievement of 75% of the Capital Investment Target) and only 525 New Jobs have been created and Maintained (reflecting achievement of 75% of the New Jobs Target), the Company shall repay to the Locality 25% of the moneys allocated to the Capital Investment Target ($62,500) and 25% of the moneys allocated to the New Jobs Target ($62,500).

(c) *Determination of Inability to Comply:* If the Locality or VEDP shall determine at any time prior to the Performance Date (a "Determination Date") that the Company is unable or unwilling to meet and Maintain its Targets by and through the Performance Date, and if the Locality or VEDP shall have promptly notified the Company of such determination, the Company must repay the entire GOF Grant to the Locality. Such a determination will be based on such circumstances as a filing by or on behalf of the Company under Chapter 7 of the U.S. Bankruptcy Code, the liquidation of the Company, an abandonment of the Facility by the Company, or other similar significant event that demonstrates the Company will be unable or is

unwilling to satisfy the Targets for the GOF Grant. Such a determination will be subject to the Disputes provision of this Agreement.

(d) *Repayment Dates:* ***Such repayment shall be due from the Company to the Locality within thirty days of the Performance Date or the Determination Date, as applicable.*** Any moneys repaid by the Company to the Locality hereunder shall be repaid by the Locality promptly to VEDP for redeposit into the Governor's Development Opportunity Fund. The Locality shall use its best efforts to recover such funds, including legal action for breach of this Agreement.

Section 6. Company Reporting.

The Company shall provide, at the Company's expense, detailed verification reasonably satisfactory to the Locality and VEDP of the Company's progress on the Targets. Such progress reports will be provided annually on or before March 31, commencing March 31, 2016, and covering the period through the January 1 to December 31 prior period. Further, the Company shall provide such progress reports at such other times as the Locality or VEDP may reasonably require. Such progress reports will substantiate the amount of the Capital Investment at the Facility, the number of New Jobs created in the Locality, the average annual wage paid to those employees, and the average level of fringe benefits provided to those employees. In no event will the Company be required to provide information that the Company determines would breach Company policies relating to information privacy, except that in any case the Company must provide at least as much information as is reasonably necessary for the Locality and VEDP to determine whether the Company has met its Target obligations and otherwise is eligible to receive disbursement of the GOF Grant.

If the Company wishes to count as New Jobs employees of contractors, to the extent permitted in the definition of "New Jobs" in Section 1, the Company is responsible for assembling and distributing the documentation necessary to verify such New Jobs, including whether such jobs are net New Jobs in the Commonwealth. If the Company wishes to count as Capital Investments the capital expenditures made on its behalf by a lessor or a developer of the Facility, the Company is responsible for assembling and distributing the documentation necessary to verify the capital expenditures made on behalf of the Company.

With each such progress report, the Company shall report to VEDP the amount paid by the Company in the prior calendar year in Virginia corporate income tax. VEDP has represented to the Company that it considers such information to be confidential proprietary information that is exempt from public disclosure under the Virginia Freedom of Information Act and that such information will be used by VEDP solely in calculating aggregate return on invested capital analyses for purposes of gauging the overall effectiveness of economic development incentives.

The Company hereby authorizes the Department of Tax Administration for the Locality to release to VEDP the Company's real estate tax, business personal property tax and machinery and tools tax information. Such information shall be marked and considered confidential and proprietary and shall be used by VEDP solely for verifying satisfaction of the Capital Investment Target.

Section 7. Dispute Resolution

In the event of any dispute, controversy or claim of any kind or nature arising under or in connection with this Agreement (including disputes as to the creation, validity, or interpretation of this Agreement) (a "Dispute"), then upon the written request of any party, each of the parties will appoint a designated senior executive whose task it will be to meet for the purpose of endeavoring to resolve the Dispute. The designated executives will meet as often as the parties reasonably deem necessary in order to gather and furnish to the other all information with respect to the matter in issue which the parties believe to be appropriate and germane in connection with its resolution. Such executives will discuss the Dispute and will negotiate in good faith in an effort to resolve the Dispute without the necessity of any formal proceeding relating thereto. The specific format for such discussions will be left to the discretion of the executives but may include the preparation of agreed upon statements of fact or written statements of position furnished to the other parties. No formal proceedings for the resolution of the Dispute may be commenced until the earlier to occur of (a) a good faith mutual conclusion by the executives that amicable resolution through continued negotiation of the matter in issue does not appear likely or (b) the 90th day after the initial written request to negotiate the Dispute. If the resolution of the Dispute requires any party to take, to cause to be taken or to cease taking, some action, such party shall be provided a reasonable period of time, not to exceed ninety (90) days, to take, to cause to be taken, or to cease taking, such action.

Section 8. Notices.

Formal notices and communications among the Parties shall be given either by (i) personal service, (ii) delivery by a reputable document delivery service that provides a receipt showing date and time of delivery, (iii) mailing utilizing a certified or first class mail postage prepaid service of the United States Postal Service that provides a receipt showing date and time of delivery or (iv) delivery by facsimile or electronic mail (email) with transmittal confirmation and confirmation of delivery, addressed as noted below. Notices and communications personally delivered or delivered by document delivery service shall be deemed effective upon receipt. Notices and communications mailed shall be deemed effective on the second business day following deposit in the United States mail. Notices and communications delivered by facsimile or email shall be deemed effective the next business day, not less than 24 hours, following the date of transmittal and confirmation of delivery to the intended recipient. Such written notices and communications shall be addressed to:

if to the Company, to:

Bechtel Corporation
50 Beale Street
San Francisco, CA 94105
Facsimile: 415-768-1977
Email: pdawson@bechtel.com
Attention: Finance Department – Office of CFO

with a copy to:

Bechtel Corporation
50 Beale Street
San Francisco, CA 94105
Facsimile: 415-768-1458
Email: mcbailey@bechtel.com
Attention: Legal Department – Office of General Counsel

if to the Locality, to:

County of Fairfax, Virginia
12000 Government Center Parkway
Suite 552
Fairfax, Virginia 22035-0066
Facsimile: 703.324.2531
Email: Edward.Long@FairfaxCounty.gov
Attention: Edward L. Long, Jr., County Executive

with a copy to:

County of Fairfax, Virginia
12000 Government Center Parkway
Suite 549
Fairfax, Virginia 22035-0066
Facsimile: 703.324.2531
Email: David.Bobzien@FairfaxCounty.gov
Attention: David P. Bobzien, County Attorney

with a further copy to:

Fairfax County Economic
Development Authority
8300 Boone Boulevard
Suite 450
Tysons Corner, Virginia 22182
Facsimile: 703.813.1269
Email: ggordon@fceda.org
Attention: Gerald L. Gordon, Ph. D., President and CEO

if to VEDP, to:

Virginia Economic Development Partnership
901 East Byrd Street, 19th Floor
Post Office Box 798 (zip: 23218-0798)
Richmond, Virginia 23219
Facsimile: 804.545.5611
Email: mbriley@yesvirginia.org
Attention: President and CEO

with a copy to:

Virginia Economic Development Partnership
901 East Byrd Street, 19th Floor
Post Office Box 798 (zip: 23218-0798)
Richmond, Virginia 23219
Facsimile: 804.545.5611
Email: smcninch@yesvirginia.org
Attention: General Counsel

Section 9. Miscellaneous.

(a) *Entire Agreement; Amendments*: This Agreement constitutes the entire agreement between the parties hereto as to the GOF Grant and may not be amended or modified, except in writing, signed by each of the parties hereto. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. The Company may not assign its rights and obligations under this Agreement without the prior written consent of the Locality and VEDP; provided that the Company shall have the right, without consent of the Locality or VEDP, to assign this Agreement to any entity that controls, is controlled by, or is under common control with, the Company if the Company remains liable for the performance of

any such assignee of its obligations under this Agreement and provides written notice to the Locality and VEDP of its intention to make such assignment.

(b) *Governing Law; Venue*: This Agreement is made, and is intended to be performed, in the Commonwealth and shall be construed and enforced by the laws of the Commonwealth. Jurisdiction and venue for any litigation arising out of or involving this Agreement shall lie in the Circuit Court of the County of Fairfax, Virginia, and such litigation shall be brought only in such court. In the event of any such litigation, the Locality shall notify the President and Chief Executive Officer of VEDP in writing.

(c) *Counterparts*: This Agreement may be executed in one or more counterparts, each of which shall be an original, and all of which together shall be one and the same instrument.

(d) *Severability*: If any provision of this Agreement is determined to be unenforceable, invalid or illegal, then the enforceability, validity and legality of the remaining provisions will not in any way be affected or impaired, and such provision will be deemed to be restated to reflect the original intentions of the parties as nearly as possible in accordance with applicable law.

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IN WITNESS WHEREOF, the parties hereto have executed this Performance Agreement as of the date first written above.

COUNTY OF FAIRFAX, VIRGINIA

By Edward L. Long Jr.
Name: EDWARD L. LONG JR.
Title: COUNTY EXECUTIVE
Date: 5/27/2015

BECHTEL CORPORATION

By Peter A. Dawson
Name: Peter A. Dawson
Title: SVP and CFO
Date: _____

GOVERNOR'S DEVELOPMENT OPPORTUNITY FUND GRANT

FIRST AMENDMENT TO PERFORMANCE AGREEMENT

This **FIRST AMENDMENT TO PERFORMANCE AGREEMENT** made and entered this _____ day of _____, 2015 (the "First Amendment"), amending the **PERFORMANCE AGREEMENT** dated as of November 1, 2011 ("Performance Agreement"), between the **COUNTY OF FAIRFAX, VIRGINIA** (the "Locality"), a political subdivision of the Commonwealth of Virginia (the "Commonwealth"), and **BECHTEL CORPORATION** (the "Company"), a Nevada corporation authorized to transact business in the Commonwealth.

WITNESSETH:

WHEREAS, capitalized terms defined in the Performance Agreement shall have the same meanings when used in this First Amendment, unless otherwise noted herein;

WHEREAS, pursuant to the Performance Agreement, the Locality was awarded a $1,500,000 GOF Grant, with the expectation that the proceeds of the GOF Grant would be made available to the Company and that the Company would endeavor to achieve the Capital Investment Target and the New Jobs Target; and

WHEREAS, the Locality and the Company desire to amend the Performance Agreement to modify the residency requirement regarding the creation and Maintenance of New Jobs:

NOW, THEREFORE, in consideration of the foregoing, the mutual benefits, promises and undertakings of the parties to this First Amendment, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties covenant and agree as follows.

1. The current definition of "New Job" in Section 1 of the Performance Agreement is deleted and replaced with the following definition:

> "New Job" means new permanent full-time employment for a position of an indefinite duration by the Company or its subsidiaries at the Facility for which the Company's standard fringe benefits are provided by the Company for the employee, and for which the Company pays an Average Annual Wage of at least $134,200. Each New Job must be for a position that requires a minimum of either (i) 35 hours of an employee's time per week for the entire normal year of the Company's operations, which "normal year" must consist of at least 48 weeks, or (ii) 1,680 hours per year. Seasonal or temporary positions, positions created when a job function is shifted from an existing location in the Commonwealth (unless that job is backfilled), and positions with construction contractors, vendors, suppliers and similar multiplier or spin-off jobs shall not qualify as New Jobs. Net new jobs in the Commonwealth for contractors or employees of contractors who provide dedicated full-time service to the Company (such as maintenance or security contractors) may count as New Jobs,

even though the Company is not directly paying the wages or providing the fringe benefits, if the other conditions set forth in this paragraph have been satisfied.

2. The definition of "Virginia Resident" in Section 1 of the Performance Agreement is deleted.

3. The phrase "the residency of those employees" in the third sentence in the first paragraph in Section 6 of the Performance Agreement is deleted.

4. The phrase "for Virginia Residents" in the first sentence in the second paragraph in Section 6 of the Performance Agreement is deleted.

5. All other provisions of the GOF Performance Agreement remain in full force and effect.

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IN WITNESS WHEREOF, the parties hereto have executed this First Amendment to Performance Agreement as of the date first written above.

COUNTY OF FAIRFAX, VIRGINIA

By _____
Name: EDWARD L. LONG JR.
Title: COUNTY EXECUTIVE
Date: 5/27/2015

BECHTEL CORPORATION

By _____
Name: Peter A. Dawson
Title: SVP and CFO
Date: _____

SEEN AND AGREED:

VIRGINIA ECONOMIC DEVELOPMENT PARTNERSHIP AUTHORITY

By _____
Name: Martin J. Briley
Title: President and Chief Executive Officer
Date: _____

COMMONWEALTH of VIRGINIA

Office of the Governor

Maurice A. Jones
Secretary of Commerce and Trade

June 6, 2015

Mr. Edward L. Long, Jr.
County Executive
Fairfax County
12000 Government Center Parkway, Suite 552
Fairfax, Virginia 22035

Dear Mr. Long:

I am delighted to inform you that Governor McAuliffe has approved a $500,000 grant from the Governor's Opportunity Fund to assist Fairfax County with the expansion of Bechtel Corporation.

The Bechtel facility is extremely important to both the Commonwealth and Fairfax County, and we are pleased that the Opportunity Fund Grant encouraged Bechtel to make a favorable decision.

We would like to remind you that in accordance with the Governor's Opportunity Fund guidelines, a performance agreement between the County and Bechtel is essential prior to the actual payment of this grant. This item will be required when your payment request is submitted.

I want to thank you for your efforts in working on this project to bring economic growth to Fairfax.

Sincerely,

Maurice A. Jones

Maurice A. Jones

MAJ:kme

cc Mr. Martin J. Briley
Virginia Economic Development Partnership

Board Agenda Item
June 23, 2015

ADMINISTRATIVE – 10

Authorization to Advertise a Public Hearing on Proposed Revisions to Sections 3-2-26, 3-3-27 and 3-7-25 of Chapter 3 of the Code of Fairfax County

ISSUE:
Board authorization to advertise a public hearing to amend Sections 3-2-26, 3-3-27 and 3-7-25 of Chapter 3 of the Fairfax County Code (Code) to modify the methodology for determining the annual employer contribution rates for the Employees', Police Officers, and Uniformed Retirement Systems.

RECOMMENDATION:
The County Executive recommends that the Board of Supervisors authorize advertisement of a public hearing regarding proposed amendments to Sections 3-2-26, 3-3-27 and 3-7-25 of the Code for the purpose of modifying the methodology for determining the annual employer contribution rates for the Employees', Police Officers, and Uniformed Retirement Systems.

TIMING:
Board action is requested on June 23, 2015, to provide sufficient time to advertise the proposed amendment for a public hearing on July 28, 2015, at 5:30 pm.

BACKGROUND:
Fairfax County has always funded its three retirement systems; namely the Employees', Police Officers and Uniformed Retirement Systems, in a disciplined and fiscally-responsible manner. In March of 2002, the Board approved changes to the funding policies for the three systems that were geared to reduce the volatility of the County's required annual contributions to the three systems. At the time that these changes were made, all three systems were at or near a funded ratio of 100%, a point at which retirement plans tend to exhibit increased volatility in their annual actuarial calculations. The changes made in 2002, referred to as the "Corridor Method," did serve to reduce the volatility of the County's annual contributions.

However, since that time a major financial market downturn occurred in 2008 that significantly reduced the funded status of all three plans. The chart below summarizes the current liabilities and funded status of the County's three retirement systems:

($ millions)	**Employees'**	**Police Officers**	**Uniformed**
Liability	$4,800.7	$1,441.5	$1,793.8
Market Assets	$3,766.1	$1,260.8	$1,516.7
Unfunded	$1,034.6	$180.7	$277.1
Funded Ratio	78.4%	87.5%	84.6%

Also, effective with the FY 2015 Comprehensive Annual Financial Report (CAFR), the County must comply with Government Accounting Standards Board (GASB) Statement 68, which requires that the total amount of any unfunded liabilities in the County's retirement systems be recorded in full and not spread over multiple years as prior accounting standards allowed. The total unfunded liabilities of the County's three retirement systems, plus the liabilities of the Educational Employees Supplemental Retirement System (ERFC) and the County's share of the liabilities of the Virginia Retirement System (VRS), will significantly reduce the County's net asset position.

In addition, in order to maintain the systems' actuarial assumed earnings rate of 7.5 percent, the external auditor must, per GASB, perform what is called an asset depletion test. If adequate contributions are not maintained, it is possible that the systems' would be required to lower this assumed earnings rate, which would in turn necessitate higher contributions from the County.

Finally, because the rating agencies give considerable weight to these unfunded liabilities when determining public entities' bond ratings, staff is recommending changes to the "Corridor Method" to ensure that the County's three systems are funded in a manner that reasonably assures that the systems are on a path to full funding.

As part of the FY 2016 Adopted Budget, the employer contribution rates were increased by adjusting the target amortization level of the unfunded liability from 93 percent to 95 percent. Building upon this, the intent of the recommended Code changes are as follows:

- Increases in the employer contribution rates will continue so that the County will amortize 100 percent of the unfunded liability by FY 2020 at the latest, fully funding the Annual Required Contribution for all systems. The County will continue to use a conservative 15 year amortization period.
- Until each system reaches 100 percent funded status, employer contributions to that system will not be reduced. Various factors, such as the future trend of the County's investment returns exceeding the assumed rate of 7.5 percent, could allow employer contribution rates to be reduced from current levels. However, the County is committed to

maintaining the rates and redirecting any potential savings into further improvement in the systems' funded positions.

- Any additional unfunded liability created as a result of approved benefit enhancements, such as ad hoc COLAs, will be fully funded when implemented. It is the intent that no adjustments to benefit levels will reduce the funded status of any of the systems.

FISCAL IMPACT:
The County contribution rates for the Employees', Police Officers, and Uniformed Retirement Systems included in the FY 2016 Adopted Budget were developed in accordance with this new funding strategy.

ENCLOSED DOCUMENTS:
Attachment 1: Amendments to Sections 3-2-26, 3-3-27 and 3-7-25 of the Code

STAFF:
Joseph Mondoro, Acting Chief Financial Officer
Jeffrey Weiler, Executive Director to the Retirement Boards
Benjamin R. Jacewicz, Assistant County Attorney

AN ORDINANCE TO AMEND AND REENACT SECTIONS 3-2-26, 3-3-27 and 3-7-25 OF THE CODE OF THE COUNTY OF FAIRFAX.

BE IT ORDAINED that:

1. Section 3-2-26 of the Code of the County of Fairfax is hereby amended and reenacted to read as follows:

Section 3-2-26. - Employer contributions.

(a) Each employer shall contribute at an annual rate to be fixed by the Board of Supervisors.

(b) The aggregate present value of future employer contributions payable into the retirement allowance account shall be sufficient when combined with the amount then held in the members' contribution account and the retirement allowance account together with the present value of future employee contributions, to provide the estimated prospective benefits payable. The annual employer contribution rate shall be fixed as equal to the employer normal cost plus an expense rate, as long as the System's funding ratio (actuarial value of assets divided by actuarial accrued liability) remains within a corridor, the lower measurement of which is ~~90%~~described below and the upper measurement of which is 120%. The employer normal cost and actuarial accrued liability are to be measured using the ~~aggregate accrual modification of the~~ entry age normal funding method.

To the extent that the System's funding ratio exceeds 120%, a credit shall be established equal to the amount of assets in excess of 120% of the actuarial accrued liability. To the extent that the System's funding ratio is lower than ~~90%~~the lower measurement of the corridor, a charge shall be established equal to the difference between ~~90%~~that lower measurement ~~of~~ plus the actuarial accrued liability and the assets. The employer contribution shall be adjusted by a 15 year amortization of this credit or charge, to be paid until the funding ratio re-enters the corridor at which time it will cease.

Effective with the fiscal year 2016 County contribution rate, the lower measurement of the corridor will be established at 95%. The 95% threshold will be increased until it reaches 100%, no later than by the year 2020. Once the lower measurement of the corridor reaches 100%, the 15 year amortization described above shall be over a fixed 15 years with additional 15 year amortization layers created annually. Once the System's funding ratio reaches 100%, such amortizations shall cease.

In the event of an ordinance change that affects benefits, the employer contribution rate shall be changed effective with the July 1 coincident with or next following the date of adoption of the ordinance change. The employer normal cost component shall be adjusted to the level required by the ordinance change and there will an additional component to the employer cost equal to ~~a 15 year amortization of~~ the increase in actuarial accrued liability. Any additional actuarial accrued liability which does not reduce the funding level below 120% shall be excluded from this component. (20-81-3; 27-90-3; 16-02-3)

2. Section 3-3-27 of the Code of the County of Fairfax is hereby amended and reenacted to read as follows:

Section 3-3-27. - Employer contributions.

(a) Each employer shall contribute at an annual rate to be fixed by the Board of Supervisors.

(b) The aggregate present value of future employer contributions payable into the retirement allowance account shall be sufficient, when combined with the amount then held in the members' contribution account and the retirement allowance account together with the present value of future employee contributions, to provide the estimated prospective benefits payable. The annual employer contribution rate shall be fixed as equal to the employer normal cost plus an expense rate, as long as the System's funding ratio (actuarial value of assets divided by actuarial accrued liability) remains within a corridor, the lower measurement of which is ~~90%~~described below and the upper measurement of which is 120%. The employer normal cost and actuarial accrued liability are to be measured using the ~~aggregate accrual modification of the~~ entry age normal funding method.

To the extent that the System's funding ratio exceeds 120%, a credit shall be established equal to the amount of assets in excess of 120% of the actuarial accrued liability. To the extent that the System's funding ratio is lower than ~~90%~~the lower measurement of the corridor, a charge shall be established equal to the difference between ~~90%~~that lower measurement ~~of~~ plus the actuarial accrued liability and the assets. The employer contribution shall be adjusted by a 15 year amortization of this credit or charge, to be paid until the funding ratio re-enters the corridor at which time it will cease.

Effective with the fiscal year 2016 County contribution rate, the lower measurement of the corridor will be established at 95%. The 95% threshold will be increased until it reaches 100%, no later than by the year 2020. Once the lower measurement of the corridor reaches 100%, the 15 year amortization described above shall be over a fixed 15 years with additional 15 year amortization layers created annually. Once the System's funding ratio reaches 100%, such amortizations shall cease.

In the event of an ordinance change that affects benefits, the employer contribution rate shall be changed effective with the July 1 coincident with or next following the date of adoption of the ordinance change. The employer normal cost component shall be adjusted to the level required by the ordinance change and there will an additional component to the employer cost equal to ~~a 15 year amortization of~~ the increase in actuarial accrued liability. Any additional actuarial accrued liability which does not reduce the funding level below 120% shall be excluded from this component. (1961 Code, § 9-97; 11-74-9; 23-85-3; 28-89-3; 48-96-3; 10-01-3; 16-02-3)

3. Section 3-7-25 of the Code of the County of Fairfax is hereby amended and reenacted to read as follows:

Section 3-7-25. - Employer contributions.

The aggregate present value of future employer contributions payable into the retirement allowance account shall be sufficient, when combined with the amount then held in the members' contribution account and the retirement allowance account together with the present value of future employee contributions, to provide the estimated prospective benefits payable. The annual employer contribution rate shall be fixed as equal to the employer normal cost plus an expense rate, as long as the System's funding ratio (actuarial value of assets divided by actuarial accrued liability) remains within a corridor, the lower measurement of which is ~~90%~~described below and the upper measurement of which is 120%. The

employer normal cost and actuarial accrued liability are to be measured using ~~the aggregate accrual modification of~~ the entry age normal funding method.

To the extent that the System's funding ratio exceeds 120%, a credit shall be established equal to the amount of assets in excess of 120% of the actuarial accrued liability. To the extent that the System's funding ratio is lower than ~~90%~~the lower measurement of the corridor, a charge shall be established equal to the difference between ~~90%~~that lower measurement ~~of~~ plus the actuarial accrued liability and the assets. The employer contribution shall be adjusted by a 15-year amortization of this credit or charge, to be paid until the funding ratio re-enters the corridor at which time it will cease; provided, however, the Board of Supervisors shall contribute to the fund an amount at least equal to the amount contributed by the members.

Effective with the fiscal year 2016 County contribution rate, the lower measurement of the corridor will be established at 95%. The 95% threshold will be increased until it reaches 100%, no later than by the year 2020. Once the lower measurement of the corridor reaches 100%, the 15 year amortization described above shall be over a fixed 15 years with additional 15 year amortization layers created annually. Once the System's funding ratio reaches 100%, such amortizations shall cease.

In the event of an ordinance change that affects benefits, the employer contribution rate shall be changed effective with the July 1 coincident with or next following the date of adoption of the ordinance change. The employer normal cost component shall be adjusted to the level required by the ordinance change and there will an additional component to the employer cost equal to ~~a 15 year amortization of~~ the increase in actuarial accrued liability. Any additional actuarial accrued liability which does not reduce the funding level below 120% shall be excluded from this component. (20-81-3; 16-02-3)

All contributions made to the System are made for the exclusive benefit of the members and their beneficiaries, and such contributions shall not be used for, nor diverted to, purposes other than for the exclusive benefit of the members. Notwithstanding the foregoing, to the extent that such refunds do not, in themselves, deprive the System of its qualified status, refunds of contributions shall be made to the employer under the following circumstances:

(a) If the plan is determined not to initially satisfy qualification requirements of Section 401(a) of the Internal Revenue Code and the Employer declines to amend the system to satisfy such qualification requirements, contributions made prior to the determination that the System has failed to qualify shall be returned to the Employer;

(b) To the extent that a federal income tax deduction is disallowed in whole or in part for any employer contribution; and

(c) If a contribution is made in whole or in part by reason of a mistake of fact, the employer contribution attributable to the mistake of fact shall be returned to the employer.

4. The effective date of this Ordinance is August 1, 2015. The Ordinance is prospective and is not retroactive in application.

Board Agenda Item
June 23, 2015

ACTION - 1

Approval of the Fairfax County Emergency Operations Plan

ISSUE:
Section 44-146.19E of the Code of the Commonwealth of Virginia and Section 15-1-5 of the Fairfax County Code require the County to prepare and keep current a comprehensive Emergency Operations Plan (EOP).

RECOMMENTATION:
The County Executive recommends the approval of the Fairfax County Emergency Operations Plan.

TIMING:
Board action is requested on June 23, 2015. This new plan represents a revision from the 2011 EOP and meets the Virginia requirement for updating the plan every four years.

BACKGROUND:
The 2015 Emergency Operations Plan is a result of the collective efforts of the Fairfax County Office of Emergency Management and the many other county departments and agencies with assigned emergency management roles and responsibilities. The final plan reflects many comments and suggestions received from a variety of stakeholders including participating county agencies, as well as other agencies and organizations that support the county during times of disasters.

This plan fulfills the Commonwealth of Virginia's requirement for each city and county to prepare and keep current an EOP to respond to disasters or large-scale emergencies. A Letter of Agreement has been signed by the agency and department directors involved in this plan.

The Fairfax County Emergency Operations Plan is a multi-discipline, all-hazards plan that establishes a single, comprehensive framework for the management of major emergencies and disasters within the County. The Plan is implemented when it becomes necessary to mobilize the resources identified herein in order to save lives, and protect property and infrastructure. This plan establishes the overall roles and responsibilities for emergency operations, as well as the concept of operations for the County. It is intended to be used in conjunction with established operational procedures, plans, and protocols.

The successful implementation of the EOP is contingent upon a collaborative approach with a wide range of partner agencies and organizations that provide crucial support during emergency operations. The EOP recognizes the significant role these partner agencies and organizations perform during emergencies and disasters and their specific roles and responsibilities are also included in the plan. The EOP is not intended as a stand-alone document but rather establishes the basis for more detailed planning by individual departments and agencies.

FISCAL IMPACT:
None

ENCLOSED DOCUMENTS:
Attachment 1: Fairfax County Emergency Operations Plan is available online at http://www.fairfaxcounty.gov/oem/documents/eop2015.pdf

STAFF:
David M. Rohrer, Deputy County Executive
David M. McKernan, Office of Emergency Management, Coordinator

Board Agenda Item
June 23, 2015

ACTION - 2

Approval of Head Start/Early Head Start Policy Council Bylaws and Self-Assessment Report

ISSUE:
Board approval of the Head Start/Early Head Start Policy Council Bylaws and Self-Assessment Report.

RECOMMENDATION:
The County Executive recommends that the Board approve the Head Start/Early Head Start Policy Council Bylaws and Self-Assessment Report.

TIMING:
Board action is requested on June 23, 2015, in order to meet federal Head Start Performance Standards.

BACKGROUND:
Existing rules and regulations require that the Board of Supervisors, as the County's governing body, review and approve the composition of the Head Start Parent Policy Council and the procedures by which members are chosen, and the Head Start program's annual Self-Assessment Report, including actions that are being taken by the program as a result of the self-assessment review. Board approval of the following attachments will satisfy these compliance requirements: 1) Policy Council Bylaws and 2) Self-Assessment Report.

1. Policy Council Bylaws

The Head Start Parent Policy Council provides a formal structure of shared governance through which parents can participate in policy making and other decisions about the program. The Bylaws of the Policy Council were developed based on the federal Head Start Performance Standards on program governance and outline the composition and selection criteria to ensure equal representation for all programs and that at least 51 percent of Policy Council members are parents of currently enrolled children, as required.

The Board of Supervisors most recently approved the Policy Council Bylaws on May 13, 2014. The Policy Council has not recommended any changes to the most recently approved version. The Office of the County Attorney has reviewed the bylaws and recommended no changes.

2. Self-Assessment Report

The Fairfax County Head Start/Early Head Start program conducts an annual self-assessment of its effectiveness and progress in meeting program goals and objectives and in implementing federal regulations every year, as required by federal Head Start Performance Standards. The results are included in the attached Self-Assessment Report, which outlines strengths and areas to be addressed, as well as any actions being taken to address them.

FISCAL IMPACT:
None

ENCLOSED DOCUMENTS:
Attachment 1 – Fairfax County Head Start/Early Head Start Policy Council Bylaws
Attachment 2 – Fairfax County Head Start/Early Head Start 2015 Self-Assessment Report

STAFF:
Patricia D. Harrison, Deputy County Executive
Nannette M. Bowler, Director, Department of Family Services
Anne-Marie D. Twohie, Director, Office for Children

FAIRFAX COUNTY OFFICE FOR CHILDREN
HEAD START/EARLY HEAD START POLICY COUNCIL
BYLAWS

ARTICLE I. NAME

The name of the organization shall be the Policy Council of the Fairfax County Head Start/Early Head Start Program.

ARTICLE II. PURPOSE

The purpose of the Fairfax County Head Start/Early Head Start Policy Council shall be to:

A) Encourage maximum participation of parents and community representatives in the planning, operation and evaluation of Fairfax County Head Start/Early Head Start Programs.

B) Serve as a link with local programs, the grantee agency – Fairfax County Board of Supervisors Office for Children (OFC), public and private agencies and the community.

C) Approve grant applications and service area plans for the grantee agency.

D) Initiate suggestions and ideas for program improvements.

E) Establish a procedure for hearing complaints against the Fairfax County Head Start/Early Head Start Program.

F) Carry out specific duties and responsibilities as stated in the Federal Head Start Performance Standards, which will govern the overall activities of the Policy Council.

ARTICLE III. MEMBERSHIP

Policy Council members should be committed to being representatives for the total Fairfax County Head Start/Early Head Start Program. They should be team players, be willing to learn the duties and responsibilities of the Policy Council and represent the Council in a positive and supportive manner at all times and in all places.

Section 1. The Fairfax County Head Start/Early Head Start Policy Council shall consist of six (6) parent representatives from each program, Greater Mount Vernon Community Head Start (GMVCHS), Fairfax County Public Schools (FCPS), and Higher Horizons (HiHo) Head Start /Early Head Start Programs and at least two (2) community representatives, who must be residents of/or employed in Fairfax County. All program options must be represented.

Section 2. Parent representatives shall be elected to the Policy Council at the program level by the program's respective policy or parent committee. Community representatives shall be recruited by the Head Start Director and the Policy Council Chairperson and elected by the Policy Council.

Section 3. Community representatives may include representation from other child care programs, neighborhood community groups (public and private), higher education institutions, program boards, and community or professional organizations which

have a concern for children and families in the Head Start/Early Head Start Program and can contribute to the development of the program.

Section 4. Voting members must resign from the Policy Council if they or an immediate family member (as defined by Virginia Code § 2.2-3101) become employed, temporarily (for sixty (60) days or more) or permanently, by the Fairfax County Head Start/Early Head Start Program. Voting members may substitute occasionally (as defined by each program) in the Fairfax County Head Start/Early Head Start Program.

Section 5. Policy Council members shall be elected to serve a one (1) year term and may not serve more than three (3) years. Members may voluntarily terminate their membership at any time by giving written notice to the Council. The respective policy or parent committee will be responsible for recruiting and electing a new member to the Council within one month of resignation or termination of the member. In the event of termination or resignation of a community representative, the Head Start Director and the Policy Council Chairperson will recruit a replacement. Election of a new community representative shall take place within one month of resignation or termination of the member.

Section 6. Any member who misses two (2) consecutive meetings without notifying the Office for Children Head Start Program Administrative Office, neglects responsibility, and/or abuses the privilege of office may be terminated by the Policy Council with a majority vote of the quorum. Written notification will be sent to the terminated member under signature of the Policy Council Chairperson.

ARTICLE IV. MEETINGS

Section 1. Fairfax County Head Start/Early Head Start Policy Council meetings shall be held on the fourth (4^{th}) Thursday of each month with dinner being served at 6:00 p.m. and call to order at 6:30 p.m. If the fourth (4^{th}) Thursday is a legal holiday, the meeting may be rescheduled to the third Thursday of the month.

Section 2. All meetings shall be conducted in compliance with the Virginia Freedom of Information Act, Virginia Code §§ 2.2-3700 – 2.2-3714 ("VFOIA"), and except for closed sessions, all meetings shall be open to the public. Pursuant to Virginia Code § 2.2-3701, "meeting" or "meetings" means the meetings including work sessions, when sitting physically, or through telephonic or video equipment pursuant to § 2.2-3708 or § 2.2-3708.1, as a body or entity, or as an informal assemblage of (i) as many as three members or (ii) a quorum, if less than three, of the constituent membership, wherever held, with or without minutes being taken, whether or not votes are cast, of any public body. As required by VFOIA, the public will be given notice of the date, time, and location of the meetings at least three working days before each Policy Council meeting, except in case of an emergency. Notice,

reasonable under the circumstances of emergency meetings, shall be given contemporaneously with the notice provided to members. The Head Start administrative staff and/or Chairperson will provide the information to the County's Office of Public Affairs so that it can provide the public notice. All meetings shall be held in places that are accessible to persons with disabilities, and all meetings shall be conducted in public buildings whenever practical.

Except as otherwise provided by Virginia law or by these bylaws, all meetings shall be conducted in accordance with Roberts's Rules of Order, Newly Revised, and except as specifically authorized by VFOIA, no meeting shall be conducted through telephonic, video, electronic, or other communication means where the members are not all physically assembled to discuss or transact public business.

Copies of meeting agendas and other materials that are given to members shall be made available to the public at the same time, unless VFOIA allows otherwise. Anyone may photograph, film, or record meetings, so long as they do not interfere with any of the proceedings.

The Secretary shall keep meeting minutes, which shall include: (1) the date, time, and location of each meeting; (2) the members present and absent; (3) a summary of the discussion on matters proposed, deliberated, or decided; and (4) a record of any votes taken. The minutes are public records and subject to inspection and copying by citizens of the Commonwealth or by members of the news media. The minutes from the previous meeting shall be sent to members at least seven (7) calendar days prior to the regular meeting.

Section 3. Special call meetings can be called by the Chairperson and the Head Start Director and scheduled when deemed necessary. Public notice will be given as required by VFOIA and members will be informed in writing and/or via telephone simultaneous with or prior to public notice.

Section 4. Policy Council members who are voted to represent the Council at conferences must meet the following criteria:

1) Be an active participant in good standing at their Parent/Policy Committee for at least 2 consecutive meetings.
2) Be able to give either an oral summary or submit a written report (whether still a member or not) at the next regularly scheduled meeting.

Section 5. In the event of inclement weather Policy Council will adhere to the Fairfax County Public Schools closure schedule. The Head Start administrative staff and/or Chairperson will contact members regarding a rescheduled date and will comply with the public notice requirements above.

ARTICLE V. OFFICERS

Section 1. The Officers of the Policy Council shall be: Chairperson, Vice-Chairperson, Secretary, Treasurer, and Parliamentarian. These officers shall perform the duties prescribed by the Federal Head Start Performance Standards, by these Bylaws and by the current Roberts Rules of Order, adopted by the Policy Council.

Section 2. In September, the Chairperson will appoint a Nominating Committee consisting of a representative from each delegate/grantee agency. It shall be the duty of this committee to present a slate of candidates for the offices at the October meeting. Before the election at the November meeting additional nominations from the floor shall be permitted.

Section 3. The officers shall serve a one (1) year election term or until their successors are elected. Their term of office shall begin at the close of the Council meeting at which they are elected.

Section 4. No member shall hold more than one (1) office at a time, and no member shall be eligible to serve more than three (3) terms.

Section 5. Should the Chair position become vacant, the Vice-Chairperson shall become the Chairperson for the remainder of the term. The Council shall elect a replacement for Vice-Chairperson at its next regular meeting to serve the balance of the term.

In the absence of the Chairperson and Vice-Chairperson, responsibilities of the Chair are assumed by the Treasurer and the Parliamentarian will maintain order. The Policy Council Secretary continues to record minutes.

Section 6. The duties of officers are as follows:

1) Chairperson – Presides at all Policy Council and Executive Committee meetings; may act as a spokesperson for the Council in events concerning the Head Start program.

2) Vice-Chairperson – Assumes the duties of the Chairperson in the absence of the Policy Council Chairperson; performs other duties as assigned by the Chairperson.

3) Secretary – Records minutes of the Policy Council meetings with assistance from Grantee staff; makes the appropriate corrections to meeting minutes as directed; compiles and keeps current list of all voting members and records their attendance; keeps on file all minutes of the Policy Council; reads minutes and other correspondence at meetings, calls members about absence from meetings, reminds members about meetings and training and tabulates votes.

4) Treasurer – Maintains the Council's financial records, prepares Treasurer's report and balances the checkbook; serves on the Budget Subcommittee; prepares for signature and distributes reimbursements, stipends, and payment

of invoices; coordinates out-of-town travel funds for Policy Council members, who would be assisted by the grantee staff.

5) Parliamentarian – Keeps order during the meetings in accordance with the Policy Council Bylaws and in accordance with the current edition of Roberts' Rules of Order.

ARTICLE VI. EXECUTIVE COMMITTEE

Section 1. Officers of the Policy Council shall constitute the Executive Committee. The Executive Officers will meet one week prior to the regular Policy Council meetings on an as-needed basis. The purpose for meeting is to establish agenda items and agree upon recommendations to present to the full Policy Council of items needing approval/disapproval. Meetings of the Executive Committee are public meetings and shall comply with VFOIA, including the meeting notice requirements set forth in Article IV, Sections 2 and 3.

ARTICLE VII. GRIEVANCES

Section 1. A standard grievance procedure to hear and resolve parent and community complaints about Head Start is approved annually by the Policy Council and will be used to address complaints not resolved at the center level and at the grantee agency.

ARTICLE VIII. PARLIAMENTARY AUTHORITY

Section 1. The rules contained in the current edition of Roberts' Rules of Order Newly Revised shall govern the Policy Council in all cases to which they are applicable and in which they are not inconsistent with these Bylaws and any special rules or order the organization may adopt.

ARTICLE IX. AMENDMENT OF BYLAWS

Section 1. These Bylaws shall be reviewed annually and recommendations presented to the Council for approval. The Policy Council will be given thirty (30) days to review recommendations.

Section 2. The Bylaws may be amended at any regular meeting of the Policy Council or at a special meeting called for such purpose by majority vote of the Council members present, provided that representatives from each delegate agency are present and voting.

Section 3. Amendments to the Bylaws will be presented to the Fairfax County Board of Supervisors for approval, and will become effective upon approval by the Board of Supervisors.

ARTICLE X. VOTING

Section 1. All matters shall be decided on by vote of the members. The vote of a majority of the quorum is needed to authorize any action. Seven (7) Council members (with at least two (2) representatives from each program and one (1) community representative) constitute a quorum. All votes shall be taken during a public meeting, and no vote shall be taken by secret or written ballot or by proxy. Voting may be by aye/nay, show of hands. Approved matters must be recorded in the minutes of the meeting. The Policy Council Secretary tabulates the votes, along with a designated staff/Policy Council member.

ARTICLE XI. TRAINING

Section 1. The Council and its officers shall receive annual training which includes: Head Start Performance Standards, Roberts' Rules of Order, VFOIA, roles and responsibilities of members and officers, subcommittee functions, budget and finance, personnel procedures and conference travel procedures.

ARTICLE XII. ACTIONS

Section 1. A motion must be made when the Council is required to take action and/or make decisions.

ARTICLE XIII. STIPENDS

Section 1. Stipends in the amount of $15.00 will be given to voting members except for community representatives at regularly scheduled Policy Council meetings.

PROGRAM SELF-ASSESSMENT SUMMARY 2015

Per 45 CFR 1304.51(i)(1), Head Start/Early Head Start programs, with the consultation and participation of policy groups and other community members as appropriate, must conduct an annual self-assessment of their effectiveness and progress in meeting program goals and objectives and in implementing Federal regulations.

In the month of February 2015, all Fairfax County Head Start/Early Head Start programs, including those operated directly by Fairfax County Office for Children—Greater Mount Vernon Community Head Start (GMVCHS) and Early Head Start Family Child Care (EHS-FCC)—as well as those operated contractually by delegate agencies—Higher Horizons Day Care Center and Fairfax County Public Schools (FCPS)—conducted their annual self-assessments. The programs engaged the services of other program staff, community members, and parents. The annual self-assessment allows for the continuous improvement of program plans and service delivery, providing an opportunity for involving parents and community stakeholders.

The self-assessment indicated a strong program, with two areas identified for continued improvement related to health follow-ups and enrolling children with disabilities by the mid-year point (January 2015). All programs were confirmed to be in compliance as of April 12, 2015.

Below is a summary of the results of the 2015 self-assessment by service area:

FISCAL MANAGEMENT

Service area found to be in full-compliance.

Identified strengths: The program has proficient and organized fiscal management of multiple funding streams with all programs demonstrating an in-depth knowledge of financial policies and procedures.

GOVERNANCE

Service area found to be in full-compliance.

Identified strengths: Governance structures are working well. Policy committees and councils are fully established with representation from all programs and options as required. Grantee Policy Council has had a great deal of training with good representation and participation. FCPS Policy Committee has community representatives who provide resources and answer parent's questions.

MANAGEMENT SYSTEMS

Service area found to be in full-compliance.

Identified strengths: The program staff is knowledgeable regarding management systems, with well-organized files and easy to access information. Human Resources evaluation processes are clear.

CHILD DEVELOPMENT AND EDUCATION

Service area found to be in full-compliance.

Identified strengths: Programs align their school readiness goals with the Head Start Child Development and Early Learning Framework, State Early Learning Guidelines, and requirements and expectations of FCPS by selecting and implementing a curriculum that is evidence-based and linked to ongoing assessment. There is evidence of established, secure relationships between teachers/providers and children. On-site classroom and provider observations revealed that teachers/providers engage in conversations with children using calm tones and matched affect. Teachers and providers demonstrate practices that support children with disabilities and dual language learners.

DISABILITIES

Non-compliance for Standard § 1305.6 Selection process (c) At least 10 % of enrollment opportunities must be made available to children with disabilities.

At the mid-year point, two programs failed to meet the mandate to enroll 10% of children with disabilities. As of the self-assessment timeframe, delegate FCPS served 28 federally funded children with disabilities (9.2% of its cumulative enrollment in PY 14-15). FCPS reached the 10 percent mandate on March 27, 2015. Additionally, delegate Higher Horizons served 13 federally-funded children with disabilities at the time of the self-assessment (8.6% of its cumulative enrollment in PY 14-15). This program's enrollment reached the 10 percent mandate on April 12, 2015.

Identified strengths: The program continues to serve children with disabilities through strong partnerships with Infant & Toddler Connection of Fairfax-Falls Church and Early Childhood Identification and Services. Interagency agreements between the program and part C/LEA are reviewed and renewed annually.

ELIGIBILITY, RECRUITMENT, SELECTION, ENROLLMENT, AND ATTENDANCE

Service area found to be in full-compliance.

Identified strengths: There is improved communication between programs during the intake and eligibility process. Programs consistently follow the Fairfax County Eligibility Guidelines, which are updated annually and which include the process for documentation required from families as well as the point system and selection criteria.

FAMILY AND COMMUNITY DEVELOPMENT

Service area found to be in full-compliance.

Identified strengths: Families are engaged in many different ways, including volunteering in the classroom, attending parent meetings and attending Policy Committee/Council. Interviews with family service workers and parents indicated strong ties with community services and resources.

HEALTH AND SAFETY

Areas of non-compliance include: Failing to meet 45-day requirements (1 child); failing to meet performance standards for TB risk-assessment (1 child); and failure to meet performance standards for blood lead testing (4 children).

Areas for improvement: 1) Missing blood lead screening is a trend that needs to be addressed. The program will provide education to HS/EHS staff, HS/EHS families and local pediatricians/medical providers on blood lead screening requirements (Head Start, Centers for Disease Control (CDC), Early and Periodic Screening, Diagnostic, and Treatment (EPSDT) and Centers for Medicare and Medicaid Services (CMS)), the importance of blood lead screening for HS and EHS participants and the possible risks for children not tested. 2) Timeliness of follow-up for health concerns needs to be improved as well as consistency of follow-up documentation for failed health events.

Identified strengths: Child Health and Safety continues to be a priority throughout all Fairfax County Head Start and Early Head Start programs. Knowledge of Health and Nutrition regulations and requirements was noted throughout all programs as well. All programs work diligently with staff and families to meet Federal Head Start, EPSDT, CDC, and CMS health and safety regulations and recommendations.

Board Agenda Item
June 23, 2015

ACTION – 3

Approval of a Memorandum of Understanding with the City of Fairfax on the Use of MPSTOC as an Emergency Backup Facility

ISSUE:
Board of Supervisors' approval of a Memorandum of Understanding ("MOU") granting Fairfax City permission to use a portion of the McConnell Public Safety Transportation Operations Center ("MPSTOC") during an extended outage at its Communications Center.

RECOMMENDATION:
The County Executive recommends that the Board approve the attached MOU and authorize the County Executive to execute the MOU on behalf of the Board.

TIMING:
Board action is requested on June 23, 2015. The Fairfax City Council has approved and signed the MOU and Board action can occur at any time without reliance on any additional prerequisite actions.

BACKGROUND:
The City of Fairfax ("City") does not have a backup facility to which it can relocate its Communications Center operations personnel during periods when its Communications Center is unavailable due to an extended outage. The Fairfax County Department of Public Safety Communications ("DPSC") has previously allowed the City's Communications Center personnel to use the MPSTOC facilities to process emergency calls on occasions where the City's facility or systems were undergoing equipment upgrades. The facility at MPSTOC has the capability to continue permitting such use of MPSTOC by the City. The City and DPSC believe that future use of the facility should be governed by a more formal understanding. The attached MOU grants the City permission to use a portion of the MPSTOC during an extended outage. The MOU also authorizes the Director of DPSC and the Chief of the Fairfax City Police to enter into a Logistics and Procedures Memorandum ("Procedures Memorandum") that outlines the steps that are necessary to permit City personnel to temporarily relocate to MPSTOC. The MOU and associated Procedures Memorandum provide clear direction for all parties and their employees when the City requests temporary use of the MPSTOC facilities.

FISCAL IMPACT:
None

ENCLOSED DOCUMENTS:
Attachment 1: Fairfax County and Fairfax City Memorandum of Understanding on Use of MPSTOC as an Emergency Backup Facility
Attachment 2: Logistics and Procedure Memorandum on Use of MPSTOC as an Emergency Backup Facility

STAFF:
Dave Rohrer, Deputy County Executive
Steve Souder, Director, Department of DPSC
Steve McMurrer, 9-1-1 Systems Administrator, DPSC
Daniel Robinson, Assistant County Attorney

Fairfax County and Fairfax City Memorandum of Understanding on Use of MPSTOC as an Emergency Backup Facility

The Fairfax County Board of Supervisors (Fairfax County) and the City Council of the City of Fairfax (the City), agree that Fairfax County will allow the City to use various facilities at the McConnell Public Safety Transportation Operations Center (MPSTOC) as backup facilities when the City of Fairfax Communications Center is unable to operate during an extended outage. This Memorandum of Understanding (MOU) establishes the terms and conditions of the City's use of facilities at MPSTOC.

RECITAL

The Fairfax County Department of Public Safety Communications (DPSC), as the primary Public Safety Answering Point (PSAP) for both Fairfax County and the City, receives all 9-1-1 calls made from callers within the geographic boundaries of the City. As a normal course of business, DPSC transfers 9-1-1 calls for police related incidents within the jurisdiction of Fairfax City police to the City Communications Center at 3730 Old Lee Highway, Fairfax VA where Fairfax City dispatchers assign City units for response. 9-1-1 calls for Fairfax City fire and EMS related events are not transferred to the City but are dispatched by Fairfax County from MPSTOC. Fairfax County and the City have an established mutual aid agreement for fire and EMS dispatch.

THE PARTIES TO THIS UNDERSTANDING ARE MUTUALLY AGREED THAT:

1. The City, through its Chief of Police or his designee (collectively "Chief"), will notify Fairfax County, through its Director of DPSC or his designee (collectively "Director"), immediately of any extended outage situation wherein the City's communications staff desires to relocate to Fairfax County's MPSTOC in order to perform the City's function as a secondary PSAP (Fairfax City Activation). Whether an outage qualifies as an extended outage shall be determined in the sole discretion of the City. Fairfax County will allow relocation of the City's communications staff to MPSTOC in all cases when the City experiences an extended outage situation, except when DPSC has vacated the building (i.e., relocated to its backup facility at Pine Ridge) or when circumstances are impacting the MPSTOC facility such that, as determined by the sole discretion of the Director, relocation of the City's communications operations would not provide a safe environment at the MPSTOC facility. In such circumstances the Director shall advise Fairfax City that MPSTOC is temporarily unavailable.

2. During a Fairfax City Activation, City Communications supervisors will ensure on-duty City dispatchers remain in radio or cellular phone contact with DPSC Operations Supervisors or Managers during the transition from the City's normal location of operations to the alternate location at MPSTOC. City designated staff will perform all activities necessary to redirect calls once they arrive at MPSTOC to allow City emergency and non-emergency telephone calls to be answered at MPSTOC at designated DPSC relief positions.

3. The City will be responsible for notifying the public at large of the City's need to temporarily relocate Communications Center operations to MPSTOC and the City will publish and broadcast both emergency and non-emergency phone numbers for City residents to reach City dispatchers.

4. The City will utilize preconfigured call forwarding capabilities to transfer specific City Communications phone lines to pre-established telephone numbers that connect to Fairfax County facilities on the MPSTOC Operations Floor at the designated positions. The City is responsible for answering all Fairfax City calls transferred by Fairfax County to the designated positions.

5. Fairfax County and the City agree that the logistics of establishing and implementing a Fairfax City Activation should be coordinated at the agency level in order to provide sufficient flexibility to ensure an efficient transition of City Communications Staff to the MPSTOC location. As such, Fairfax County and the City authorize and direct the Director of DPSC and the Chief of the Fairfax City Police Department to enter into a Logistics and Procedures Memorandum (Procedures Memorandum) that outlines the logistics for establishing and implementing a Fairfax City Activation. The Procedures Memorandum may be amended from time to time if deemed necessary by DPSC and the Fairfax City Police Department. However, in no event shall the Procedures Memorandum conflict with the language, spirit or intent of this Memorandum of Understanding, and to the extent any provision of the Procedures Memorandum conflicts with the language, spirit or intent of this Memorandum of Understanding, this Memorandum of Understanding shall control.

6. This MOU will remain in effect until terminated by either party upon 90 days advance, written notice to the other party as follows:

   If to the City: City Manager
   10455 Armstrong Street
   Fairfax, VA 22030

   If to Fairfax County: County Executive
   12000 Government Center Parkway
   Suite 552
   Fairfax, VA 22035

7. Nothing in this MOU shall be construed to create any joint venture, partnership, or other business association, nor shall either party enter into any obligation or commitment on behalf of the other party.

8. The City shall be responsible for the cost of repair or replacement of any of Fairfax County's property that is damaged or destroyed as the result of the direct negligent or willful acts of City personnel, employees or agents.

9. Except as specifically provided in paragraph 8, neither party shall be liable to the other party for any claims, liabilities, or expenses arising solely out of the acts or omissions of such other party or one of its agents or employees. Neither party shall be obligated to defend or assume the cost of defense of the other party or hold harmless or indemnify the other party for any claim arising from the acts or omissions of one of its own agents or employees.

10. Both parties agree to waive any right of subrogation or recovery arising from any claim for workers' compensation for their respective employees, regardless of cause.

11. Nothing in this MOU shall be construed as creating any personal liability on the part of any officer, employee or agent of the parties, nor shall it be construed as giving any rights or benefits to anyone other than the parties hereto.

12. City employees with access to MPSTOC must receive security training as set forth in the IT security addendum attached to this MOU.

13. This MOU shall take effect upon its signing by the authorized representative of each party.

Signatures:

CITY COUNCIL OF THE CITY OF FAIRFAX

_____ Date:_____

By:_____

Its:_____

FAIRFAX COUNTY BOARD OF SUPERVISORS

_____ Date:_____

By:_____

Its:_____

Logistics and Procedures Memorandum on Use of MPSTOC as an Emergency Backup Facility

The Fairfax County Board of Supervisors and the City Council of the City of Fairfax have entered into a Memorandum of Understanding (MOU) pursuant to which Fairfax County will allow various facilities at the McConnell Public Safety Transportation Operations Center (MPSTOC) to be utilized as a backup facility for situations where the City is unable to operate from its regular City owned facilities during an extended outage. The MOU authorizes and directs the Director of the Fairfax County Department of Public Safety Communications (DPSC) and the Chief of the Fairfax City Police Department (City Police) to enter into a separate Logistics and Procedures Memorandum that establishes the procedures that will be followed when the City's communications staff desires to relocate to Fairfax County's MPSTOC in order to perform the City's function as a secondary Public Safety Answering Point (PSAP) because of an extended outage situation (Fairfax City Activation). This Logistics and Procedures Memorandum (Procedures Memorandum) establishes the procedures that will be followed during a Fairfax City Activation.

PROCEDURES

When the City, in its sole discretion, determines that it is experiencing, or will experience, an extended outage:

1. The City will alert Fairfax County by telephone or using Fairfax County radio channel HQDISP that an emergency situation exists in the City and request to relocate physical communications operations to MPSTOC.

2. The Director of DPSC or his designee (collectively "Director"), will determine, in his sole discretion, whether relocation should be allowed pursuant to the criteria set forth in the MOU.

3. If the Director determines relocation is allowed, then the Director will notify the Chief of the City Police or his designee (collectively "Chief") and the Director and the Chief will notify their respective staffs.

4. Fairfax County police dispatch will relay any City related emergency radio traffic over the primary City police channel (CFDISP) that transpires for the City prior to displaced City communications staff arriving at MPSTOC. It is incumbent on City communications staff to carry portable radios during the transition period. If City communications staff is unavailable, City Police field units will be responsible for acknowledging radio traffic from DPSC. The City shall also provide a ten digit cellular telephone number (571-329-4332) to be answered by City communications staff so that Fairfax County can coordinate activities, as needed, during the transition period from the City's facilities to MPSTOC.

5. Fairfax County agrees to provide two designated dispatch positions (RLF1 and RLF2) with computers, pre-configured radio consoles, telephony workstations, and VCIN Open

Fox software (licenses provided by the City) at MPSTOC for use by City communications dispatchers during a City Activation.

6. The City is responsible to bring two laptops with broadband cards containing all required City dispatch and administrative software. The laptops serve as a supplemental resource and as a backup to the cubicle computer. The City will, at its discretion, bring a laptop(s) for internet use accessible via City cellular communication air cards or, if available, the MPSTOC guest services network WIFI.

7. Virginia Criminal Information Network (VCIN) Teletype Terminals FRC1 and FRFX will be transferred by the City notifying the State they have left their City center and to transfer them to FRFC at MPSTOC. Upon arrival, City staff will notify the State to transfer FRFC traffic to positions RLF1 (terminal FRC3) and RLF2 (terminal FRC4) on the MPSTOC Operations Floor for use by City communications staff during the entire time of the Fairfax City Activation. Prior to the on-site arrival of the City communications staff, Fairfax County staff will monitor the teletype terminal (FRC1 and FRFX) for any teletype related queries. Fairfax County staff will pass along any teletype related queries that came in during the transition to the City staff once they arrive at MPSTOC.

8. Fairfax County will provide access to a cubicle or office or other work space such as the Police Pod (the cubicle). The cubicle is to be used by a City supervisor or City employee to complete City work in a manner that does not disrupt Fairfax County personnel on the Operations floor at MPSTOC.

9. The Open Fox terminals provided by Fairfax County are restricted to the use of the Open Fox application ONLY which the City operators have access to. Therefore, the City operators will have no need to access the Fairfax County network.

10. The City will establish necessary procedures with Verizon to allow select Fairfax City communications circuits to be transferred from their primary communications center to the MPSTOC during times of a Fairfax City Activation. Utilizing Verizon Ultra Call Forward, the City will redirect administrative lines:

    a. Primary City Administrative line 703-385-7924 redirected to 703-877-3732.
    b. Secondary City Administrative line 703-591-5511 redirected to 703-877-3731.
    c. Phone number 703-877-3730 will be utilized by MPSTOC call taker personnel for internal transfers of City 9-1-1 calls on the operations floor.
    d. Fairfax County will also provide 703-877-3729 for internal use by the Fairfax City Police Department to reach City staff at MPSTOC during any activation.

11. Once City telephone circuits have been transferred by the City to MPSTOC using pre-established Verizon procedures, City supervisors or City designated dispatch staff will complete the activation of call flow to positions RLF1 and RLF2 by following the *City of Fairfax Activation Operating Procedures* for RLF1 and RLF2. Said procedures are

documented separately but City Communications will be trained by Fairfax County Telephony Staff on the procedures and will be given a hard and soft copy of the procedures. A copy of these procedures will be in a binder under a specially designated Fairfax City Activation phone on the MPSTOC supervisor's bridge near position FD00.

12. MPSTOC personnel are not required to answer the administrative lines (non-emergency calls) of the City that are redirected to MPSTOC (see Item 10).

13. The City is responsible to provide its own technical support for its laptop computers and other Fairfax City peripherals. Fairfax County personnel or Fairfax County contracted personnel, while available for consultation, are not responsible to troubleshoot any City related 9-1-1 Verizon technical issues at MPSTOC that arise during a Fairfax City Activation.

14. The parties will establish procedures that foster efficient and secure transfer and sharing of information to help the public during emergencies, including, among other things:

    a. MPSTOC call taker personnel will answer Non-emergency calls received over 9-1-1 lines and if City personnel are in transit to MPSTOC, Fairfax County personnel will capture the basic call information for such non-emergency calls by entering 'Advised Events' within Fairfax CAD. Information on all such Advised Events will be conveyed to City personnel when they arrive at MPSTOC.

    b. Fire and EMS emergency calls will be dispatched per normal MPSTOC operating procedures.

    c. If all telephone communications are down between the City Communication Center and MPSTOC, MPSTOC personnel will utilize the City's primary radio channel, or an otherwise identified radio talk group, to communicate and distribute emergency call traffic for Police events to City personnel.

    d. Establishment of a testing schedule will be accomplished and training may occur during normal MPSTOC operations or during MPSTOC relocation to their alternate site at the Pine Ridge facility.

    e. MPSTOC call takers will transfer calls to 703-877-3730 either manually or utilizing Vesta automatic programming.

15. MPSTOC personnel will provide temporary access control cards to City personnel during their training and emergency activation.

16. This Procedures Memorandum will remain in effect until amended by DPSC and the City Police or until the MOU entered into by Fairfax County and the City is terminated, whichever happens first.

17. This Procedures Memorandum shall take effect upon its signing by authorized representatives of each party.

Signatures:

Steve Souder, Director Department of Public Safety Communications Fairfax County	Carl R. Pardiny Chief of Police City of Fairfax Police Department
Date	Date

Board Agenda Item
June 23, 2015

ACTION - 4

Approval of the Consumer Protection Commission Recommendation on the Number of Taxicab Certificates to be Authorized in 2015

ISSUE:
Board approval of the number of new taxicab certificates available to be issued in 2015.

RECOMMENDATION:
The County Executive recommends that the Board approve no new taxicab certificates in 2015.

TIMING:
Board action is requested on June 23, 2015, so that the number of authorized taxicab certificates will be established prior to the June 30, 2015, deadline for submission of applications for taxicab operator certificates.

BACKGROUND:
Section 84.1-2-5 of the County Code provides that in each odd-numbered year the Board will determine the number of taxicab certificates that are available to be issued. A copy of this section is provided in Attachment 1. The number of certificates was last increased in February 2014, when the Board awarded 78 new certificates, thereby increasing the taxicab fleet from 576 to 654 taxicabs.

The Taxicab Demand Formula has been the primary analytical tool used since 1998 to assess the demand for taxicab certificates. This formula calculates the weighted growth over time in criteria that contribute to demand for taxicab service. The criteria used in the 2015 analysis and their weights are: (1) the average number of taxicab trips per certificate (45%); (2) mass transit and tourism indicators (30%); (3) population (20%); and (4) number of households without a car (5%). Growth in these criteria is analyzed for the period beginning with the last full calendar year prior to an increase in certificates through the most recent full calendar year. The formula also provides for a discretionary adjustment of up to 10% to reflect qualitative factors. As shown on Attachment 2, the results of the 2015 taxicab demand formula analysis yield a total weighted change of -3.56 percent, indicating a decline in demand and that no additional certificates are needed.

The decline in demand for taxicab service appears due primarily to increasing competition from drivers affiliated with transportation network companies (TNCs) like UberX and Lyft. State legislation enacted in 2015 allows TNC drivers to lawfully provide

service within Fairfax County so long as the TNC and its drivers comply with amendments to Title 46.2 of the Code of Virginia, as set forth in SB1025 and HB1662 (effective July 2015). TNCs are very active in the metropolitan Washington D.C. area and staff is monitoring that activity, particularly in Northern Virginia. TNC activity may warrant revisions to Chapter 84.1 when additional information or data is available.

In analyzing demand for taxicab certificates, staff solicited public input from a number of stakeholder community organizations. In April 2015, staff met with both the Transportation Advisory Commission (TAC) and the Mobility and Transportation Committee of the Long Term Care Coordinating Council (LTCCC) to present the results of its demand formula analysis and request comment on the need for additional taxicab certificates. TAC and LTCCC members concurred with the staff analysis and did not request that additional certificates be authorized. Staff also created a page on the county website soliciting public comment.

On May 19, 2015, the Consumer Protection Commission (CPC) voted unanimously (10-0) to recommend that the Board authorize no additional taxicab certificates in 2015.

Over the next several months, the CPC will consider applications for taxicab certificates filed by the June 30, 2015, deadline. If any such applications are filed, the CPC will hold a public hearing and its recommendations regarding the allocation of certificates will be brought to the Board.

FISCAL IMPACT:
None

ENCLOSED DOCUMENTS:
Attachment 1 – Fairfax County Code Section 84.1-2-5
Attachment 2 – Results of 2015 Taxicab Demand Formula Analysis

STAFF:
David J. Molchany, Deputy County Executive
Michael S. Liberman, Director, Department of Cable and Consumer Services
Erin Ward, Senior Assistant County Attorney
John Burton, Assistant County Attorney
Susan Hafeli, Branch Manager, DCCS Public Utilities Branch

FAIRFAX COUNTY CODE
CHAPTER 84.1, *Public Transportation*
ARTICLE 2, *Operator's Certificates*

Section 84.1-2-5. Establishment of public convenience and necessity; burden of applicant.

(a) The number of certificates that are available to be issued on a biennial basis, will be determined by the Board, based on public convenience and necessity, after considering any appropriate recommendations submitted by the Commission or the Director and such other information as the Board chooses to consider. That number will be reviewed and established by resolution of the Board after May 1 of each odd numbered year, but the Board reserves the right to revise that number by subsequent resolution as the Board deems appropriate. The burden will be upon the applicant to establish the existence of all facts and statements within the applicant's application and to provide such other information as is required or requested pursuant to this Chapter.

(b) If the applicant applies for certificates in excess of the number determined by the Board, based on public convenience and necessity, the burden of proof for the excess certificates shifts to the applicant. The applicant will then have the burden of establishing that public welfare will be enhanced by the award of the certificates of public convenience and necessity requested in the application. The applicant will be required to provide factual documented evidence indicating the demand and establishing public welfare. (4-00-84.1; 56-08-84.1.)

RESULTS OF 2015 TAXICAB DEMAND FORMULA ANALYSIS

Review Period 2013-2014					
Demand Criteria	*Percent Change*		*Formula Weight*		*Weighted Change*
Growth in average trips per certificate	(9.54%)	x	45%	=	(4.29%)
Mass transit/tourism composite growth rate	1.87%	x	30%	=	0.56%
Population growth rate	0.18%	x	20%	=	0.04%
Growth in percent of households without a vehicle	2.60%	x	5%	=	0.13%
Total Weighted Change			*100%*	=	*(3.56%)*
Weighted Outcome: (.036%) x 615 certificates = (22) certificates					

Note: Although the number of authorized certificates was increased in 2014 from 576 to 654, the majority of the newly-authorized taxicabs were not placed in service until the second half of 2014. Consequently, the Consumer Protection Commission recommended use of the average of the 2013 and 2014 fleet sizes – 615 taxicabs – to calculate both the growth in average trips per certificate and the weighted outcome.

Board Agenda Item
June 23, 2015

ACTION - 5

Approval of a Standard Project Agreement with the Northern Virginia Transportation Authority for Preliminary Engineering and Environmental Study of Route 28 Widening from Prince William County Line to Route 29 (Springfield and Sully Districts)

ISSUE:
Board of Supervisors' authorization for the Fairfax County Director of the Department of Transportation to sign a standard project agreement substantially in the form of Attachment 2 with the Northern Virginia Transportation Authority (NVTA) for $5 million to fund preliminary engineering and environmental study of Route 28 Widening (Prince William County Line to Route 29) project.

RECOMMENDATION:
The County Executive recommends that the Board approve a resolution (Attachment 1) authorizing the County Director of the Department of Transportation to execute a standard project agreement, in substantially the form of Attachment 2, with NVTA for $5 million to fund preliminary engineering and environmental study of Route 28 Widening project.

TIMING:
The Board of Supervisors should act on this item on June 23, 2015, so that NVTA can release funding for the preliminary engineering and environmental study of Route 28 Widening project.

BACKGROUND:
The Route 28 Widening (Prince William County Line to Route 29) project will reduce congestion on a heavily traveled section of the Virginia Route 28 corridor, which provides travel within and between three counties in Northern Virginia (Prince William, Fairfax, and Loudoun), and the two cities of Manassas and Manassas Park.

Current northbound AM peak hour travel time from Manassas Drive (in Manassas Park) to US 29 (in Centreville) ranges between 35 and 60 minutes Monday through Thursday, even without an incident. Similar travel times are typical in the southbound direction in the PM peak hour. Traffic queues at various signals along the corridor extend for up to one mile or more. Several large residential developments are currently under construction in Prince William County just south of the Fairfax County line; with the

opening of these developments, congestion and delays along Route 28 will continue to increase.

The project will reduce congestion by adding one lane in each direction to improve through capacity on Virginia Route 28, which currently carries over 60,000 vehicles per day, at a peak hour Level of Service (LOS) F. The intersection improvements will improve through travel by eliminating split phase signal timings at five intersections along this section of Route 28. In addition, the project will improve travel times and connections to other corridors such as US Route 29 (Lee Highway) and Route 620 (New Braddock Road) which are alternatives to the I-66 corridor.

Total cost to complete the project is estimated to be $47,350,000. It is anticipated that staff would pursue additional NVTA regional funding in years FY 2017 and beyond. This project is in conformance with the Fairfax County Comprehensive Transportation Plan 2013 Edition and is included in the Transportation Priorities Plan and staff's recommended project submissions for NVTA consideration for FY2015-FY2016 funding approved by the Board on January 28, 2014.

HB 2313 (2013) directs the NVTA to use 70 percent of the revenue collected from the three Northern Virginia taxes and fees for (i) transportation projects selected by NVTA that are contained in the regional transportation plan or (ii) mass transit capital projects that increase capacity.

On April 23, 2015, the Authority approved its FY 2015-2016 program, which included approximately $346 million for 37 projects across Northern Virginia. The program included $5 million for the preliminary engineering and environmental study of the Route 28 Widening project. The description sheet for this approved project is included as Attachment 3.

To facilitate the implementation of the regionally funded projects, NVTA and jurisdictional staff developed a Standard Project Agreement (SPA) to govern the terms and conditions associated with the funding the Authority approves for these regional projects. The SPA is based on the requirements of HB 2313, but it also includes practical provisions associated with the implementation of the law and standard contract language. County staff was extensively involved in drafting this SPA, and in subsequently tailoring it for the Route 28 Widening project.

The major provisions of the SPA provide that the County will:

- Perform work in accordance with all applicable federal, state, and local laws and regulations, the SPA and the Project Description Sheet;

- Perform or have performed all environmental work, right-of-way acquisition, construction, contract administration, testing services, inspection services, or capital asset acquisition necessary to complete the project;
- Update project cash flow requirements periodically;
- Provide requests for payment consistent with the approved cash flow for a project on standard requisition forms;
- Notify NVTA's Executive Director of any additional project costs resulting from unanticipated circumstances. NVTA will decide whether to fund these additional costs, but only in accordance with NVTA's project selection process;
- Release or return any unexpended funds to NVTA no later than 90 days following final payment to contractors;
- Certify that any matching funds required for the project have been secured;
- Reimburse NVTA (with interest) for any funds misapplied or not used in accordance with the statutes governing NVTA's revenues;
- Certify that the County will use the project for its intended purpose for the duration of its useful life or reimburse NVTA for the residual value of the asset based on its depreciated value;
- Acknowledge that NVTA will not be responsible for operating or maintaining the project upon completion;
- Obtain all necessary permits or permissions necessary for construction and/or operating the project;
- Comply with all applicable federal and state funding requirements, if such other sources are used to fund the project;
- Certify that it has adhered to all applicable laws and regulations, as well as the requirements of the agreement.

The SPA provides that NVTA will:

- Provide funding for the project on a reimbursement basis, as outlined in the project agreement, project budget and cash flow as original or subsequently approved;
- Assign a project coordinator to monitor the project to ensure compliance with the agreement and review payment requisitions;
- Make project payments within 20 days, if the payment requisition is sufficient;
- Notify recipient of reasons a payment requisition is declined;
- Consider additional payment requests recommended by the Executive Director and the Finance Committee;
- Conduct periodic reviews of the project to ensure that it remains in compliance with the agreed-upon project scope;
- Advise the recipient in writing of any misused or misapplied funding and make recommendations to the Finance Committee, if the issue(s) is not resolved, and withhold additional funding for the project until final resolution of the matter.
- Secure reimbursement (with interest) of any misused or misapplied funding;

- Make guidelines available to assist with complying with the terms of the agreement.

The SPA was approved by NVTA on March 13, 2014. A specific project agreement must be executed for each project approved by NVTA.

FISCAL IMPACT:
The County will receive $5 million as reimbursement from NVTA for preliminary engineering and environmental study undertaken by the County as part of the approved project. NVTA funds reimbursed to the County will be allocated to Fund 40010, County and Regional Transportation Projects.

ENCLOSED DOCUMENTS:
Attachment 1: Resolution to Execute Agreement with the Northern Virginia Transportation Authority
Attachment 2: Standard Project Agreement, including Related Appendices, with the Northern Virginia Transportation Authority
Attachment 3: Approved Project Description Sheet for Route 28 Widening (Prince William County Line to Route 29)

STAFF:
Robert A. Stalzer, Deputy County Executive
Tom Biesiadny, Director, Fairfax County Department of Transportation (FCDOT)
Joe LaHait, Debt Coordinator, Department of Management and Budget
Patricia Moody McCay, Assistant County Attorney
Todd Wigglesworth, Acting Chief, Coordination and Funding Division, FCDOT
Todd Minnix, Chief, Transportation Design Division, FCDOT
Ellen Posner, Coordination and Funding Division, FCDOT
Janet Nguyen, Coordination and Funding Division, FCDOT
Ray Johnson, Coordination and Funding Division, FCDOT

Fairfax County Board of Supervisors Resolution

At a regular meeting of the Board of Supervisors of Fairfax County, Virginia, held in the Board Auditorium in the Fairfax County Government Center of Fairfax, Virginia on Tuesday, June 23, 2015, at which meeting a quorum was present and voting, the following resolution was adopted.

AGREEMENT EXECUTION RESOLUTION

WHEREAS, in accordance with Northern Virginia Transportation Authority (NVTA) project agreement procedures, it is necessary that a resolution be received from the local government authorizing execution of an agreement.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of Fairfax County, Virginia, authorizes the Director of Fairfax County's Department of Transportation to execute, on behalf of the County of Fairfax, a Standard Project Agreement (SPA) with NVTA for funding preliminary engineering and environmental study of Route 28 Widening (Prince William County Line to Route 29), substantially in the form of the NVTA SPA presented to the Board by staff on June 23, 2015.

Adopted this _____ day of_____, 2015, Fairfax, Virginia

ATTEST _____
Catherine A. Chianese
Clerk to the Board of Supervisors

Standard Project Agreement for Funding and Administration
between
Northern Virginia Transportation Authority
and
County of Fairfax, Virginia
(Recipient Entity)

NVTA Project Number: Route 28 Widening - 3K

This Standard Project Agreement for Funding and Administration ("this Agreement") is made and executed in duplicate on this_____ day of _____, 20__, as between the Northern Virginia Transportation Authority ("NVTA") and County of Fairfax, Virginia ("Recipient Entity").

WITNESSETH

WHEREAS, NVTA is a political subdivision of the Commonwealth of Virginia created by the Northern Virginia Transportation Authority Act ("the NVTA Act"), Chapter 25 of Title 33.2 of the Code of Virginia, as amended;

WHEREAS, Section 33.2-2500(4) of the Code of Virginia authorizes NVTA to enter into project agreements with certain statutorily designated entities for the provision of transportation facilities and services to the area embraced by NVTA;

WHEREAS, Section 33.2-2509 of the Code of Virginia authorizes NVTA to use funds from a fund established pursuant to that Code section (the "NVTA Fund") in order to assist in the financing, in whole or in part, of certain regional transportation projects in accordance with Code Section 33.2-2510;

WHEREAS, the NVTA Fund provides for the deposit therein of certain dedicated revenues and other funds appropriated by the Virginia General Assembly;

WHEREAS, Section 33.2-2510 of the Code of Virginia authorizes the use of funds from the NVTA Fund and the use of proceeds from NVTA debt issuances ("NVTA Bond Proceeds") to be used by NVTA solely for transportation purposes benefitting those counties and cities embraced by NVTA;

WHEREAS, the Project set forth and described on Appendix A to this Agreement ('the Project") satisfies the requirements of Virginia Code Section 33.2-2510;

WHEREAS, the Project is to be financed, as described in Appendix B, in whole or in part, by funds from the NVTA Fund and/or from NVTA Bond Proceeds, is located within a locality embraced by NVTA's geographical borders, or is located in an adjacent locality, but only to the extent that any such extension is an insubstantial part of the Project and is essential to the viability of the Project within the localities embraced by NVTA;

WHEREAS, Fairfax County formally requested that NVTA provide funding to the Project by timely submitting an application for NVTA funding in response to NVTA's call for projects;

WHEREAS, NVTA has reviewed Fairfax County's application for funding and has approved Fairfax County's administration and performance of the Project's described scope of work;

WHEREAS, based on the information provided by Fairfax County, NVTA has determined that the Project complies with all requirements of the NVTA Act related to the use of moneys identified in Virginia Code Sections 33.2-2510(A),(C)1 and all other applicable legal requirements;

WHEREAS, the funds to be provided by NVTA described in Appendix B have been duly authorized and directed by Fairfax County to finance the Project;

WHEREAS, NVTA agrees that Fairfax County will design and/or construct the Project or perform such other specific work for the Project and Fairfax County agrees that it will perform such work on the terms and conditions set forth in this Agreement and the Appendices appended thereto;

WHEREAS, both parties have concurred in the Fairfax County's administration, performance, and completion of the Project on the terms and conditions set forth in this Agreement and its Appendices and in accordance with all applicable federal, state, and local laws and regulations; and

WHEREAS, NVTA's governing body and Fairfax County's governing body have each authorized that their respective designee(s) execute this agreement on their respective behalf(s) as evinced by copies of each such entity's clerk's minutes which are appended hereto as Appendix E;.

NOW THEREFORE, in consideration of the promises made mutual covenants, and agreements contained herein, the parties hereto agree as follows:

A. Recipient Entity's Obligations

_____Fairfax County_____shall:

I. Complete or perform all said work as described in Appendix A, advancing such work diligently and ensuring that all work is completed in accordance with all applicable federal, state, and local laws and regulations, and all terms and conditions of this Agreement.

2. Ensure that all work performed or to be performed under this Agreement is in accordance with the Project Description Sheets attached to Appendix A and complies with Va. Code Ann. Sections 33.2-2510(A), (C)1.

3. Perform or have performed, and remit all payment requisitions and other requests for funding for design and engineering, including all environmental work, right-of-way acquisition, construction, contract administration, testing services, inspection services, or capital asset acquisitions for the Project, as is required by this Agreement and that may be necessary for completion of the Project.

4. Not use the NVTA funds specified on Appendix B to pay any Project cost if the NVTA Act does not permit such Project cost to be paid with NVTA funds.

5. Recognize that, if the Project contains "multiple phases" (as such "multiple phases" are defined for the Project on Appendix A), for which NVTA will provide funding for such multiple phases (as set forth on Appendix B), NVTA may not provide funding to _____Fairfax County_____ to advance the Project to the next phase until the current phase is completed. In any circumstance where _____Fairfax County_____ seeks to advance a Project to the next phase using NVTA funds, _____Fairfax County_____ shall submit a written request to NVTA's Executive Director explaining the need for NVTA's funding of an advanced phase. NVTA's Executive Director will thereafter review the circumstances underlying the request in conjunction with Appendix B and NVTA's current and projected cash flow position and make a recommendation to NVTA whether to authorize the requested advance phase funding. Nothing herein, however, shall prohibit _____Fairfax County_____ from providing its own funds to

advance a future phase of the Project and from requesting reimbursement from NVTA for having advance funded a future phase of the Project. However, Fairfax County further recognizes that NVTA's reimbursement to Fairfax County for having advance funded a Project phase will be dependent upon NVTA's cash flow position at the time such a request for reimbursement is submitted and to the extent that any such advanced funding is consistent with Appendix B.

6. Acknowledge that NVTA's Executive Director will periodically update NVTA's project cash flow estimates with the objective toward keeping those estimates accurate throughout the life of the Project. Fairfax County shall provide all information required by NVTA so as to ensure and facilitate accurate cash flow estimates and accurate updates to those cash flow estimates throughout the life of the Project as described in Appendix B.

7. Provide to NVTA requests for payment consistent with Appendix B and the most recently approved NVTA cash flow estimates that include NVTA's standard payment requisition(s), containing detailed summaries of actual project costs incurred with supporting documentation as determined by NVTA and that certify all such costs were incurred in the performance of work for the Project as authorized by this Agreement. Each payment requisition shall be in substantially the same form as set forth in Appendix C of this Agreement. If approved by NVTA, Fairfax County can expect to receive payment within twenty (20) days upon receipt by NVTA. Approved payments may be made by means of electronic transfer of funds from NVTA to or for the account of Fairfax County.

8. Promptly notify NVTA's Executive Director of any additional project costs resulting from unanticipated circumstances and provide to NVTA detailed estimates of additional costs associated with those circumstances. Fairfax County understands that it will be within NVTA's sole discretion whether to provide any additional funding to the Project in such circumstances and that NVTA will do so only in accordance with NVTA's approved Project Selection Process and upon formal action and approval by NVTA. Fairfax County shall timely provide to NVTA a

complete and accurate update to Appendix B, if NVTA approves funding of any additional Project costs for the Project under this Paragraph.

9. Release or return any unexpended funds to NVTA no later than 90 days after final payment has been made to the contractors.

10. Review and acknowledge the requirements of NVTA Resolution No. 14-08 adopted January 23, 2014; to wit that, if applicable to Fairfax County's Project: a) Prior to any NVTA funds being released for a project that may be part of a larger project, projects, or system undertaken with an extra-territorial funding partner, all such extra-territorial funding partners must commit to pay their appropriate, respective proportionate share or shares of the larger project or system cost commensurate with the benefits to each on a basis agreed upon by the NVTA member localities; b) any such funds released by NVTA for such project will be in addition to the funds that the NVTA member locality is to receive from or be credited with by the extra-territorial funding partner for the project or system; and c) there shall be no funding made available by NVTA until such time as all extra-territorial funding partners for such project or system pay or officially commit to fund their appropriate, respective proportionate shares of such large project or system commensurate with the benefits to each on a basis agreed upon with NVTA.

11. Should Fairfax County be required to provide matching funds in order to proceed or complete the funding necessary for the Project, Fairfax County shall certify to NVTA that all such matching funds have been either authorized and/or appropriated by Fairfax County's governing body or have been obtained through another, independent funding source;

12. Maintain complete and accurate financial records relative to the Project for all time periods as may be required by the Virginia Public Records Act and by all other applicable state or federal records retention laws or regulations, unless superseded by the laws that govern Fairfax County and provide copies of any such financial records to NVTA, free of charge, upon request.

13. Maintain all original conceptual drawings and renderings, architectural and engineering plans, site plans, inspection records, testing records, and as built drawings for the Project for the time periods required by the Virginia Public Records Act and any other applicable records retention laws or regulations, unless superseded by the laws that govern Fairfax County; and provide to NVTA copies of all such drawings and plans free of charge, upon request.

14. Reimburse NVTA for all NVTA funds (with interest earned at the rate earned by NVTA) that Fairfax County misapplied or used in contravention of Sections 33.2-2500 *et. seq*. of the Virginia Code ("the NVTA Act") Chapter 766 of the 2013 Virginia Acts of Assembly ("Chapter 766"), or any term or condition of this Agreement.

15. Name NVTA and its Bond Trustee or require that all Fairfax County's contractors name NVTA or its Bond Trustee as an additional insured on any insurance policy issued for the work to be performed by or on behalf of Fairfax County for the Project and present NVTA with satisfactory evidence thereof before any work on the Project commences or continues.

16. Give notice to NVTA that Fairfax County may use NVTA funds to pay outside legal counsel services (as opposed to utilizing the services of its own in-house counsel or NVTA's in-house legal counsel) in connection with the work performed under this Agreement Fairfax County so as to ensure that no conflict of interest may arise from any such representation.

17. Provide certification to NVTA, that upon final payment to all contractors for the Project, Fairfax County will use the Project for its intended purposes for the duration of the Project's useful life. Under no circumstances will NVTA be considered responsible or obligated to operate and/or maintain the Project after its completion.

18. Comply with all requirements of the Virginia Public Procurement Act and other applicable Virginia Code provisions, or local ordinances which govern the letting of public contracts, unless superseded by the laws that govern Fairfax County.

19. Acknowledge that if the Project is being funded in whole or in part by NVTA Bond Proceeds, comply with the tax covenants attached as Appendix D.

20. Acknowledge that if Fairfax County expects and/or intends that the Project is to be submitted for acceptance by the Commonwealth into its system that Fairfax County agrees to comply with the Virginia Department of Transportation's ("VDOT's") "Standards, Requirements and Guidance."

21. Recognize that Fairfax County is solely responsible for obtaining all permits and permissions necessary to construct and/or operate the Project, including but not limited to, obtaining all required VDOT and local land use permits, applications for zoning approvals, and regulatory approvals.

22. Recognize that if Fairfax County is funding the Project, in whole or in part, with federal and/or state funds, in addition to NVTA funds and/or NVTA Bond Proceeds that Fairfax County will need to comply with all federal and Commonwealth funding requirements, including but not limited to, the completion and execution of VDOT's Standard Project Administration Agreement and acknowledges that NVTA will not be a party or signatory to that Agreement; nor will NVTA have any obligation to comply with the requirements of that Agreement.

23. Provide a certification to NVTA no later than 90 days after final payment to the contractors that Fairfax County adhered to all applicable laws and regulations and all requirements of this Agreement.

B. NVTA's Obligations

NVTA shall:

I. Provide to Fairfax County the funding authorized by NVTA for design work, engineering, including all environmental work, all right-of-way acquisition, inspection services, testing services, construction, and/or capital asset acquisition(s) on a reimbursement basis as set forth in this Agreement and as specified in the Project Budget and Cash Flow contained in

Appendix B to this Agreement or the most updated amendment thereto, as approved by NVTA.

2. Assign a Program Coordinator for the Project. NVTA's Program Coordinator will be responsible for monitoring the Project on behalf of NVTA so as to ensure compliance with this Agreement and all NVTA's requirements and with overseeing, managing, reviewing, and processing, in consultation with NVTA's Executive Director and its Chief Financial Officer ("CFO") , all payment requisitions submitted by Fairfax County for the Project. NVTA's Program Coordinator will have no independent authority to direct changes or make additions, modifications, or revisions to the Project Scope of Work as set forth on Appendix A or to the Project Budget and Cash Flow as set forth on Appendix B.

3. Route to NVTA's assigned Program Coordinator all Fairfax County's payment requisitions, containing detailed summaries of actual Project costs incurred which are in substantially the same form as shown on Appendix C submitted to NVTA for the Project. After submission to NVTA, NVTA's Program Coordinator will conduct an initial review of all payment requisitions and supporting documentation for the Project in order to determine the submission's legal and documentary sufficiency. NVTA's Program Coordinator will then make a recommendation to the NVTA's CFO and Executive Director whether to authorize payment, refuse payment, or seek additional information from Fairfax County. If the payment requisition is sufficient as submitted, payment will be made within twenty (20) days from receipt. If the payment requisition is deemed insufficient, within twenty (20) days from receipt, NVTA's Program Coordinator will notify Fairfax County in writing and set forth the reasons why the payment requisition was declined or why and what specific additional information is needed for processing the payment request. Payment will be withheld until all deficiencies identified by NVTA have been corrected. Under no circumstances will NVTA authorize payment for any work performed by or on behalf of Fairfax County that is not in conformity with the requirements of the NVTA Act, Chapter 766, or this Agreement.

4. Route all Fairfax County's supplemental requests for funding from NVTA under Paragraphs A.5 and A.8 of this Agreement to NVTA's Executive Director. NVTA's Executive Director will initially review those requests and all supporting documentation with NVTA's CFO. After such initial review, NVTA's Executive Director will make a recommendation to NVTA's Finance Committee for its independent consideration and review. NVTA's Finance Committee will thereafter make a recommendation on any such request to NVTA for final determination by NVTA.

5. Conduct periodic compliance reviews scheduled in advance for the Project so as to determine whether the work being performed remains within the scope of this Agreement, the NVTA Act, Chapter 766, and other applicable law. Such compliance reviews may entail review of Fairfax County's financial records for the Project and on -site inspections.

6. Acknowledge that if, as a result of NVTA's review of any payment requisition or of any NVTA compliance review, NVTA staff determines that Fairfax County has misused or misapplied any NVTA funds in derogation of this Agreement or in contravention of the NVTA Act, Chapter 766 or applicable law, NVTA staff will promptly advise NVTA's Executive Director and will advise Fairfax County's designated representative in writing. Fairfax County will thereafter have thirty (30) days to respond in writing to NVTA's initial findings. NVTA's staff will review Fairfax County's response and make a recommendation to NVTA's Finance Committee. NVTA's Finance Committee will thereafter conduct its own review of all submissions and make a recommendation to NVTA. Pending final resolution of the matter, NVTA will withhold further funding on the Project. If NVTA makes a final determination that Fairfax County has misused or misapplied funds in contravention of this Agreement, the NVTA Act, Chapter 766, or other applicable law, NVTA will cease further funding for the Project and will seek reimbursement from Fairfax County of all funds previously remitted by NVTA (with interest earned at the rate earned by NVTA) which were misapplied or misused by Fairfax County. Nothing herein shall, however, be construed as denying, restricting or limiting the pursuit of either party's legal rights or available legal remedies.

7. Make guidelines available to Fairfax County to assist the parties in carrying out the terms of this Agreement in accordance with applicable law.

8. Upon recipient's final payment to all contractors, retain copies of all contracts, financial records, design, construction, and as-built project drawings and plans for the Project for the time periods required by the Virginia Public Records Act and as may be required by other applicable records retention laws and regulations.

9. Be the sole determinant of the amount and source of NVTA funds to be provided and allocated to the Project and the amounts of any NVTA funds to be provided in excess of the amounts specified in Appendix B.

C. Term

1. This Agreement shall be effective upon adoption and execution by both parties.

2. Fairfax County may terminate this Agreement, for cause, in the event of a material breach by NVTA of this Agreement. If so terminated, NVTA shall pay for all Project costs incurred through the date of termination and all reasonable costs incurred by Fairfax County to terminate all Project related contracts. The Virginia General Assembly's failure to appropriate funds to NVTA as described in paragraph F of this Agreement or repeal of the legislation establishing the NVTA fund created pursuant to Chapter 766 shall not be considered material breaches of this Agreement by NVTA. Before initiating any proceedings to terminate under this Paragraph, Fairfax County shall give NVTA sixty (60) days written notice of any claimed material breach of this Agreement; thereby allowing NVTA an opportunity to investigate and cure any such alleged breach.

3. NVTA may terminate this Agreement, for cause, resulting from Fairfax County's material breach of this Agreement. If so terminated, Fairfax County shall refund to NVTA all funds NVTA provided to Fairfax County for the Project (including interest earned at the rate earned by NVTA). NVTA will provide Fairfax County with sixty (60) days written notice that NVTA is exercising its rights to terminate this Agreement and the reasons for termination. Prior to termination, Fairfax County may

request that NVTA excuse Fairfax County from refunding all funds NVTA provided to Fairfax County for the Project based upon Fairfax County's substantial completion of the Project or severable portions thereof; and NVTA may, in its sole discretion, excuse Fairfax County from refunding all or a portion of the funds NVTA provided to Fairfax County for the Project. No such request to be excused from refunding will be allowed where Fairfax County has either misused or misapplied NVTA funds in contravention of applicable law.

4. Upon termination and payment of all eligible expenses as set forth in Paragraph C.3 above, Fairfax County will release or return to NVTA all unexpended NVTA funds with interest earned at the rate earned by NVTA no later than sixty (60) days after the date of termination.

D. Dispute

In the event of a dispute under this Agreement, the parties agree to meet and confer in order to ascertain if the dispute can be resolved informally without the need of a third party or judicial intervention. NVTA's Executive Director and Fairfax County's Chief Executive Officer or Chief Administrative Officer shall be authorized to conduct negotiations on behalf of their respective entities. If a resolution of the dispute is reached via a meet and confer dispute resolution method, it shall be presented to NVTA and to Fairfax County's governing body for formal confirmation and approval. If no satisfactory resolution can be reached via the meet and confer method, either party is free to pursue whatever remedies it may have at law, including all judicial remedies.

E. NVTA's Financial Interest in Project Assets

Fairfax County agrees to use the real property and appurtenances and fixtures thereto, capital assets, equipment and all other transportation facilities that are part of the Project and funded by NVTA under this Agreement ("Project Assets") for the designated transportation purposes of the Project under this Agreement and in accordance with applicable law throughout the useful life of each Project Asset. NVTA shall retain a financial interest in the value of each of the of the Project Assets, whether any such Project Asset may have depreciated or appreciated, throughout its respective useful life proportionate to the amount of the cost of the Project Asset funded by NVTA under this

Agreement. In the event that Fairfax County fails to use any of the Project Assets funded under this Agreement for the transportation purposes as authorized by this Agreement or applicable law throughout its respective useful life, Fairfax County shall refund to NVTA with interest at the rate earned by NVTA the amount attributable to NVTA's proportionate financial interest in the value of said Project Asset. If Fairfax County refuses or fails to refund said monies to NVTA, NVTA may recover its proportionate financial interest from Fairfax County by pursuit of any remedies available to NVTA, including but not limited to NVTA's withholding of commensurate amounts from future distributions of NVTA funds to Fairfax County.

F. Appropriations Requirements

1. Nothing herein shall require or obligate any party to commit or obligate funds to the Project beyond those funds that have been duly authorized and appropriated by their respective governing bodies.

2. The parties acknowledge that all funding provided by NVTA pursuant to Chapter 766 is subject to appropriation by the Virginia General Assembly. The parties further acknowledge that: (i) the moneys allocated to the NVTA Fund pursuant to Va. Code Ann. Sections 58.1-638, 58.1-802.2, and 58.1-1742 and any other moneys that the General Assembly appropriates for deposit into the NVTA Fund are subject to appropriation by the General Assembly and (ii) NVTA's obligations under this Agreement are subject to such moneys being appropriated for deposit in the NVTA Fund by the General Assembly.

G. Notices

All notices under this Agreement to either party shall be in writing and forwarded to the other party by U.S. mail, care of the following authorized representatives:

1) to: NVTA, to the attention of its Executive Director;
3040 Williams Drive, Suite 200
Fairfax, VA 22031

2) to Fairfax County, to the attention of _____
_____
_____ (address)

H. Assignment

This Agreement shall not be assigned by either party unless express written consent is given by the other party.

I. Modification or Amendment

This Agreement may be modified, in writing, upon mutual agreement of both parties.

J. No Personal Liability or Creation of Third Party Rights

This Agreement shall not be construed as creating any personal liability on the part of any officer, employee, or agent of the parties; nor shall it be construed as giving any rights or benefits to anyone other than the parties hereto.

K. No Agency

Fairfax County
_____ represents that it is not acting as a partner or agent of NVTA; and nothing in this Agreement shall be construed as making any party a partner or agent with any other party.

L. Sovereign Immunity

This Agreement shall not be construed as a waiver of either party's sovereign immunity rights.

M. Incorporation of Recitals

The recitals to this Agreement are hereby incorporated into this Agreement and are expressly made a part hereof. The parties to this Agreement acknowledge and agree that such recitals are true and correct.

N. Mutual Preparation and Fair Meaning

The parties acknowledge that this Agreement has been prepared on behalf of all parties thereto and shall be construed in accordance with its fair meaning and not strictly construed for or against either party.

O. Governing Law

This Agreement is governed by the laws of the Commonwealth of Virginia.

IN WITNESS WHEREOF, each party hereto has caused this Agreement to be executed as of the day, month, and year first herein written by their duly authorized representatives.

Northern Virginia Transportation Authority

By:_____

Date:_____

_____County of Fairfax, Virginia_____ (Name of Recipient Entity)

By: _____

Date:_____

Appendix A –Narrative Description of Project

Attach- Approved NVTA Project Description Sheet

NVTA Project Title: Route 28 Widening (Prince William County Line to Route 29)

Recipient Entity: Fairfax County

Recipient Entity/Project Manager Contact Information: Todd Minnix, (703) 877-5749, Wesley.Minnix@fairfaxcounty.gov

NVTA Program Coordinator Contact information: Keith Jasper, keith.jasper@thenovaauthority.org

Project Scope
Only Complete if Different from the Approved NVTA Project Description Sheet

Detailed Scope of Services
Only Complete if Different from the Approved NVTA Project Description Sheet

APPENDIX B-PROJECT BUDGET & CASH FLOW

PROJECT IDENTIFICATION AND PROPOSED FUNDING

NVTA Project Title: Route 28 Widening (Prince William County Line to Route 29)
Recipient Entity: Fairfax County
Project Contact Information: W. Todd Minnix, (703) 877-5749, Wesley.Minnix@fairfaxcounty.gov

PROJECT COSTS & FUNDING SOURCE

Project Cost Category	Total Project Costs	NVTA PayGo Funds	NVTA Financed Funds	*Description Other Sources of Funds*	Amount Other Sources of Funds	Recipient Entity Funds
Design Work	$ 4,000,000.00	$ 4,000,000.00	$ -		$ -	$ -
Engineering						
Environmental Work	$ 1,000,000.00	$ 1,000,000.00				
Right-of-Way Acquisition						
Construction						
Contract Administration						
Testing Services						
Inspection Services						
Capital Asset Acquisitions						
Other						
Total Estimated Cost	$ 5,000,000.00	$ 5,000,000.00	$ -	$ -	$ -	$ -

FISCAL YEAR ANNUAL PROJECT CASH FLOW

	Total Fiscal Year 2015		Total Fiscal Year 2016		Total Fiscal Year 2017		Total Fiscal Year 2018		Total Fiscal Year 2019	
Project Phase	PayGo	Financed	PayGo	Financed	PayGo	Financed	PayGo	Financed	PayGo	Financed
Design Work	$ -		$ 750,000.00		$ 1,500,000.00		$ 1,750,000.00			
Engineering										
Environmental Work			500,000.00		500,000.00					
Right-of-Way Acquisition										
Construction										
Contract Administration										
Testing Services										
Inspection Services										
Capital Asset Acquisitions										
Other										
Total Estimated Cost	$ -	$ -	$ 1,250,000.00	$ -	$ 2,000,000.00	$ -	$ 1,750,000.00	$ -	$ -	$ -

Please Note: If additional years are needed, please submit a separate form with additional columns

FISCAL YEAR ESTIMATED PROJECT CASH FLOW

	FY 15 Mthly Cash Flow		FY 16 Mthly Cash Flow		FY 17 Qtrly Cash Flow		FY 18 Qtrly Cash Flow		FY 19 Qtrly Cash Flow	
	PayGo	Financed	PayGo	Financed	PayGo	Financed	PayGo	Financed	PayGo	Financed
July										
August										
September			$ 312,500.00		$ 500,000.00		$ 437,500.00			
October										
November										
December			$ 312,500.00		$ 500,000.00		$ 437,500.00			
January										
February										
March			$ 312,500.00		$ 500,000.00		$ 437,500.00			
April										
May										
June			$ 312,500.00		$ 500,000.00		$ 437,500.00			
Total per Fiscal Year	**$ -**	**$ -**	**$ 1,250,000.00**	**$ -**	**$ 2,000,000.00**	**$ -**	**$ 1,750,000.00**	**$ -**	**$ -**	**$ -**

Please Note: If additional years are needed, please submit a separate form with additional columns

This attachment is certified and made an official attachment to the Standard Project Agreement document by the parties of this agreement.

Recipient Entity Official

Signature
Director, Department of Transportation
Title

Date
Tom Biesiadny
Print name of person signing

Northern Virginia Transportation Authority

Signature
NVTA Executive Director
Title

Date

Print name of person signing

Northern Virginia Transportation Authority
The Authority for Transportation in Northern Virginia

FY 2015-16 PROJECT DESCRIPTION FORM (3K)

Basic Project Information

Submitting Agency: Fairfax County

Project Title: Route 28 Widening (Prince William County Line to Route 29) 3K

Project Type *(check one)*:
Roadway (X) Transit ( )

VA State Route Number (if applicable) and NVTA Corridor Number (1-8): VA Route 28; NVTA Corridor Number 3

1. **Project Description:** Widen VA Route 28 from 4 to 6 lanes from the Prince William County Line (Bull Run Bridge) to Route 29 in Fairfax County. The project would include intersection improvements and pedestrian/bicycle facilities.

2. **Requested NVTA Funds:** $5,000,000

3. **Phase(s) of Project Covered by Requested NVTA Funds:** Preliminary engineering and environmental study

4. **Total Cost to Complete Project:** $47,350,000

5. **Project Milestone -Study Phase:** Start of Study July 2014 – short-term improvement study of entire corridor from Liberia Avenue in Manassas to Route 29 in progress by VDOT. Long-term corridor study including potential alternative routes and upgrades to other routes will follow provided funding is available.

6. **Project Milestone -Preliminary Engineering (30% Design):** Start of PE - December 2016 (Estimated)

7. **Project Milestones -Final Design:** Start of Final Design - June 2018 (Estimated)

8. **Project Milestones -Right-of-Way:** ROW acquisitions completed August 2017 (start) to March 2018 (completion) (Estimated)

9. **Project Milestone – Construction:** Start of Construction - December 2018 to expected completion in December 2020 (Estimated)

10. **Project Milestone – Mass Transit Vehicle Acquisition:** Start of Construction - N/A

11. Is Project in Transaction 2040:
Yes (X) No ( )

12. Project in 2010 CLRP: No

13. Project Leverages other Funding: (please state amount**)**

- Local ( )
- State (X)
- Federal ( )
- Other:

Stated Benefits

- **What Regional benefit(s) does this project offer?**
  The project will reduce congestion on a heavily traveled section of the VA Route 28 corridor, which provides travel within and between three counties in northern Virginia (Prince William, Fairfax, and Loudoun) and the two cities of Manassas and Manassas Park. The project will also improve multi-modal travel by adding pedestrian/bicycle facilities.

  Current northbound AM Peak Hour travel time from Manassas Drive (in Manassas Park) to US 29 (in Centreville) ranges between 35 and 60 minutes Monday through Thursday, even without an incident. Similar travel times are typical in the southbound direction in the PM Peak Hour. Traffic queues at various signals along the corridor extend for up to one mile or more. Several large residential developments are currently under construction in Prince William County just south of the Fairfax County line; with the opening of these developments, congestion and delays along Route 28 will continue to increase.

- **How does the project reduce congestion?**
  The project will add one lane in each direction to improve through capacity on VA Route 28, which currently carries over 60,000 vehicles per day, at a Peak Hour LOS F. The intersection improvements will improve through travel by eliminating split phase signal timings at five intersections along this section of Route 28. In addition, the project will improve travel times and connections to other corridors such as US Route 29 (Lee Highway) and Route 620 (New Braddock Road) which are alternatives to the I-66 corridor.

- **How does project increase capacity? (Mass Transit Projects only)** N/A

- **How does project improve auto and pedestrian safety?**
  By adding capacity and reducing congestion, the project reduces the occurrence of vehicular conflicts. By improving intersections and eliminating split phase signal timings, vehicle conflicts are reduced, making the road safer for both vehicles and pedestrians/bicyclists. Sidewalks and shared-use paths are included in the project scope.

- **List internet links below to any additional information in support of this project:**
  The project is in conformance with the Fairfax County Comprehensive Transportation Plan: Fairfax County Comprehensive Plan 2013 Edition (as amended*) - Fairfax County, Virginia

  Related TIP Project #6205 VA Route 28 Study, related TIP Project #6208, I-66 @ Rte. 28 Interchange Improvements

Route 28 Southbound, South of New Braddock Road

Route 28 Southbound at Compton Road

Board Agenda Item
June 23, 2015

ACTION - 6

Approval of the Fairfax County Department of Transportation's (FCDOT) Disadvantaged Business Enterprise Policy and Goal for the Federal Transit Administration (FTA) for Federal Fiscal Years 2015-17

ISSUE:
Fairfax County is the recipient of federal transit funds authorized by Titles I, III, V, and VI of ISTEA, Pub. L. 102-240 or by Federal transit laws in Title 49, U.S. Code, or Titles I, II, and V of the TEA-21, Pub. L. 105-178, and as such, it must maintain a valid Disadvantaged Business Enterprise Policy, Program, and Goal for Federal Fiscal Years 2015-17 for the Federal Transit Administration.

RECOMMENDATION:
The County Executive recommends that the Board of Supervisors approve the Department of Transportation's Disadvantaged Business Enterprise Policy, Program, and Goal for FY 2015-17, substantially in the form of Attachment 1 attached hereto.

TIMING:
The Board of Supervisors is requested to act on this item on June 23, 2015, so that the FCDOT will remain in compliance with USDOT regulations and be eligible to receive additional FTA funds in the future.

BACKGROUND:
On a triennial basis and in accordance with 49 CFR Part 26, Fairfax County is required to develop and submit to FTA a Disadvantaged Business Enterprise (DBE) policy, including a stated DBE goal for minority participation in FTA program funded contracts. The County also has in place a Small and Minority Business Enterprise Program that is intended to strengthen small, woman-owned, and minority owned businesses (SWAM) and service disabled veteran businesses through outreach, education, and training. A description of the County program is contained in Attachment 1, Appendix 3. The County does not have a current DBE policy that meets all USDOT regulations. The County Executive has determined that that it is in the public interest to adopt the attached Disadvantaged Business Enterprise Policy and Goal for Federal Fiscal Years 2015-17 for the Federal Transit Administration, to meet the federal requirements and to continue to be eligible to accept FTA funds.

Thus, the proposed policy builds upon the County's existing policies that assist small and minority owned business enterprises and works to ensure that DBEs, as defined in 49 CFR Part 26, have increased opportunities to receive and participate in FTA assisted contracts. The policy also achieves the following objectives, which are delineated by FTA:

1. Ensure nondiscrimination in the award and administration of FTA assisted contracts;
2. Create a level playing field on which DBEs can compete fairly for FTA assisted contracts;
3. Ensure that the DBE Program is narrowly tailored in accordance with applicable law;
4. Ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
5. Help remove barriers to the participation of DBEs in FTA-assisted contracts; and
6. Assist the development of firms that can compete successfully in the market place outside the DBE Program.

For FY 2015-17, FCDOT is proposing an overall goal of 17.7 percent for DBE participation in contracts supported by FTA program funds, as determined using methodology recommended by FTA. The stated goal is not a quota, but is an aspirational goal that the County aims to achieve through proactive, race-neutral strategies. Race-neutral strategies may include such strategies as coordinating with organizations that represent and promote DBE firms, ensuring that DBE firms are notified of Requests for Proposals issued by the County, or educating minority business owners how to qualify as DBE firms.

During the development of the DBE policy and goal for FY 2015-17, FCDOT coordinated with the following County departments: Finance, Office of County Attorney, Office of Public Private Partnerships, Public Works and Environmental Services, and Purchasing and Supply Management. Once approved, FCDOT will continue to consult and coordinate with these County departments throughout the life of the program.

As required by 49 CFR 26.45(g)(2), FCDOT also consulted with minority, women's and general contractor groups, and community organizations which are knowledgeable about the availability of disadvantaged and non-disadvantaged businesses and the effects of discrimination on opportunities for DBEs. Specifically, FCDOT reached out to the Capital Region Minority Supplier Development Council, the Metropolitan Washington Hispanic Chamber of Commerce, the Asian Chamber of Commerce, and the Virginia Hispanic Chamber of Commerce.

FCDOT published the goal in the Washington Post, El Tiempo Latino, and on the County's website beginning on April 27, 2015. In conformance with the public participation regulation requirements, the proposed goal also was available for public inspection and comment during normal business hours at the County offices for a period of 30 days. FCDOT also accepted public comments until June 12, 2015, a period of 45 days. No comments have been received and no changes have been made to the DBE policy and goal for FY 2015-17 as a result of these public outreach efforts.

FISCAL IMPACT:
At present Fairfax County has approximately $5.5 million in FTA funding available to support eligible grant projects. With an approved DBE program, Fairfax County will remain eligible to receive future FTA grant funding.

ENCLOSED DOCUMENTS:
Attachment 1: Fairfax County Disadvantaged Business Enterprise Policy, Program, and Goal for FTA

STAFF:
Robert A. Stalzer, Deputy County Executive
Tom Biesiadny, Director, FCDOT
Gail P. Langham, Deputy County Attorney
Cathy A. Muse, Director, Department of Purchasing and Supply Management
Ronald N. Kirkpatrick, Deputy Director, Department of Public Works and Environmental Services
Christopher J. Pietsch, Director, Department of Finance
Todd Wigglesworth, Acting Chief, Coordination and Funding Division, FCDOT
Brent Riddle, Senior Transportation Planner, Coordination and Funding Division, FCDOT

Fairfax County
Disadvantaged Business Enterprise Policy, Program, and Goal for FY 2015-FY2017 for the Federal Transit Administration (FTA)

Section 26.1, 26.23 Objectives and Policy Statement

Program Objectives

The County of Fairfax, Virginia (Fairfax County) has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation (USDOT), 49 CFR Part 26. Fairfax County has received Federal financial assistance from USDOT (i.e. FTA), and as a condition of receiving this assistance, Fairfax County has signed an assurance that it will comply with 49 CFR Part 26.

It is the policy of Fairfax County to ensure that DBEs, as defined in 49 CFR Part 26, have an equal opportunity to receive and participate in FTA assisted contracts. It is also the county's policy to:

1. Ensure nondiscrimination in the award and administration of FTA assisted contracts;
2. Create a level playing field on which DBEs can compete fairly for FTA assisted contracts;
3. Ensure that the DBE Program is narrowly tailored in accordance with applicable law;
4. Ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
5. Help remove barriers to the participation of DBEs in FTA assisted contracts; and
6. Assist the development of firms that can compete successfully in the market place outside the DBE Program.

Policy Statement

Brent Riddle is designated by Fairfax County Department of Transportation (FCDOT) as DBE Liaison Officer (DBELO). In that capacity, Mr. Riddle is responsible for implementing all aspects of the DBE program. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by Fairfax County in its financial assistance agreements with the Department of Transportation.

Fairfax County Department of Transportation staff will submit this policy statement to the County's Board of Supervisors and all relevant departments and agencies within the County. Fairfax County also distributes this statement to DBE and non-DBE business communities that perform work on FTA assisted contracts. The information will be available on the County's website, to ensure accessibility to any interested parties.

Director's Commitment to the Disadvantaged Business Enterprise Program

I, Tom Biesiadny, Director of the Fairfax County Department of Transportation, will take Affirmative Action to ensure that DBEs shall have maximum practical opportunity to participate in the performance of the contracts financed in whole or in part with funds derived from FTA.

I will direct the appropriate Fairfax County Department of Transportation staff to provide for the utilization of DBEs including financial institutions, and to use all practical means to ensure that DBEs have the maximum practical opportunity to complete for contract and subcontract work let by Fairfax County and supported by FTA funding.

In keeping with this commitment it is my pledge to work toward achieving the following DBE goals for the award of FTA assisted contracts. The goal for utilization of the DBE's shall be 17.7% of the value of construction, supply and consultant contract dollar amounts for FTA funded construction contracts during 2015 through 2017.

Tom Biesiadny, Director
Fairfax County Department of Transportation

Date

Section 26.1, 26.23 Objectives

The objectives are found in the policy statement on the first page of this program.

Section 26.3 Applicability

Fairfax County is the recipient of federal transit funds authorized by Titles I, III, V, and VI of ISTEA, Pub. L. 102-240 or by Federal transit laws in Title 49, U.S. Code, or Titles I, II, and V of the TEA-21, Pub. L. 105-178.

Section 26.5 Definitions

Fairfax County adopts the definitions contained in Section 26.5 of Part 26 for this program.

Section 26.7 Non-discrimination Requirements

Fairfax County will not exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR Part 26 on the basis of race, color, sex, gender, national origin or ethnicity.

In administering its DBE program, Fairfax County will not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the DBE program with respect to individuals of a particular race, color, sex, gender, national origin or ethnicity.

Section 26.11 Record Keeping Requirements

Uniform Report of DBE Awards or Commitments and Payments: 26.11(a)

Fairfax County will report DBE participation to the relevant federal operating administrations using the Uniform Report of DBE Awards or Commitments and Payments, found in Appendix B to the DBE regulation.

Bidders List: 26.11(c)
Fairfax County does not compile and maintain a bidders list. To verify bidders, Fairfax County utilizes the Virginia Department of Small Business and Supplier Diversity (SBSD) and the Metropolitan Washington Airports Authority's (MWAA) pre-qualified bidders lists which contain information about all DBE and non-DBE firms that bid or quote on FTA assisted contracts in Virginia. The directories determine which firms may be counted as DBEs. The bidder list will include the name, address, DBE/non-DBE status.

These directories are revised periodically. Due to the size of the directories, copies are not appended; however, these directories are available together online at the following URL:
http://www.dmbe.virginia.gov/

Section 26.13 Assurances

Fairfax County has signed the following assurance, applicable to all FTA assisted contracts and their administration:

Federal Financial Assistance Agreement Assurance: 26.13(a)

> Fairfax County shall not discriminate on the basis of race, color, sex, gender, national origin or ethnicity in the award and performance of any FTA assisted contract or in the administration of its DBE Program or the requirements of 49 CFR Part 26. Fairfax County shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of FTA assisted contracts. The Fairfax County DBE Program, as required by 49 CFR Part 26 and as approved by USDOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to Fairfax County of their failure to carry out its approved program, the Department may impose sanctions as provided for under §26.101 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

This language will appear in financial assistance agreements with sub-recipients.

Contract Assurance: 26.13b

Fairfax County will ensure that the following clause is placed in every FTA assisted contract and subcontract:

> The contractor or subcontractor shall not discriminate on the basis of race, color, sex, gender, national origin or ethnicity in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of FTA assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as Fairfax County deems appropriate.

Section 26.21 DBE Program Updates

Fairfax County will continue to carry out this program until all funds from FTA financial assistance have been expended. Fairfax County will provide to USDOT updates representing significant changes in the program.

Section 26.25 DBE Liaison Officer

FCDOT has designated the following individual as DBE Liaison Officer (DBELO):

> Brent Riddle
> Fairfax County Department of Transportation
> 4050 Legato Road, Suite 400
> Fairfax, Virginia 22033
> 703-877-5659
> michael.riddle@fairfaxcounty.gov

In his capacity as DBELO, Mr. Riddle (or his designee) is responsible for implementing all aspects of the DBE program and ensuring that Fairfax County comply with all provisions of 49 CFR Part 26. As

DBELO, Mr. Riddle has direct, independent access to the Director of the Department of Transportation concerning DBE program matters.

The DBELO is responsible for developing, implementing and monitoring the DBE program, in coordination other appropriate officials. Duties and responsibilities include the following:

1. Gathers and reports statistical data and other information as required by DOT.
2. Reviews third party contracts and purchase requisitions for compliance with this program.
3. Coordinates with other County departments (as applicable) to determine overall annual goals.
4. Ensures that bid notices and requests for proposals are available to DBE's in a timely manner.
5. Identifies contracts and procurements so that DBE goals are included in solicitations (both race-neutral methods and contract specific goals) and monitors results.
6. Analyzes Fairfax County's progress toward goal attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings as needed.
8. Advises the Director on DBE matters and achievement.
9. Participates with the legal counsel and project managers to determine contractor compliance with good faith efforts.
10. Provides DBE's with information and assistance in this process.
11. Plans and participates in DBE training seminars.
12. Checks DBE certification according to criteria set by SBSD on the Uniform Certification Process in Virginia
13. Provides outreach to DBE's and community organizations to advise them of opportunities.
14. Coordinates with SBSD on the Uniform Certification Process in Virginia

Reconsideration Official

Fairfax County's reconsideration official will be the Fairfax County Purchasing Agent who will work in tandem with the Director of Fairfax County's Department of Transportation. They will abide by the requirements for reconsideration as stated in §26.53(d).

Section 26.27 DBE Financial Institutions

Fairfax County is authorized to utilize the services of any public depository in the Commonwealth of Virginia that is deemed qualified by the State Treasury Board to maintain checking, time deposit and warrant accounts and for the purposes of wiring funds, processing tax and license payments and maintaining custodial accounts for the County's investments. The Director of Finance is responsible for the procurement of banking services and is authorized by statutes of the Commonwealth of Virginia and by County resolution to acquire these services by contract. As outlined in the most recent request for proposal for banking and financial services, financial institutions eligible for consideration to provide such services to Fairfax County must be:

- Designated as a qualified public depository under the Virginia Security for Public Deposits Act.
- A member of the Federal Reserve System and the National Automated Clearing House Association (NACHA)
- Be able to accommodate local deposits within their business operations
- Sufficiently capitalized to accommodate the County's cash management needs with bank assets exceeding $100 billion and bank deposits exceeding $100 billion at the end of its most recent reporting period.

Fairfax County recently completed a competitive procurement for banking services that resulted in a three year contract with four one year renewal options. In January 2015, the County entered into the second year of the initial three year term of the contract. In preparation for future requirements for this type of service the County will work with the Virginia Department of Small Business and Supplier Diversity, which administers the Federal Disadvantaged Business Enterprise Program certification for the Commonwealth of Virginia, and the Fairfax County Economic Development Authority to identify financial institutions that may meet the County's requirements. The County will reach out to identified financial institutions to advise them of how they can register to receive notices of solicitation and participate in workshops on how to respond to County solicitations.

Section 26.29 Prompt Payment Mechanisms

Fairfax County will include the following clauses in each FTA assisted prime contract:

> Prompt Payment: 26.29(a)
> The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 30 days from the receipt of each payment the prime contractor receives from Fairfax County. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of Fairfax County. This clause applies to both DBE and non-DBE subcontracts.
>
> Retainage: 26.29(b)
> The prime contractor agrees further to return retainage payments to each subcontractor within 30 days after retainage is paid to the prime contractor. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval from Fairfax County. This clause applies to both DBE and non-DBE subcontractors. Work may be credited toward goals only when payments are actually made to DBE's.

Monitoring and Enforcement: 26.29(d)
Fairfax County monitors and enforces the prompt payment of DBE and non-DBE sub-contractors and suppliers by inserting into every contract Articles of General Conditions that require prime contractors to pay sub-contactors and suppliers within seven days. Furthermore, prime contractors must sign an affidavit with every pay application to ensure prime contractors are meeting the terms of the General Conditions.

Fairfax County will bring to the attention of USDOT any fraudulent or dishonest conduct in connection with the DBE program, so that USDOT can take the steps provided in §26.107. Fairfax County also will consider similar action under its own legal authorities, including responsibility determinations in future contracts. Fairfax County has implemented appropriate mechanisms to ensure compliance by all program participants (e.g., applying legal and contract remedies available under Federal, state and local law).

Section 26.31 Directory

Fairfax County does not certify firms as DBEs but utilizes SBSD's and MWAA's Certified DBE Vendor lists to verify if firms may be counted as DBEs. The directories list the firm's name, address, and phone number and the type of work the firm has been certified to perform as a DBE.

The directories utilized by FCDOT are revised periodically. Because of the size of these files, copies are not appended; however, the directories are available online at the following URLs:
http://www.dmbe.virginia.gov/

Section 26.33 Overconcentration

Fairfax County has not identified that overconcentration exists in the types of work that DBEs perform. The DBELO (or his designee) will work with relevant County agencies to re-evaluate for overconcentration triennially.

Section 26.35 Business Development Programs

Fairfax County does not operate a business development program. The DBELO will work with the County's Department of Purchasing and Supply Management to re-evaluate the need for such a program periodically. However, Fairfax County will refer to its small and minority business program that is advertised to firms that do business with County agencies.

For further information, please see Appendix 3: *Fairfax County Small and Minority Business Enterprise Program*.

Section 26.37 Monitoring and Enforcement Mechanisms

Fairfax County will implement the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR Part 26:

1. Fairfax County will bring to the attention of FTA any false, fraudulent, or dishonest conduct in connection with the program, of which Fairfax County has knowledge, so that FTA can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the USDOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 26.109.
2. Fairfax County will consider appropriate action under our own legal authorities as may be authorized under applicable Virginia law, including responsibility determinations in future contracts.
3. Fairfax County will also provide a monitoring and enforcement mechanism to verify that work committed to DBEs at contract award is actually performed by the DBEs. This will be accomplished by monitoring and reviews performed throughout the contract segments by staff members of the Fairfax County Department of Transportation and will occur for all contracts/projects on which DBEs are participating.
4. Fairfax County will require a running tally of actual payments from prime contractors to DBE firms for work committed to them at the time of contract award.

For more information regarding this section, please see Appendix 4: *Monitoring and Enforcement Mechanisms/Legal Remedies for Ensuring Disadvantaged Business Enterprise Inclusion in Contracts.*

Section 26.39 Small Business Participation

Fairfax County has incorporated a non-discriminatory element in its DBE program, in order to facilitate competition on FTA assisted public works projects by small business concerns (both DBEs and non-DBE small businesses): For more details, please see Appendix 3: *Fairfax County Small and Minority Business Enterprise Program*.

The Fairfax County Board of Supervisors voted to establish a Small and Minority Business Enterprise Program on April 6, 1981. Through this program, Fairfax County undertakes every effort to increase opportunity for utilization of small or minority businesses in all aspects of procurement to the maximum extent feasible.

Where it is practicable for any portion of the awarded contract to be subcontracted to other suppliers, the contractor is encouraged to offer such subcontracting opportunities to small, women and minority businesses.

Where Federal grants or monies are involved, it is the policy of Fairfax County, through its agents and employees, to comply with the requirements set forth in the U.S. Office of Management and Budget Circular No. A-102, uniform administrative requirements for Grants and Cooperative Agreements with State and Local Governments, as they pertain to small and minority business utilization.

Fairfax County does not certify businesses; however, Fairfax County does recognize business classifications of Small, Minority, Woman, Veteran and Service-Disabled Veteran Owned business enterprises that are certified by other agencies. Certification documentation can be submitted to the Vendor Relations Coordinator as an email attachment to VendorHelpSelfService@fairfaxcounty.gov or by fax to 703-324-3587.

Business classifications are defined on Fairfax County's business classification website under the Department of Purchasing and Supply Management's website, which is located at the following URL: (http://www.fairfaxcounty.gov/dpsm/osb/busclass.htm).

> **Small Business Enterprise** - An independently owned and operated business which, together with affiliates, has 250 or fewer employees or average annual gross receipts of $10 million or less averaged over the previous three years. Nothing in the provision prevents a program, agency, institution or subdivision from complying with the qualification criteria of a specific state program or a federal guideline to be in compliance with a federal grant or program.
>
> **Minority-Owned Business Enterprise** - A business concern with at least 51% ownership by one or more minorities who are United States citizens or legal resident aliens or, in the case of a corporation, partnership or limited liability company or other entity, at least 51% ownership interest by one or more minorities and whose management and daily business operations are controlled by one or more of such individuals.
>
> **Woman-Owned Business Enterprise** - A business concern which is at least 51% owned by one or more women who are United States citizens or legal resident aliens or, in the case of a corporation, partnership or limited liability company or other entity, at least 51% ownership interest by one or more women and whose management and daily business operations are controlled by one or more of such individuals.

All business representatives are welcome to the *Selling to Fairfax County* workshop held six times per year. Businesses, including small businesses, have an opportunity to meet staff from the county's Purchasing department and become familiar with the county's process. Workshops outline the county's process, upcoming contracting opportunities, and address any questions or concerns that businesses may have about doing business with the county.

All workshops are free of charge. The workshop schedule is available under the Vendor Relations Website at: (http://www.fairfaxcounty.gov/dpsm/osb/workshop.htm).

Section 26.43 Set-asides or Quotas

Fairfax County does not use quotas in any way in the administration of this DBE program.

Section 26.45 Overall Goals

In accordance with Section 26.45, Fairfax County will submit its FY 2015 – 2017 overall DBE goal to the FTA on June 23, 2015, contingent upon approval by the Fairfax County Board of Supervisors.

Overall Goal

FCDOT utilized several programs and resources already in existence to help determine a DBE goal and promote DBE participation. These programs include county and private-sector resources. Among County resources, FCDOT consulted with the Supplier Diversity Program within the Department of Purchasing and Supply Management, which ensures that small businesses, minority-owned businesses and women-owned businesses are treated fairly and have an opportunity to compete for the county's contract dollars. The office also engages in a variety of outreach efforts, including counseling and assistance, which are intended to maximize prime and subcontract opportunities for small, minority-owned businesses and women-owned businesses. FCDOT also met with representatives of Fairfax County's Office of Public Private Partnerships, which serves as a clearing house for public agencies, non-profit organizations, and businesses interested in working collaboratively. Additionally, FCDOT consulted the Fairfax County Economic Development Authority, which works with small, minority, and women-owned businesses to provide services and opportunities to start and expand their business operations (http://www.fairfaxcountyeda.org/services-small-minority-and-woman-owned-firms).

Outside of the County resources, FCDOT reached out to representatives of the Capital Region Minority Supplier Development Council, the Metropolitan Washington Hispanic Chamber of Commerce, the Asian Chamber of Commerce, and the Virginia Hispanic Chamber of Commerce to gain a sense of the number of types of DBE firms that their organizations represent and to begin to develop strategies for ensuring DBE participation in bidding for FTA supported contracts. FCDOT was able to rely upon these resources in addition to the resources listed subsequently in this document to determine and promote DBE participation. Consultation with the groups identified above should not be construed as mutually exclusive or exhaustive. See Appendix 8: *Documentation of Consultation and Outreach*

Fairfax County then consulted with directories maintained by SBSD and MWAA to verify information and availability of disadvantaged and non-disadvantaged businesses, relevant to the projects to be put out for bids from FY 2015 – FY 2017. From all of these efforts, Fairfax County has established an overall goal of 17.7% DBE participation for federal FY 2015 – 2017 on United States Department of Transportation Federal Transit Administration assisted contracts. Any Fairfax County DBE enhancement or remedial measures shall comply with measures established for the VDOT DBE program, as applicable to a Fairfax County contract or project.

Fairfax County posted notices of the proposed DBE goal, informing the public that the proposed goal and its rationale were available for public inspection for 30 days during normal business hours at FCDOT headquarters:

Fairfax County Department of Transportation
4050 Legato Road, Suite 400
Fairfax, Virginia 22033

Fairfax County also accepted public comment on the proposed goals for 45 days after the notices were published. To reach a diverse public audience, the goal was published in El Tiempo Latino, the Spanish-language newspaper, the Washington Post, and posted on the Department of Transportation's website. Copies of the advertised notices are included in Appendix 7: *Proof of Publication*.

Fairfax County expects to meet this goal for upcoming projects receiving FTA funds by verifying DBE certifications and furnishing prime contractors information about DBE firms in the greater Washington,

D.C. and Northern Virginia region. This overall goal of 17.7% will be reviewed triennially, with the next review taking place in FY 2017, based on program updates.

Methodology to Calculate Overall Goal

For a detailed methodology used to calculate Fairfax County's overall DBE goal see Appendix 6: *Fairfax County Goal and Methodology FY15-17*.

Section 26.47 Goal Setting and Accountability

If the awards and commitments shown on Fairfax County's Uniform Report of Awards or Commitments and Payments at the end of any fiscal year are less than the overall applicable to that fiscal year, Fairfax County will:

1. Analyze in detail the reason for the difference between the overall goal and the actual awards/commitments;
2. Establish specific steps and milestones to address the issues identified in the analysis.

Section 26.49 Transit Vehicle Manufacturers Goals

Fairfax County does not currently purchase transit vehicles with federal funds. If, in the future, Fairfax County should procure any transit vehicles with FTA assisted contracts, it will require each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA assisted transit vehicle procurements, to certify that it has complied with the requirements of this section. Alternatively, Fairfax County may, at its discretion and with FTA approval, establish project-specific goals for DBE participation in the procurement of transit vehicles in lieu of the transit vehicle manufacturer complying with this element of the program.

Section 26.51 Meeting Overall Goals/Contract Goals

Fairfax County anticipates being able to meet 8.1% of its overall DBE goal of 17.7% through race-neutral means. Race-neutral DBE participation occurs when a DBE wins a contract or subcontract that did not have contract specific goals, or when the DBE status was not considered in making the award. Race-neutral strategies will include regular consultation and notification of bidding opportunities with the internal and external agencies and offices that actively help promote DBEs, as described in Section 26.45 above. Regular consultation may include presentations and/or informational events, as well as email notifications.

Fairfax County will use contract goals to meet any portion of the overall goal it does not project being able to meet using race-neutral means. Contract goals are established so that, over the period to which the overall goal applies, they will cumulatively result in meeting any portion of Fairfax County's overall goal that is not projected to be met through the use of race-neutral means.

Fairfax County will establish contract goals only on those FTA assisted contracts that have subcontracting possibilities.

Fairfax County will express its contract goals as a percentage of the federal share of a FTA assisted contract.

Section 26.53 Good Faith Efforts Procedures

Award of Contracts with a DBE Contract Goal: 26.53(a)

In those instances where a contract-specific DBE goal is included in a procurement/solicitation, Fairfax County will not award the contract to a bidder who does not either: (1) meet the contract goal with verified, countable DBE participation; or (2) documents it has made adequate good faith efforts to meet the DBE contract goal, even though it was unable to do so. It is the obligation of the bidder to demonstrate it has made sufficient good faith efforts prior to submission of its bid.

Information to be Submitted: 26.53(b)

Fairfax County may regard bidders'/offerors' compliance with good faith effort requirements as either a matter of responsiveness or responsibility, as determined by the Purchasing Agent. Each solicitation for which a DBE contract goal has been established will require the bidders/offerors to submit the following information:

- The names and addresses of DBE firms that will participate in the contract
- A description of the work that each DBE will perform
- The dollar value of the participation of each DBE firm participating
- Written and signed documentation of commitment to use a DBE subcontractor, whose participation it submits to meet a contract goal
- Written and signed confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment
- If the contract goal is not met, evidence of good faith efforts

Evaluation of Good Faith Efforts: 26.53(a) & (c)
Fairfax County may regard compliance with good faith effort requirements as either a matter of responsiveness or responsibility as appropriate, as determined by the Purchasing Agent. Fairfax County will determine whether a bidder/offeror who has not met the DBE contract goal has documented sufficient good faith efforts to be regarded as responsive or responsible.

The process used to determine whether good faith efforts have been made by a bidder/offeror are as follows:

1. Review of required documentation of evidence of good faith effort by bidder/offerer [See 26.53(b)]
2. Consult with Virginia's state DBE list to verify if bid contained qualified DBE firms

Fairfax County will ensure that all information is complete and accurate and adequately documents the offeror's good faith efforts before it commits to the performance of the contract by the bidder/offeror.

Administrative Reconsideration: 26.53(d)

Any bidder/offeror whose bid/offer has been determined to be non-responsive to the requirements of the solicitation may protest the decision to award a contract by submitting a protest in writing to the County Purchasing Agent, or an official designated by the County of Fairfax, no later than 10 days after the award or the announcement of the decision to award, whichever comes first.

Any bidder/offeror who is determined not to be a responsible bidder shall be notified in writing by the County Purchasing Agent. Such notice shall state the basis for the determination. Within 10 days of being informed by Fairfax County that the bidder is not responsible because it has not documented sufficient good faith efforts to meet the DBE goal, a bidder/offeror may seek administrative

reconsideration. Bidders/offerors should submit this request for reconsideration in writing to the reconsideration official, Ronald N. Kirkpatrick, at the address provided below.

Ronald N. Kirkpatrick
Deputy Director
Fairfax County Department of Public Works and Environment Services
Fairfax County Government
12000 Government Center Parkway, Suite 449
Fairfax, Virginia 22035
703-324-3206

With copy mailed to
Tom Biesiadny
Director
Fairfax County Department of Transportation
4050 Legato Road, Suite 400
Fairfax, Virginia 22033-2867
703-877-5600

As part of the reconsideration of whether the bidder/offer is or is not responsible with regard to the DBE goal, the bidder/offeror will have the opportunity to provide written documentation concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The bidder/offeror will have the opportunity to meet in person with Fairfax County's reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do. Fairfax County will send the bidder/offeror a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so. The written decision on reconsideration shall be final unless the bidder/offeror appeals the decision within 10 days of receipt of the notice by instituting legal action as provided in the Code of Virginia. The bidder/offeror may not institute legal action until all statutory requirements have been met.

If, upon appeal, it is determined that the decision of the County Purchasing Agent was arbitrary or capricious and the award for the particular County contract in question has not been made, the sole relief available to the bidder shall be a finding that the bidder is a responsible bidder for the County contract in question. Where the award has been made, the County may declare the contract void upon a finding that this action is in the best interest of the public. Where a contract is declared void, the performing contractor shall be compensated for the cost of performance up to the time of such declaration. In no event shall the performing contractor be entitled to lost profits.

For more information regarding Fairfax County's procurement policies, the bidder/offeror should consult the Fairfax County Purchasing Resolution, which can be found at the following URL: (http://www.fairfaxcounty.gov/dpsm/purchres.pdf)

Good Faith Efforts when a DBE is Terminated/Replaced on a Contract with Contract Goals: 26.53(f)

Fairfax County will require a contractor to make good faith efforts to replace a DBE that is terminated or has otherwise failed to complete its work on a contract with another certified DBE, to the extent needed to meet the contract goal. Fairfax County will require the prime contractor to notify the DBELO immediately of the DBE's inability or unwillingness to perform and provide reasonable documentation.

Fairfax County will require the prime contractor to obtain Fairfax County's prior approval to terminate or substitute a DBE and to provide copies of new or amended subcontracts, or documentation of good faith efforts.

For a sample of a bid specification see Appendix 7: *Sample Bid Specification*.

Section 26.55 Counting DBE Participation

Fairfax County will count DBE participation toward overall and contract goals as provided in 49 CFR 26.55.

26.81 Unified Certification Programs/Section

Fairfax County is a member of a Unified Certification Program (UCP) administered by the Commonwealth of Virginia. The UCP meets all of the requirements of this section. Fairfax County will use and count for DBE credit only those DBE firms certified by the Commonwealth of Virginia, through the Virginia Department of Minority Business Enterprise (DMBE). Accordingly, Fairfax County does not certify DBE's; however, the County does recognize certification by DMBE [and Metropolitan Washington Airports Authority (MWAA)] for projects that include funding allocated by the Commonwealth of Virginia, as required by state law. For projects that do not include Commonwealth of Virginia funding, Fairfax County may also recognize certification by the District of Columbia Department of Transportation (DDOT), Washington Metropolitan Transit Authority (WMATA), or any other transportation or transit agency in Northern Virginia receiving USDOT funds.

26.83-26.91 Procedures for Certification Decisions
The Commonwealth of Virginia uses the certification standards of Subpart D of Part 26 and the certification procedures of Subpart E of Part 26 to determine the eligibility of firms to participate as DBEs in DOT-assisted contracts.

Process
Virginia certification application forms and documentation requirements can be found at www.dmbe.virginia.gov. For information about the certification process or to apply for certification, firms should contact:

Virginia Department of Minority Business Affairs
1111 East Main Street, Suite 300
Richmond, Virginia 23219
804-786-5560
www.dmbe.virginia.gov.

Any firm or complainant may appeal Virginia's UCP decision in a certification matter to USDOT. Such appeals may be sent to:

U.S. Department of Transportation
Office of Civil Rights Certification Appeals Branch
1200 New Jersey Ave. SE
West Building, 7th Floor
Washington, D.C. 20590

Section 26.109 Information, Confidentiality, Cooperation

Information submitted by a bidder/offeror shall be subject to disclosure requirements under the Virginia Freedom of Information Act and all applicable Federal, state, and local law. See Va. Code §58.1-3; Virginia Freedom of Information Act (VFOIA).

Trade secrets or propriety information submitted by a bidder/offeror in connection with a procurement transaction or prequalification application submitted pursuant to Article 2, Section 4 D.3 shall not be subject to the Virginia Freedom of Information Act; however, the bidder/offeror shall 1) invoke the protections of this section prior to or upon submission of the data or other materials, 2) identify the data or other materials to be protected, and 3) state the reasons why protection is necessary.

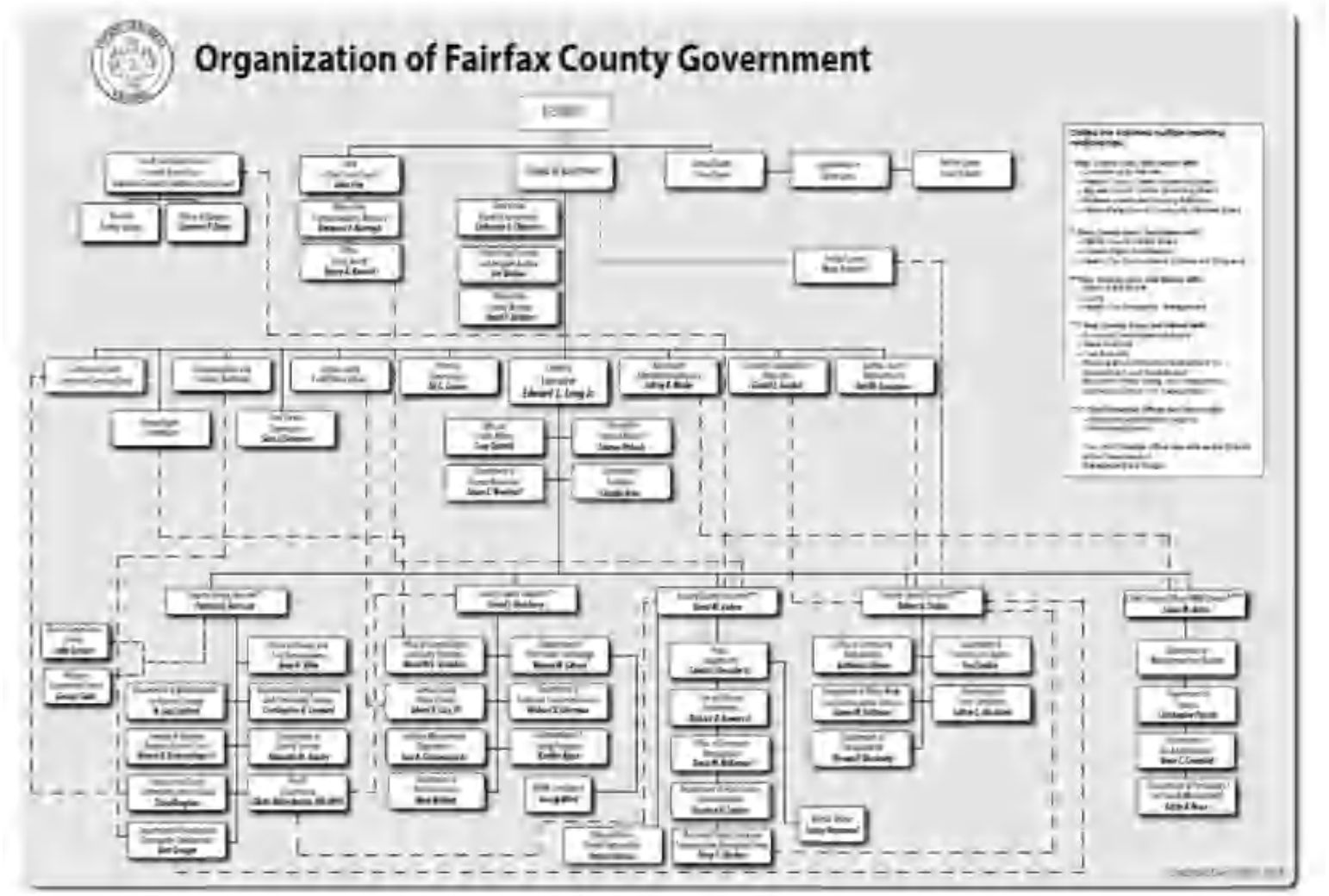
Monitoring Payments to DBEs

Fairfax County will require prime contractors to maintain records and documents of payments to DBEs for three years following the performance of the contract. These records will be made available for inspection upon request by any authorized representative of Fairfax County or USDOT. This reporting requirement also extends to any certified DBE subcontractor.

Fairfax County may perform interim audits of contract payments to DBEs. The audit will review payments to DBE subcontractors to ensure that the actual amount paid to DBE subcontractors equals or exceeds the dollar amounts states in the schedule of DBE participation.

APPENDICES

Appendix 1: Fairfax County Government Organizational Chart


Organization of Fairfax County Government

Appendix 2: Links to DBE Directory, Certification Forms, Fairfax County Department of Purchasing and Supply Management

Virginia Department of Minority Business Enterprise (DMBE) – DBE Directory
http://www.dmbe.virginia.gov/

Virginia DMBE Certification Forms
http://www.dmbe.virginia.gov/dbecert.html

VDOT DBE Certification
http://www.virginiadot.org/business/bu-civil-rights-Title6.asp#certification

VDOT Prequalification Process
http://www.virginiadot.org/business/const/prequal.asp3

Fairfax County Department of Purchasing and Supply Management
http://www.fairfaxcounty.gov/dpsm/

Fairfax County Purchasing Regulations
http://www.fairfaxcounty.gov/dpsm/regs.htm

Fairfax County Purchasing Resolution
http://www.fairfaxcounty.gov/dpsm/purchres.pdf

Virginia Public Procurement Act
http://www.fairfaxcounty.gov/dpsm/regs.htm

Virginia Freedom of Information Act (VFOIA) VA Code §58.13
http://foiacouncil.dls.virginia.gov/2011Law.pdf)

Appendix 3: Fairfax County Small and Minority Business Enterprise Program

County of Fairfax

SMALL AND MINORITY BUSINESS ENTERPRISE PROGRAM

Your First Stop for
County Connections

Introduction

The County of Fairfax is committed to keeping diversity in contracting as an integral part of the Department of Purchasing and Supply Management's business strategy. We strive to grow and sustain small, woman-owned, and minority-owned (SWAM) and service disabled veteran businesses through the county's in-reach, community outreach, education and training.

Notice of the county's Small and Minority Business Enterprise Program shall be distributed to all department heads for disbursement to appropriate staff. The program operates under the auspices of the Department of Purchasing and Supply Management (DPSM), Vendor Relations Division (VRD).

SWAM and Service disabled veteran Business Definitions

The definition for a small, woman-owned, and minority-owned (SWAM) and service disabled veteran business shall be as defined by the Commonwealth of Virginia's *Virginia Public Procurement Act* (VPPA).

Mission

The county's mission is to grant diverse suppliers equal access to potential business opportunities, in an effort to strengthen our supplier base and reflect the citizens we serve.

Commitment

We understand that to effectively respond to today's diverse communities, we must strive for diversity in not only our employees, but also in our supplier base. The county's strong commitment to supplier diversity promotes the increased utilization of SWAM and service disabled veteran business suppliers that meet out standards of high quality and value. We firmly believe that diverse suppliers have a positive impact on our community.

Our commitment is to develop a supply base that reflects the demographic diversity of the County of Fairfax. The Small and Minority Business Enterprise Program is a strategic business process aimed at providing companies that are small, minority-owned, woman-owned or service disabled veteran equal access to procurement opportunities.

Expectation

The county seeks the best quality, value, and service at the best cost, from all of our suppliers. These same standards apply to our Small and Minority Business Enterprise Program. The program does not focus on start-up or in-depth business development support, but rather on expanding mutually beneficial relationships. The County of Fairfax will ensure that suppliers fully comprehend the county's requirements and are thus able to bid appropriately.

Objective Statement

To be successful, we have established the following objectives:

- Identify and utilize SWAM and service disabled veteran businesses that provide goods and/or services that are purchased by the county,
- Encourage certification of SWAM and service disabled veteran businesses by the Commonwealth of Virginia's Department of Minority Business Enterprise.
- Host workshops and training sessions intended to enhance business operations and procurement opportunities for SWAM and service disabled veteran businesses, and
- Promote the utilization of SWAM and service disabled veteran businesses among county departments and prime contractors.

The county recognizes the value of a diverse supplier base and its impact on the business community and population at large. In recognition of this fact, the county has developed this Small and Minority Business Enterprise Program to ensure that it continues to creatively seek new supplier sources to fulfill the business opportunities for the county and that SWAM and service disabled veteran firms are given the opportunity to compete for these business opportunities.

Responsibility for Program Implementation

The development and execution of policy for the Small and Minority Business Enterprise Program will be a function of the County staff, under the broad direction of the County Executive and subject to policy guidance provided by the Board of Supervisors. The Board of Supervisors approved the concept of a Small and Minority Business Enterprise Program in its adoption of the basic principle of Affirmative Action, on May 7, 1979.

The County Executive will have the overall responsibility for implementing the policies set forth by the Board of Supervisors. The County Executive will review the progress towards attaining the objectives of the program ensuring that staff understands and is committed to the objectives of the Board of Supervisors.

The Vendor Relations Division (VRD) Director, under the guidance of the Purchasing Agent will have the primary responsibility for the day-to-day administration of the Small and Minority Business Enterprise Program. The VRD Director will coordinate such support staff and participating organization support as may be necessary and proper to administer the program. The aim of the Small and Minority Business Enterprise Program shall be to increase the involvement of small, women-owned and minority-owned firms on all of the county's contracts.

The specific responsibilities of the Vendor Relations Division include but are not limited to the following:

1. Developing and implementing techniques in order to ensure that all SWAM and service disabled veteran business enterprises shall have the maximum practicable opportunity in every procurement and contractual activity.
2. Contacting and making potential SWAM and service disabled veteran business enterprises aware of the county's procurement regulations.
3. Develop, maintain and update a calendar of County sponsored workshops and seminars.
4. Update and expand the Department of Purchasing and Supply Management website to include more information on relevant procurement policies and procedures especially those that will be of use to the SWAM and service disabled veteran vendors.
5. Utilizing a method of registration of SWAM and service disabled veteran firms.
6. Monitoring bidders' list usage to ensure the inclusion of SWAM and service disabled veteran firms.
7. Assisting prime vendors with locating SWAM and service disabled veteran firms for subcontracting and second-tier opportunities.
8. Incorporating into the county's procurement and construction contracts provisions that:

    a. Bidders/offerors will indicate whether they are or are not small, woman-owned, and/or minority-owned; and

b. If Federal grant monies are involved and any subcontracts are to be let, the prime contractor will comply with the requirements set forth in applicable federal grant program regulations governed by OMB Circular A-102, as they pertain to small, woman-owned, and minority-owned business utilization.

9. Maintaining statistical data of procurement dollars awarded to SWAM firms directly and through a second-tier program.

10. Monitoring, evaluating, and reporting to the County Executive and all county departments on the progress of the Small and Minority Business Enterprise Program on an annual basis.

11. Periodically review and analyze county requirements for goods and services with a view toward maximizing the availability of work which would be within the performance capabilities of SWAM and service disabled veteran vendors, by techniques including but not limited to the following:

    a. Breaking down requirements into small enough packages so that SWAM and service disabled veteran vendors would be able to bid competitively.

    b. Ensuring that the terms and conditions of county Request for Proposal (RFP) and Invitations for Bid (IFB) are stringent enough to protect the county's interests, but not too stringent so as to disqualify new and/or marginally capitalized businesses from bidding on solicitations within their capabilities, thus unnecessarily limiting competition.

Purchasing Activities

Fairfax County purchases a variety of products and services through several different departments. In each, the overall goal is the same - to obtain the highest quality products and services, at the best cost to the county, in a timely manner and with the best service.

To ensure that SWAM and service disabled veteran vendors are aware of and maximize the benefits of the Small and Minority Business Enterprise Program, the following list of activities are the responsibility of all staff responsible for purchasing goods or services:

1. Encourage participation of SWAM and service disabled veteran vendors in all phases of the procurement process.
2. Make available a list of goods and services annually procured, the usual amount specified in each order, and the designated buyer's name, e-mail address, and telephone number.
3. Discuss and clarify questions relative to County contracts and as to why a particular course of action was taken in reference to the awarding of these contracts.
4. Participate to the maximum extent possible in conference and vendor fairs designated for SWAM and service disabled veteran vendors.
5. Participate in workshops and seminars at appropriate times, in order to familiarize the SWAM and service disabled veteran vendor community with the workings of the county.

The county's purchasing professionals play a key role by supporting our Small and Minority Business Enterprise Program. In addition, other employees who make purchasing decisions are required to work with the Vendor Relations Division to seek and utilize diverse suppliers.

Appendix 4: Monitoring and Enforcement Mechanisms/Legal Remedies for Ensuring Disadvantaged Business Enterprise Inclusion in Contracts

Fairfax County has available several remedies to enforce the DBE requirements contained in its contracts, including, but not limited to, the following:

1. Breach of contract action, pursuant to the terms of the contract;
2. Breach of contract action, pursuant as may be available through all of Virginia's common law civil remedies including but not limited to actions for breach of contract damages, to obtain restitution, and specific enforcement of the contract.
3. If applicable and appropriate, consideration of vendor disbarment from any similar future solicitations pursuant to Fairfax County Procedural Memorandum 12-11 (dated August 21, 2003).

In addition, the federal government has available several enforcement mechanisms that it may apply to firms participating in the DBE problem, including, but not limited to, the following:

1. Suspension or debarment proceedings pursuant to 49 CFR part 26
2. Enforcement action pursuant to 49 CFR part 31
3. Prosecution pursuant to 18 USC 1001.

Appendix 5: Proof of Publication

Ad # 1290857 Name: FAIRFAX CO DEPT OF TRANSPORTATION ATTN: Size: 84 Lines 70007
Class: 870 PO#: Authorized by: Account: 2010187255

PROOF OF PUBLICATION

District of Columbia, ss: Personally appeared before me, a Notary Public in and for the said District, Alba Ogden well known to me to be BILLING SUPERVISOR of The Washington Post, a daily newspaper published in the City of Washington, District of Columbia, and making oath in due form of law that an advertisement containing the language annexed hereto was published in said newspaper on the dates mentioned in the certificate herein.

I Hereby Certify that the attached advertisement was published in The Washington Post, a daily newspaper, upon the following date(s) at a cost of $285.12 and was circulated in the Washington metropolitan area.

Published 1 time(s). Date(s): 27 of April 2015

Account 2010187255

Witness my hand and official seal this 27 day of April 2015

Ria Coopersmith

My commission expires

Ria M Coopersmith
Notary Public, District of Columbia
Expires 8/1/2015

Public Notice Disadvantaged Business Enterprise Proposed Federal FY2015-2017 Goal Fairfax County hereby announces its FY 2015-2017 goal of 37.7% for Disadvantaged Business Enterprise (DBE) participation for projects supported by funding from the Federal Transit Administration. The goal and its rationale are available for inspection from 8:00 am to 4:30 pm (local time) at 4050 Legato Road, Suite 400, Fairfax, VA 22033, for 30 days following the date of publication of this notice. Written comments on this goal will be accepted for 45 days from the date of publication of this notice. Comments should be addressed to: Fairfax County Department of Transportation Attention: Brent Riddle, Sr. Transportation Planner 4050 Legato Road, Suite 400 Fairfax, VA 22033; michael.riddle@fairfaxcounty.gov Phone: 703-877-5600 Fairfax County and the Fairfax County Department of Transportation (FCDOT) ensure nondiscrimination in all programs and activities in accordance with title VI of the Civil Rights Act of 1964 and the Americans with Disabilities Act (ADA). To request this information in an alternate format, contact FCDOT at 703-877-5600, TTY 711.

FAIRFAX CO DEPT OF TRANSPORTATION

PROOF OF PUBLICATION

The Washington Post

The Washington Post Company hereby certifies that it is the publisher of The Washington Post that The Washington Post is a newspaper of general circulation, published daily in the City of Washington, District of Columbia, that The Washington Post has been so published continuously for more than one year prior to the date of first publication of the notice mentioned below; that the undersigned person is the duly authorized agent of The Washington Post Company to execute this certificate on its behalf; and that a notice of which the annexed is a true copy was printed and published in said newspaper on the following date (s) at a cost of $106.00 and was circulated in the Washington metropolitan area.

Published 1 time(s) Date(s): 01 of May 2015

Billing Supervisor

Witness my hand and official seal this _____ day of _____ 2015

My commission expires _____

JEANNA MITCHELL-PHILLIPS
NOTARY PUBLIC
MY COMMISSION EXPIRES 10/31/2019
DISTRICT OF COLUMBIA

Anuncio Público

Una Publicación de Fairfax County, Va.

AVISO PÚBLICO

Propuesta para empresas en desventaja
Su meta de propósito federal FY 2015-2017

El Condado de Fairfax anuncia su objetivo de FY 2015-2017 del 17.7% para la participación de la empresas en desventaja (DBE) para proyectos apoyados por fondos de la Administración Federal de tránsito. El objetivo y sus fundamentos estarán disponibles para inspección de 9:00 a 4:30 (hora local) en 4050 Legato Road, Suite 400, Fairfax, VA 22033, durante 30 días siguientes a la fecha de publicación de este aviso. Se aceptarán comentarios por escrito sobre este objetivo durante 45 días desde la fecha de publicación de este aviso. Comentarios deben ser dirigidas a:

Fairfax County Department of Transportation
Attencion: Brent Riddle, Sr. Transportation Planner
4050 Legato Road, Suite 400
Fairfax, VA 22033
michael.riddle@fairfaxcounty.gov
Phone: 703-877-5600

Appendix 6: Fairfax County Disadvantaged Business Enterprise Goal and Methodology FY 2015-2017

Summary

Fairfax County has established requirements for seeing an overall goal for Disadvantaged Business Enterprise (DBE) participation in federally funded contracts in accordance with regulations of the United States Department of Transportation, 49 CFR Part 26. This rule requires recipients of federal funds to use a methodology based on demonstrable data of relevant market conditions and is designed to reach a goal the recipient would expect DBEs to achieve in the absence of discrimination.

Proposed Goal for FY 2015-2017

Fairfax County has established an overall goal of 17.7% DBE participation for FY 2015 – 2017 on Federal Transit Administration assisted contracts.

Fairfax County will post a notice of the proposed overall DBE goal, informing the public that the proposed goal and its rationale are available for public inspection during normal business hours at the Fairfax County Department of Transportation. The goal will be published on the Fairfax County Department of Transportation website; the Spanish-language newspaper, El Tiempo Latino; and in the Washington Post.

Fairfax County expects to meet this goal for upcoming projects receiving FTA funds by verifying DBE certifications and furnishing prime contractors information about DBE firms in the greater Washington, D.C. region. This overall goal of 17.7% will be reviewed triennially based on program updates.

Race Conscious/Race Neutral Breakout Summary

Fairfax County's goal is to improve the rate of DBEs in Fairfax County Department of Transportation (FCDOT) projects that are funded by FTA, many of which are in partnerships with the Virginia Department of Transportation (VDOT). In addition, many of the relevant Fairfax County projects are similar to VDOT-contracted projects. By looking at VDOT's most recent Race Neutral vs. Race Conscious breakout, we can apply the same ratio and use that as a starting point for our goal over the next three years.

In Fairfax County, this estimate would equate to 8.1% of our goal being met by race-neutral project procurement opportunities, leaving the remaining 9.6% of the goal to be met by race-conscious project procurement opportunities, as further described herein. Race-conscious language regarding such project procurement opportunities will be implemented on FTA-assisted contracts with subcontracting opportunities where appropriate.

Fairfax County intends to meet the maximum feasible portion of its overall DBE goal by using a race-neutral means of facilitating DBE participation. If the race-neutral percentage is larger than estimated, the number of projects with race-conscious contract language will be adjusted.

Public Participation

FCDOT utilized several programs and resources already in existence to determine and promote DBE participation. These programs include county and private-sector resources. Among the county resources, FCDOT consulted with the Supplier Diversity Program within the Department of Purchasing and Supply

Management, which ensures that small businesses, minority-owned businesses and women-owned businesses are treated fairly and have an opportunity to compete for the county's contract dollars. The office also engages in a variety of outreach efforts, including counseling and assistance, which are intended to maximize prime and subcontract opportunities for small, minority-owned businesses and women-owned businesses. FCDOT also met with representatives of Fairfax County's Office of Public Private Partnerships, which serves as a clearing house for public agencies, non-profit organizations, and businesses interested in working collaboratively. Additionally, FCDOT consulted the Fairfax County Economic Development Authority, which works with small, minority, and women-owned businesses to provide services and opportunities to start and expand their business operations (http://www.fairfaxcountyeda.org/services-small-minority-and-woman-owned-firms).

Outside of the County resources, FCDOT met with representatives of the Capital Region Minority Supplier Development Council, the Virginia Hispanic Chamber of Commerce, the Asian Chamber of Commerce, and the Hispanic Business Council to gain a sense of the number of types of DBE firms that their organizations represent and to begin to develop strategies for ensuring DBE participation in bidding for FTA-supported contracts. FCDOT was able to rely upon these resources in addition to the resources listed subsequently in this document to determine and promote DBE participation.

Methodology

STEP ONE

The first step in establishing an overall DBE Goal is to come up with a measurement of the actual relative availability of DBE vendors within Fairfax County and the local region to perform the types of FTA assisted contracts that FCDOT intends to let during the federal fiscal year cycle. For the remainder of FY 2015, 2016, and 2017, Fairfax County is expected to initiate contracts for construction of sidewalks and bus shelters.

After reviewing the current projects Fairfax County is completing with the use of applicable FTA grant funds, FCDOT has determined that an estimate of FTA funding for FY 2015-2017 is $5,510,561 out of approximately $8,305,513 in total project costs. The approximately $5.5 million in FTA funds for FY 2015-2017 will be spent on Construction services (NAICS Codes 237110, 237130, 237310, and 238990). Fairfax County does not anticipate any new large scale or additional projects that require FTA grants arising in the next three years that would increase the estimated total project costs and FTA Grant amounts for FY 2015-2017.

The following table delineates projects that are projected to be completed during FY 2015 - FY 2017.

Project Number	Total Project Amount	Federal Amount
1400079-2012	$483,347	$386,678
1400080-2012	$900,000	$720,000
1400081-2012	$322,000	$257,600
1400082-2012	$435,666	$348,533
1400083-2012	$291,000	$232,800
1400084-2012	$659,000	$527,200
1400087-2012	$400,000	$320,000
1400012-2006 (Frye Road Phase II)	$145,600	$72,800
1400012-2006 (Lukens Lane)	$560,000	$280,000
1400017-2006 (Mohawk Lane)	$450,000	$225,000
1400012-2006 (Ladson Lane)	$317,500	$158,750
1400017-2006 (Belford Drive)	$463,100	$231,550
1400014-2006 (Southgate Drive)	$268,100	$134,050
1400015-2006 (Lockheed Boulevard)	$660,900	$330,450
1400016-2006 (Arlington Drive)	$391,200	$195,600
1400013-2006 (Sacramento Drive)	$523,100	$261,550
Transit Shelter Projects	$1,035,000	$828,000
TOTAL	**$8,305,513**	**$5,510,561**

According to proposed project timelines for initiating the above projects, the average annual fiscal year estimate for using FTA Grant funding is provided below.

	NAICS Codes 237110, 237130, 237310, and 238990
Fiscal Year 2015	$4.0 million
Fiscal Year 2016	$4.3 million
Fiscal Year 2017	$0
TOTAL	**$8.3 million**

Base Figure

FTA has suggested the following formula for determining the base figure percentage of ready, willing, and able DBE firms for USDOT-Assisted projects:

$$\text{Base Figure} = \frac{\text{Numerator: Ready, Willing and Able DBE Firms (by category)}}{\text{Denominator: All Ready, Willing and Able Firms (by the same numerator category)}}$$

Fairfax County does not certify firms as DBE's but utilizes several governmental entities' databases to determine which firms may be counted as DBEs. The directories list the firm's name, address, and phone number and the type of work the firm has been certified to perform as a DBE.

A substantial majority of the contracting dollars are spent in the local marketing area known as the Washington Metropolitan Area that is comprised of Washington D.C. and the larger counties and municipalities in Northern Virginia. The following table summarizes the total number of all contractors and subcontractors located in Fairfax County's local market area who would be available for FTA-assisted projects. This information was extracted from the 2012 County Business Patterns (NAICS) database hosted by the census.

Total Available Firms	
Jurisdiction	**NAICS Codes 237110, 237130, 237310, & 238990**
Alexandria City, VA	15
Arlington, VA	13
District of Columbia	18
Fairfax City, VA	8
Fairfax, VA	175
Falls Church, VA	3
Fredericksburg, VA	6
Loudoun, VA	76
Manassas City, VA	18
Manassas Park, VA	8
Prince William, VA	116
Stafford, VA	24
Total	**486**

The table below lists the number of Certified DBE Firms with offices in the Washington Metropolitan Area, according to databases maintained by the Commonwealth of Virginia Department of Minority Business Enterprise (DMBE), and the Metropolitan Washington Airport Authority (MWAA). During this process, Fairfax County Department of Transportation cross-referenced each directory to prevent double counting a particular DBE firm who is certified and registered by more than one agency.

Certified DBE Firms Overview			
	DMBE	MWAA	**Total**
NAICS Codes 237110, 237130, 237310, & 238990	72	14	**86**
		Total DBE	**86**

The base goal calculation is as follows:

$$\frac{\text{86 Ready, Willing, and able DBEs in the aforementioned NAICS codes}}{\text{486 Total Firms Ready, Willing, and Able in the aforementioned NAICS codes}} = 17.7\%$$

Weighting

To improve the accuracy of the DBE goal, FTA recommends a weighting strategy for each NAICS category. However, FCDOT does not anticipate entering into any new contracts using applicable FTA funding other than for construction services. Therefore, no weighting strategy is utilized to develop the DBE goal for FY 2015-2017.

STEP TWO

Several additional factors were considered for adjusting the base figure. These factors were not utilized due to a variety of issues. Included below are the factors and reasons why they were not used in this analysis.

1 Disparity Studies: There were no local disparity studies that provided any further insight into the number of ready, willing, and able DBEs or their use in transportation projects. Fairfax County did review the Virginia Department of Transportation (VDOT) Utilization and Availability Study, Revised July 19, 2004.
2 Past Participation: After reviewing the past participation data since 2008, Fairfax County discovered a possible underutilization of DBEs. The exact reason could not be determined, but moving forward Fairfax County is committed to increasing its utilization of DBEs.
3 Potential Capacity Increases: The data do not show any significant increase on an annual basis of DBEs or total firms in either the Construction or Engineering NAICS categories. Consequently, Fairfax County does not foresee an increase in the percent of potential firms and thus no additional adjustment is required to the 17.7% goal.

Should contracting opportunities significantly change during the three-year period such that the submitted goal is rendered inconclusive, Fairfax County will appropriately review both the goal and DBE contracting practices to ensure the goal and program as a whole accurately reflects the actual contracting opportunities available during the specified time period. Fairfax County will submit its DBE goal to the FTA every three years.

Race Conscious / Race Neutral Breakout

In recent years FCDOT has not consistently maintained data on the use of DBEs. Accordingly, it is impossible to use past results to set a target for race neutral and race conscious goals for project procurement opportunities. However, the goal is to improve the rate of DBEs in projects. By looking at the most recent Race Neutral vs. Race Conscious breakout, the same ratio can be applied and used as a starting point for a goal over the next three years.

VDOT Data shows a Race Neutral percentage of 4.82%. VDOT's total DBE goal is 10.53%. Therefore, the fraction 4.82 / 10.53, which equals 45.77% of the VDOT DBE goal, is expected to be met by Race Neutral project procurement opportunities.

For the Fairfax County DBE, this estimate of 45.77% for Race Neutral project procurement opportunities would equate to at least 8.1% (= 17.7% * 45.77%) of the County's goal being met by race-neutral project procurement opportunities for purposes of the overall goal, leaving the remaining 9.6% of the overall goal to be met by race-conscious project procurement opportunities. Efforts to include the minority business community in such project procurement opportunities will include identification and recruitment of minority firms to which procurement opportunities will be advertised, teaming and networking events allowing minority firms to interact with potential project partners, and participation in association and trade organization events where Fairfax County projects can be highlighted. Race-conscious language regarding project procurement opportunities will be implemented on FTA-assisted contracts with subcontracting opportunities where appropriate.

Fairfax County intends to meet the maximum feasible portion of its overall DBE goal by using a race-neutral means of facilitating DBE participation. DBE contractors will be encouraged to apply on all solicitations, Fairfax County will contact appropriate leadership of DBEs to inform them when contract opportunities arise, and all solicitations and contracts will include a good-faith effort DBE goal as a race-neutral means to increase DBE participation. However, if these race neutral strategies do not prove effective in reaching our 17.7% DBE goal, Fairfax County will implement race conscious contract goals. Fairfax County will review the estimated breakout of race-neutral and race-conscious DBE participation as needed to reflect actual DBE usage and we will track the outcome of our efforts. If the race-neutral percentage is larger than estimated, the number of projects with race-conscious contract language regarding project procurement opportunities will be adjusted.

Appendix 7: Sample Bid Specification

PRE-BID CONFERENCE

TITLE: IFB

SUBJECT:

A(n) (*optional/**mandatory) pre-bid conference will be held at _____ A.M./P.M on _____ at the Fairfax County Government Center, 12000 Government Center Parkway, Conference Room _____, Fairfax Virginia. The purpose of this conference is to allow potential bidders an opportunity to present questions and obtain clarification relative to any facet of this solicitation.

*While attendance at this conference will not be a prerequisite to submitting a proposal, bidders who intend to submit a bid are encouraged to attend. Bring a copy of the solicitation with you. Any changes resulting from this conference will be issued in a written addendum to the solicitation.

** Due to the importance of all bidders having a clear understanding of the specifications/scope of work and requirements of this solicitation, attendance at this conference will be a prerequisite for submitting a bid. Bids will only be accepted from those bidders who are represented at this pre-bid conference. Attendance at the conference will be evidenced by the representative's signature on the attendance roster. Bring a copy of the solicitation with you. Any changes resulting from this conference will be issued in a written addendum to the solicitation.

All questions pertaining to this IFB should be submitted in writing to the contract specialist at dpsmteamX@fairfaxcounty.gov prior to the pre-bid conference.

FAIRFAX COUNTY

DEPARTMENT OF PURCHASING & SUPPLY MANAGEMENT
12000 GOVERNMENT CENTER PARKWAY, SUITE 427
FAIRFAX, VIRGINIA 22035-0013
www.fairfaxcounty.gov/dpsm

V I R G I N I A

TELEPHONE: (703) 324-3201 FAX: (703) 324-3228 TTY: 1-800-828-1140

ISSUE DATE:	**INVITATION FOR BID:**	**FOR:**
DEPARTMENT:	**DUE DATE/TIME:**	**CONTRACT SPECIALIST:** _____/703-324-____ or; _____._____@fairfaxcounty.gov

Bids - In accordance with the following and in compliance with all terms and conditions, unless otherwise noted, the undersigned offers and agrees, if the bid is accepted, to furnish items or services for which prices are quoted, at the price set opposite each item, delivered or furnished to designated points within the time specified. It is understood and agreed that with respect to all terms and conditions accepted by Fairfax County the items or services offered and accompanying attachments shall constitute a contract.

Note: Fairfax County does not discriminate against faith-based organizations in accordance with the *Code of Virginia*, § 2.2-4343.1 or against a bidder or offeror because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment in the performance of its procurement activity.

NAME AND ADDRESS OF FIRM:

Telephone/Fax No.: _____

E-Mail Address: _____

Federal Employer Identification No or

Federal Social Security No.(Sole Proprietor) _____

Prompt Payment Discount: __% for payment within___days/net___ days

State Corporation Commission (SCC) Identification No. _____

By signing this bid, Bidder certifies, acknowledges, understands, and agrees to be bound by the conditions set forth in the General Conditions and Instructions to Bidders as described in Appendix A.

BUSINESS CLASSIFICATION – Described in Appendix B - CHECK ONE: ☐ LARGE (Y) ☐ SMALL (B)
☐ MINORITY-OWNED SMALL (X) ☐ MINORITY OWNED LARGE (V) ☐ WOMEN-OWNED SMALL (C)
☐ WOMEN OWNED LARGE (A) ☐ NON PROFIT (9)
CHECK ONE: ☐ INDIVIDUAL ☐ PARTNERSHIP ☐ CORPORATION
State in which Incorporated: _____

Vendor Legally Authorized Signature _____ Date

Print Name and Title _____ Secretary

Sealed bids subject to terms and conditions of this invitation will be received by the Fairfax County Purchasing Agent at 12000 Government Center Parkway, Suite 427, Fairfax, Virginia 22035-0013 on the due date and time specified, and then publicly opened and read.

AN EQUAL OPPORTUNITY PURCHASING ORGANIZATION

(DPSM30) rev 12/2010

SPECIAL PROVISIONS

1 INTENT OF CONTRACT:

1.1 The intent of this solicitation is to obtain sealed competitive bids to furnish all labor, materials, tools, and equipment, for the _____, in accordance with all terms, conditions, plans, and specifications contained herein.

1.2 Bidders are required to include the following with their bid. Failure to provide these items will result in the rejection of your bid.

- Vendor's legal authorized signature
- List of Safety Violations (Ref. Special Provisions paragraph 8)
- ***Copy*** of State of Virginia's Contractor's License (Ref. Special Provisions paragraph 9)
- Completion time (Ref. Special Provisions paragraph 4)

2. PRE-BID CONFERENCE:

2.1 A(n) (optional/mandatory) pre-bid conference will be held on _____ at _____ A.M. in the Fairfax County Government Center, Conference Center Room , 12000 Government Center Parkway, Room_____, Fairfax, Virginia. Attendees requiring special services are asked to provide their requirements to the Department of Purchasing and Supply Management ADA representative at (703) 324-3201 or TTY 1-800-828-1140. Please allow seven (7) working days in advance of the event to make the necessary arrangements.

2.2 The purpose of the pre-bid conference is to give potential bidders an opportunity to ask questions and to obtain clarification about any aspect of this Invitation for Bid. Bidders may submit any questions pertaining to the IFB, in writing, prior to the pre-bid conference to the contract specialist at dpsmteamX@fairfaxcounty.gov.

3. SITE INSPECTION:

3.1 Each bidder is expected to have become familiar with and take into consideration, site conditions that may affect the work and to check all dimensions at the site.

3.2 Each bidder shall acquaint themselves thoroughly as to the character and nature of the work to be done. Each bidder shall make a careful examination of the site of the work and inform themselves fully as to the difficulties to be encountered in performance of the work, the facilities for delivering, storing and placing materials and equipment and other conditions relating to construction and labor.

3.3 Each bidder shall examine the premises and the site and compare them with any applicable drawings and specifications. Each bidder shall familiarize themselves with the existing conditions such as obstructive area levels and any problems related to erecting the required systems.

3.4 No plea of ignorance of conditions that exist on the site of the work, or difficulties that may be encountered in the execution of the work, as a result of failure to make necessary investigations and examinations, will be accepted as an excuse for any failure or omission on the part of the Contractor to fulfill in every detail all the requirements of the contract documents and to complete the work, or as a basis for any claim.

3.5 The Contractor must employ such methods or means as will not cause interruption of or interference with the work of any other Contractor, or County personnel at the site.

4. COMMENCEMENT AND COMPLETION OF WORK:

4.1 The contractor shall notify the Owner's representative a minimum of three (3) working days in advance of the date work is to commence.

4.2 Any work scheduled for weekends will be arranged 48 hours in advance.

4.3 Completion time must be stated IN CALENDAR DAYS in the appropriate spaces of the Pricing Schedule (Appendix B). Indefinite terms such as "promptly", "without delay", etc., will not be given consideration. FAILURE TO INDICATE COMPLETION TIME SHALL BE CAUSE FOR REJECTION OF THE BID.

5. INTERPRETATION OF BID:

5.1 Please direct any questions pertaining to this solicitation to:

_____ Contract Specialist
Department of Purchasing & Supply Management
12000 Government Center Parkway, Suite 427
Telephone: (703) 324-
Email: @fairfaxcounty.gov

5.2 The term "Engineer," "Project Engineer," or similar terms refer to the Owner's representative for technical specifications contract coordination.

6. LIQUIDATED DAMAGES:

6.1 The time in which the Contractor agrees to complete the work is of the essence to the contract. If the work is not completed within the time stated, then liquidated damages in the amount of fifty dollars ($50.00) per consecutive calendar day will be deducted from the final payment. The damages will accrue for each day's delay after the expiration of the contract period until final completion of the work and its acceptance by the Owner.

6.2 The Contractor shall reimburse the Owner for the actual costs of inspection and supervision for the period for which liquidated damages are assessed.

7. EQUAL PRODUCTS AND SUBSTITUTIONS:

7.1 Unless otherwise provided in the contract documents the naming of a certain brand, make or manufacturer or article, devices, product, material, fixture, form or type construction by name, make or catalog number, shall convey the general style, type, character and standard of quality of the article desired and shall not be construed as limiting competition. Bidders may offer any article, device, product, material, fixture, form or type of construction which in the judgment of the Owner is equal to that specified considering quality, workmanship, economy of operation, suitability for the purpose intended, and acceptability for use on the project. Approval by the Owner prior to bid opening will be in the form of an addendum to the specifications issued to all prospective bidders indicating that the additional makes or brands are equivalent to those specified.

7.2 Substitutions Prior to Bid Opening:

7.2.1 To obtain such approval on makes or brands of material other than those specified in contract documents, the Bidder shall submit his/her requests with adequate supporting technical data, as required below, to the Owner not less than ten (10) calendar days

before the bid opening;

7.2.2 The Bidder's request for approval of any substitution shall include:

1. Complete data substantiating compliance of the proposed substitution with the Contract Documents,

2. Product identification, including manufacturer's name, address and phone number,

3. Manufacturer's literature showing complete product description, performance and test data, and all reference standards,

4. Samples and colors in the case of articles or products,

5. Name and address of similar projects on which the product was used and date of installation,

6. For construction methods, include a detailed description for proposed method and drawings illustrating same, and

7. Itemized comparison of proposed substitution with product or method specified;

7.2.3 The bidder's request for approval, prior to bid, shall also include a certification form, notarized, and entitled "Bidder's Request for Equal Product or Substitution and Bidder's Representations". If approved by an addendum, the form shall be resubmitted by the bidder (and all other bidders that desire to use the product or substitution) in the bid package.

7.3 The decision of the Owners regarding the approval of items for which substitution is requested will be final. In the event an approved substitution is later determined by the Owner to be unacceptable for any reason, including the necessity to perform extensive redesign or rework of the project in order to accommodate the substitution, or if it becomes apparent to Owner that the substituted item will not perform or function as well as the specified item, the bidder will be required to furnish the original specified item or request approval to use another substitution. The bidder will pay all costs, expenses or damages associated with or related to the unacceptability of a substitution and the resultant utilization of another item. A time extension will not be granted due to delays associated with or related to the unacceptability of a substitution.

7.4 If a substitution is approved, no change in brand or make will be permitted unless satisfactory written evidence is presented to and approved by the Owner that the manufacturer cannot make scheduled delivery of the approved substitute item.

7.5 The Contractor may request approval for substitutions after award of the contract in accordance with the provision of this paragraph.

7.6 Substitutions will not be considered for approval by the Owner prior to or after award of the Contract if:

7.6.1 The proposed substitution is indicated or implied on shop drawings or product data submittals and has not been formally submitted for approval by the bidder in accordance with the above-stated requirements;

7.6.2 Acceptance of the proposed substitution will require substantial design revisions to the contract documents or is otherwise not acceptable to the Owner.

7.7 Bidders, other than the bidder who requested a particular substitution, that choose to utilize that substitution, as approved by addendum, shall comply with the submittal requirements of this paragraph. All provisions regarding the use of substitutions shall apply to all bidders who choose to utilize said substitution.

8. FAIRFAX COUNTY CONSTRUCTION SAFETY RESOLUTION:

The Contractor shall comply with the resolution adopted by the Fairfax County Board of Supervisors on December 8, 2003, as amended:

8.1 It shall be required that each bid submitted to the County for a contract for construction, alteration, and/or repairs, including painting or decorating of a building, highway, street, bridge, sidewalk, culvert, sewer, excavation, grading, or any other construction, include a list of all the following actions which have become final in the three years prior to the bid submission:

A. Willful violations, violations for failure to abate, or repeated violations, for which the bidder was cited by (a) the United States Occupational Safety and Health Administration; (b) the Virginia Occupational Safety and Health Administration; or (c) the occupational safety and health plan for any other public jurisdiction; or

B. Three (3) or more serious construction safety violations for which the bidder was cited by the (a) United States Occupational Safety and Health Administration; or (b) the Virginia Occupational Safety and Health Administration; or (c) the occupational safety and health plan from any other public jurisdiction.

C. Termination of a contract between the contractor and any public entity by their purchasing agent or his designee for safety violations.

8.2 If the bidder has not received or been the subject of any such violations referenced in paragraph 8.1 in the three (3) years prior to the bid submission, then the bidder shall so indicate by certification on the bid form entitled Certification of Safety Violations. The bidder will also indicate on this form each state in which work was performed in the three (3) years prior to the bid submission.

8.3 No bidder or contractor may bid on a County construction contract who has been the subject of any citations for the type and number of violations listed in aforementioned paragraph 8.1, which have become final within the three (3) years prior to the bid submission.

A. Notwithstanding the language of paragraph 8.3, above, any bidder or contractor who has been the subject of a violation, as described in paragraph 8.1 A, which has become final in the three (3) years prior to the bid submission, may bid, if the bidder or contractor meets the eligibility criteria set forth in paragraph 8.4, below.

B. Notwithstanding the language of paragraph 8.3, above, any bidder or contractor who has been the subject of the type and number of violations as described in paragraph 8.2, which have become final within three (3) years prior to bid submission, may bid, if the bidder or contractor meets the eligibility criteria in paragraph 8.5, below.

C. Notwithstanding the language of paragraph 8.1.C, above, any bidder or contractor who has previously been terminated from a public contract, as described in paragraph 8.1.C, within

three (3) years prior to the bid submission, may bid, if the bidder or contractor meets the eligibility criteria in paragraph 8.5, below.

8.4 Prior to bidding on a project, under the provisions of paragraph 8.3 above, a contractor may request that a determination be made by the County's Purchasing Agent or designee, regarding their eligibility to submit a bid on a contract under the terms of this resolution. However, this request for determination and any subsequent adjudication process must be completed prior to submitting a bid on any project and the request for determination must be received by the County's Purchasing Agent or designee no later than twenty-one (21) days before bids are due unless otherwise stated in the Solicitation. A notice of the bidder's request for determination of eligibility will be posted publicly for comments by any interested party. The bidder's request for determination of eligibility and all supporting documentation provided by the bidder to the County in support of its request shall be open to the inspection of any interested person, firm or corporation in accordance to the requirements of Fairfax County Purchasing Resolution and Virginia Freedom of Information Act.

8.5 At the request of the Purchasing Agent or designee, the County Risk Manager shall evaluate a contractor's eligibility. Contractors may be subject to a special audit of their safety records as required. The criteria used by the Risk Manager in evaluating contractor's eligibility shall include but not be limited to the following:

A. Corrective action taken by a bidder or contractor to prevent the recurrence of safety violations.

B. Days Away From Work Incident Rate for the past three (3) years.

C. Summary of Work-Related Injuries and Illnesses/Incident Rate for the past three (3) years.

1. Worker's Compensation Experience Modification Rating for the past three (3) years.
2. Fatality record for the past five (5) years.
3. Detailed information regarding the firm's safety program including but not limited to a Safety and Health plan and qualifications of the safety personnel.
4. Verification that management staff directly in charge of projects that experienced safety violations listed in aforementioned paragraph A will not be involved in the County project.
5. Incorporation of safety and health related issues into their new employee orientation programs.
6. Incorporation of work safety as a part of an employee's performance evaluation.
7. Support of safety related matters by senior/corporate management. Does the firm have a safety policy statement signed by a member of senior/corporate management?
8. Designation of a full time Safety Manager. Does this person report to a high level, authoritative position within the Company?
9. Frequency and type of safety inspections conducted at work sites.
10. The number and type of safety training programs conducted for employees.
11. Frequency of safety "tailgate meetings" conducted by the firm.
12. Designation of an active safety committee, frequency of their meetings and list of members of the committee.
13. Active membership in a recognized construction safety organization in the Washington Metropolitan area, or in the state of contractor's domicile.

8.6 The determination of eligibility rendered by the Purchasing Agent or his designee shall be final unless it is appealed in accordance with the provisions of the solicitation or the Fairfax County Purchasing Resolution.

SPECIAL PROVISIONS

8.7 It shall be a condition of each County construction contract, as discussed above, that no contractor or subcontractor contracting for any part of the contract work shall require any laborer, mechanic, or other person employed in the performance of the contract to work in surroundings or under working conditions which are hazardous or dangerous to his safety, as determined under construction safety standards promulgated by the U.S. Department of Labor or the Virginia Department of Labor and Industry.

8.8 The contractor awarded a County construction contract shall certify in writing that they will not knowingly, willfully, or recklessly employ or contract with any person, company, corporation, or any other entity for services pursuant to that contract if such person, company, corporation, or other entity could not have been awarded such contract due to the restrictions in paragraph 8.3, above.

8.9 The contractor shall also certify in writing that all safety related information provided in accordance with the Safety Resolution and contract requirements are complete, accurate and truthful.

8.10 The failure to provide information requested pursuant to this Resolution or the failure to conform to the certification requirements of this Resolution shall be grounds for disqualifying a prospective bidder.

8.11 The County may impose the following sanctions upon a contractor who willfully submits any false or misleading certification or information regarding material facts in connection with submissions pursuant to this Resolution, or willfully omits any certification or information regarding material facts in connection with submissions pursuant to this Resolution. The term willful shall include intentional or reckless acts or omissions.

(1) Disqualify the prospective bidder from bidding a contract.
(2) Debar the contractor from bidding future contracts for a period not to exceed three years.
(3) Terminate the contract awarded to the bidder after providing notice and opportunity to be heard.

9. STATE REGISTRATION OF CONTRACTOR:

9.1 If a contract is for one hundred and twenty thousand dollars ($120,000) or more, or if the total value of all construction, removal, repair or improvements undertaken by the bidder within any twelve-month period is seven hundred-fifty thousand dollars ($750,000) or more, the bidder is required under Title 54, Chapter 11, Code of Virginia (1950), as amended, to show evidence of being licensed as a "Class A Contractor." (Non Virginia licenses are not acceptable). If a contract is seventy five hundred ($7,500) dollars or more but less than one hundred and twenty thousand dollars ($120,000), the bidder is required to show evidence of being licensed as a "Class B Contractor". If a contract is one thousand dollars ($1,000) or more but less than seventy five hundred dollars ($7,500), the bidder is required to show evidence of being licensed as a "Class C Contractor."

9.2 ***The Code of Virginia does not allow an unlicensed contractor to submit a bid where the resultant contract will require a license. The bidder shall provide a copy of the license****.*

10. SUBMISSION OF BIDS:

10.1 Each bidder must use the attached Pricing Schedule to submit their bid. Bidder must show completion time, unit price, total price and/or lump sum price, if applicable, for each item for which a bid is submitted. **All bidders must return two (2) copies of the Cover Sheet**

(DPSM30), duly signed, and two (2) copies of Appendix B, keeping all remaining pages for your files. Bids may be mailed or hand delivered to the following location:

Department of Purchasing & Supply Management
12000 Government Center Parkway, Suite 427
Fairfax, Virginia 22035-0013.

102. All bids shall be submitted in a sealed envelope or package with the bid number, title, and the bidder's name and address on the outside of such envelope or package.

10.3 **BIDS RECEIVED AFTER THE DUE DATE/TIME WILL NOT BE CONSIDERED FOR CONTRACT AWARD AND WILL BE RETURNED TO THE BIDDER**.

10.4 Bidders are reminded that changes to the bid, in the form of addenda, are often issued between the issue date and within three (3) days before the due date. All addenda MUST be signed and submitted to the Department of Purchasing and Supply Management, 12000 Government Center Parkway, Suite 427, Fairfax, VA 22035 before the due date/time or must accompany the bid. Notice of addenda will be posted on eVA and the DPSM current solicitation webpage. Bidders are responsible to monitor the web page for the most current addenda at www.fairfaxcounty.gov/dpsm/solic.htm.

11. BID SECURITY:

11.1 Bid security in the amount of two and one-half percent (2.5%) of the bid price is required with each bid in the form of a certified check or bid bond made payable to County of Fairfax, Virginia. Checks will be returned to all bidders within sixty (60) days after the date of the formal opening of the bids. The bid security must clearly make reference to this solicitation number and title. Bid bonds shall be issued by a surety company licensed and authorized to conduct business in the State of Virginia.

12. ALTERNATIVE FORMS OF BID SECURITY:

12.1 In lieu of a bid, payment or performance bond a bidder may furnish a certified check or cash escrow in the face amount required for the bond.

12.2 If approved by the County Attorney, a bidder may furnish a personal bond, property bond, or bank or savings institution's letter of credit on certain designated funds in the face amount required for the bid, payment or performance bond. Approval shall be granted only upon a determination that the alternative form of security proffered affords protection to the County equivalent to a corporate surety's bond.

12.3 The County may, at the discretion of the County Purchasing Agent, require bid, payment or performance bonds for contracts for goods or services if provided in the Invitation to Bid or Request for Proposal.

13. CONTACT FOR ADMINISTRATION:

13.1 In the event a contract is executed with your firm as a result of this solicitation, indicate the person(s) that may be contacted for prompt contract administration in the space provided on the Pricing Schedule.

SPECIAL PROVISIONS

14. WITHDRAWAL OF BID:

14.1 A bidder for a public construction contract, other than a contract for construction or maintenance of public highways, may withdraw their bid from consideration if the price bid was substantially lower than the other bids due solely to a mistake therein, provided the bid was submitted in good faith, and the mistake was a clerical mistake as opposed to a judgment mistake, and was actually due to an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of a bid, which unintentional arithmetic error or unintentional omission can be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the bid sought to be withdrawn. The bidder shall give notice in writing of their claim of right to withdraw their bid within two (2) business days after the conclusion of the bid opening procedure.

15. BID EVALUATION/CONTRACT AWARD:

15.1 Bids will be evaluated on the basis of a firm fixed price, and award will be made to the lowest responsive and responsible bidder complying with all provisions of the invitation for Bid.

15.2 Paragraph 24, "Award or Rejection of Bids" of the General Conditions and Instructions to Bidders is amended to add: "Unless cancelled or rejected, a responsive bid from the lowest responsive and responsible bidder shall be accepted as submitted, except that if a bid from the lowest responsive and responsible bidder exceeds available funds, the County may negotiate with the apparent low responsive and responsible bidder to obtain a contract price within available funds."

15.3 Negotiation may be undertaken when there is insufficient time to readvertise with a modified specification and/or there are no clearly definable elements of the specifications which can be removed to permit a readvertisement or it is otherwise in the best interest of Fairfax County to negotiate.

15.4 If negotiation is undertaken, the County may negotiate changes in the solicitation with the lowest responsive and responsible bidder to obtain a satisfactory price within available funds. If a satisfactory price cannot be agreed to, then the negotiation shall be terminated and the solicitation cancelled.

16. CONTRACT INSURANCE PROVISIONS:

16.1 The Contractor shall not commence work on the site until he/she has obtained all insurance required under this article nor shall the Contractor allow any subcontractor to commence work on his/her subcontract until all similar insurance required of the subcontractor has been obtained. The Contractor shall agree to furnish certificates of such coverage if requested by the County Purchasing Agent.

16.2 The Contractor shall be responsible for its work and every part thereof, and for all materials, tools, equipment, appliances, and property of any and all description used in connection therewith. The Contractor assumes all risks of direct and indirect damage or injury to the property or persons used or employed on or in connection with the work contracted for, and of all damage or injury to any person or property wherever located, resulting from any action, omission, commission or operation under the Contract.

16.3 The Contractor shall, during the continuance of all work under the Contract provide the following:

a. Maintain statutory Worker's Compensation and Employers' Liability insurance in limits of not less than $100,000 to protect the contractor from any liability or damages for any injuries (including death and disability) to any and all of its employees, including any and

all liability or damage which may arise by virtue of any statute or law in force within the Commonwealth of Virginia.

b. The Contractor agrees to maintain Commercial General Liability insurance in the amount of $1,000,000 per aggregate/occurrence, to protect the Contractor, its subcontractors, and the interest of the County, its officers and employees, against any and all injuries to third parties, including bodily injury and personal injury, wherever located, resulting from any action or operation under the Contract or in connection with the contracted work. The General Liability insurance shall also include the Broad Form General Liability endorsement, in addition to coverages for explosion, collapse, and underground hazards, where required.

c. The Contractor agrees to maintain, owned, non-owned, and hired Automobile Liability insurance, in the amount of $1,000,000 per aggregate/occurrence, including property damage, covering all owned, non-owned, borrowed, leased, or rented vehicles operated by the Contractor. In addition, all mobile equipment used by the Contractor in connection with the contracted work, will be insured under either a standard Automobile Liability policy, or a Comprehensive General Liability policy. The Garage Keeper's Liability coverage shall also be maintained where appropriate.

d. Builder's Risk Policy: The Contractor shall provide Builder's Risk and Fire and Extended Coverage insurance to protect the County and Contractor and subcontractors against loss caused by the perils insured in the amount of 100% of the insurable value of the contract. Such insurance value shall reflect any increases to the contract amount through change orders. Policy to be in Builder's Risk Completed Value forms, including the following:

   1. Policies shall be written to include the names of contractors and County and the words "as their interest may appear";

   2. all insurance shall be in effect on or before the date when construction work is to commence; and

   3. all insurance shall be maintained in full force and effect until the final acceptance of the project by the County.

e. Liability insurance may be arranged by General Liability and Automobile Liability policies for the full limits required, or by a combination of underlying Liability policies for lesser limits with the remaining limits provided by an Excess or Umbrella Liability policy.

f. The contractor agrees to maintain Environmental Impairment Liability including sudden and accidental pollution and in transit coverage as well as coverage for storage at site.

g. Liability Insurance "Claims Made" basis:

   If the liability insurance purchased by the contractor has been issued on a "claims made" basis, the contractor must comply with the following additional conditions. The limits of liability and the extensions to be included as described previously in these provisions, remain the same. The contractor must either:

   1. Agree to provide certificates of insurance evidencing the above coverage for a period of two years after final payment for the contract. This certificate shall

evidence a "retroactive date" no later than the beginning of the contractor's or sub-contractor's work under this contract, or a copy of the endorsement itself.

2. Purchase the extended reporting period endorsement for the policy or policies in force during the term of this contract and evidence the purchase of this extended reporting period endorsement by means of a certificate of insurance or a copy of the endorsement itself.

h. The Contractor shall purchase and maintain such boiler and machinery insurance as may be required by the Contract Documents or by law. This insurance shall include the interests of the County, the contractor and subcontractors.

i. Rating Requirements:

1. The Contractor agrees to provide insurance issued by companies admitted within the Commonwealth of Virginia, with the Best's Key Rating of at least A:VI.

2. European markets including those based in London, and the domestic surplus lines markets that operate on a non-admitted basis are exempt from this requirement provided that the contractor's broker can provide financial data to establish that a market's policy holder surpluses are equal to or exceed the surpluses that correspond to Best's A:VI Rating or better.

j. Hold-harmless and Indemnification: Article 63 of the General Conditions and Instructions to Bidders shall apply.

k. The Contractor will provide an original, signed Certificate of Insurance and such endorsements as prescribed herein.

l. The Contractor will secure and maintain all insurance certificates of its subcontractors that shall be made available to the County on demand.

m. The Contractor will provide on demand certified copies of all insurance coverage related to the Contract within ten business days of demand by the County. These certified copies will be sent to the County from the Contractor's insurance agent or representative.

16.4 No change, cancellation, or non-renewal shall be made in any insurance coverage without a 45-day written notice to the County. The Contractor shall furnish a new certificate prior to any change or cancellation date. The failure of the Contractor to deliver a new and valid certificate will result in suspension of all payments until the new certificate is furnished.

16.5 Compliance by the Contractor and all subcontractors with the foregoing requirements as to carrying insurance shall not relieve the contractor and all subcontractors of the liability provisions of the Contract.

16.6 Contractual and other Liability insurance provided under this Contract shall not contain a supervision, inspection or engineering services exclusion that would preclude the County from supervising and/or inspecting the project as to the end result. The Contractor shall assume all on-the-job responsibilities as to the control of persons directly employed by it and of the subcontractors.

16.7 Nothing contained in the specifications shall be construed as creating any contractual relationship between any subcontractor and the County. The Contractor shall be as fully responsible to the

County for the acts and omissions of the subcontractors and of persons employed by them as it is for acts and omissions of persons directly employed by it.

16.8 Precaution shall be exercised at all times for the protection of persons (including employees) and property.

16.9 The Contractor and all subcontractors and sub-subcontractors are to comply with the Occupational Safety and Health Act of 1970, Public Law 91-956, as it may apply to this Contract.

16.10 Any loss insured under subparagraph "16.3d" is to be adjusted with the County and made payable to the County as trustee for the requirements of any applicable mortgagee clause. The contractor shall pay each subcontractor a just share of any insurance monies received by the contractor, and by appropriate agreement, written where legally required for validity, shall require each subcontractor to make payments to his/her sub-subcontractors in similar manner.

16.11 When the County finds it necessary to occupy or use a portion or portions of the work prior to substantial completion thereof, such occupancy shall commence with a mutual agreement between the County and contractor. The insurance company or companies providing the property insurance recognize this contingency and shall provide evidence of such endorsement prior to commencement of work. This insurance shall not be canceled or lapsed for the unoccupied part of the building on account of such partial occupancy. Consent of the contractor and of the insurance company or companies to such occupancy or use shall not be unreasonably withheld.

16.12 The County, its officers and employees shall be named as an "additional insured" and "loss payee" on the Automobile and General Liability policies and it shall be stated on the Insurance Certificate that this coverage "is primary to all other coverage the County may possess."

16.13 A Fairfax County contract number must be provided on the certificate.

17. BONDS:

17.1 The contractor shall furnish, within twenty (20) calendar days after execution of the contract, the following bonds, issued by a surety company licensed and authorized to conduct business in the State of Virginia, made payable to the County of Fairfax. All bonds must clearly make reference to this solicitation number and title.

a. Performance Bond in the amount equal to one hundred percent (100%) of the contract price on AIA Document A311, February 1970 Edition or equivalent.
b. Labor and Materials Payment Bond in an amount equal to one hundred percent (100%) of the contract price on AIA A311, February 1970 Edition or equivalent.

17.2 Failure to provide the required bonds, within twenty (20) calendar days, will constitute a material breach of the contract, for which the County may terminate the contract for cause.

18. ADDITIONAL OR SUBSTITUTE BOND:

18.1 If the Owner becomes dissatisfied with any surety or sureties then upon the Performance Bond, or if for any other reason, each Bond shall cease to be adequate security to the Owner, the Contractor shall substitute an acceptable bond in such form and sum and signed by such other sureties as may be satisfactory to the Owner within five (5) days after notice. The premiums on such bond shall be paid by the Contractor. No further payment shall be deemed due nor shall be made until the new sureties shall have qualified.

SPECIAL PROVISIONS

19. PURCHASE ORDER:

19.1 A purchase order for the items/service listed in this Invitation for Bid will be enclosed with the resulting contract or will be issued shortly thereafter and will become an integral part of the resulting contract. The purchase order indicates that sufficient funds have been obligated as required by Title 15.2-1238 of the Code of the Commonwealth of Virginia and assures distribution of the necessary receiving reports.

19.2 The purchase order does not supersede any provisions of the Acceptance Agreement. Performance time and dates are determined solely by the contract, and any modification thereto.

19.3 Services/supplies are not to begin until receipt of the purchase order or other notification by the County Purchasing Agent to proceed.

19.4 The Department of Purchasing and Supply Management has the capability to issue purchase orders electronically and transmit them to vendors by fax. For more information about the Fax Purchase Order program, call (703) 324-3268, TTY 1-800-828-1140.

20. CONSTRUCTION SCHEDULE AND SCHEDULE OF VALUES:

20.1 Within two weeks after being selected as the contractor for the project, the General Contractor shall provide a complete estimated construction progress schedule depicting time and efforts of all trades involved in the work. This shall be submitted for approval by the Owner's representative for contract coordination.

20.2 Prior to the first application for payment, submit a proposed schedule of values to the owner's representative for contract coordination. The schedule of values should accurately reflect the cost of each activity as represented on the construction schedule (ref: Special Provisions, paragraph 20.1) and the sum of the increments shall total the contract price.

21. CORRESPONDENCE:

21.1 All communications between the parties relating to details, progress and coordination of the work shall be through the Engineer and shall be deemed binding only when in writing.

22. PERMITS AND LICENSES:

22.1 The Contractor is responsible for obtaining any necessary licenses and permits, and for complying with any applicable Federal, State, and municipal laws, codes, and regulations, in connection with the prosecution of the work without additional expense to the County. The Contractor is similarly responsible for all damages to persons or property that occurs as a result of their fault or negligence. The Contractor shall take proper safety and health precautions to protect the work, the workers, the public, and the property of others. The Contractor is also responsible for all materials delivered and work performed until completion and acceptance of the entire construction work, except for any completed unit of construction previously accepted.

23. REPRESENTATIONS OF CONTRACTOR:

23.1 The Contractor represents and warrants:

a. The firm is financially solvent and that manager is experienced in and competent to perform the type of work, or to furnish the plans, materials, supplies or equipment to be so performed or furnished; and
b. that contractor is familiar with all Federal, State, municipal and department laws, ordinances and regulations, which may in any way affect the work of those employed, including but not limited to any special acts relating to the work or to the project of which it is a part; and
c. that such temporary and permanent work required by the Contract Documents as is to be done by the contractor can be satisfactorily constructed and used for the purpose of which it is intended and that such construction will not injure any person, or damage any property; and
d. that contractor has carefully examined the plans, the specifications and the site of the work and that from the contractor's own investigations, he/she has satisfied themselves as to the nature and location of the work, the character, quality, quantity of surface and subsurface materials likely to be encountered, and character of equipment and other facilities needed for the performance of the work, the general and local conditions and all other materials which may in any way affect the work or its performance.

24. SUPERINTENDENCE BY CONTRACTOR:

24.1 At the work site, the Contractor shall employ a construction superintendent or foreman who shall have full authority to act for the Contractor. It is understood that the representative shall be acceptable to the Engineer and shall be one who can be continued in that capacity for the particular job involved, unless he/she ceases to be on the Contractor's payroll.

25. POWER OF CONTRACTOR TO ACT IN EMERGENCY:

25.1 In case of an emergency that threatens loss or injury of property and/ or safety of life, the Contractor is permitted to act without previous instructions from the Engineer as deemed appropriate. The contract must notify the Engineer immediately after of any actions taken.

25.2 The engineer shall approve any compensation claimed by the Contractor due to such extra work.

25.3 Where the Contractor has not taken action but has notified the Engineer of an emergency threatening injury to persons or damage to the work, or any adjoining property, upon authorization from the Engineer to prevent such threatened injury or damage, the engineer shall direct the contractor's actions. The amount of reimbursement claimed by the Contractor on account of any such action shall be determined in the manner provided in Paragraph 37 hereof for the determination of compensation to be paid for extra work.

26. PLANS AND SPECIFICATIONS - INTERPRETATIONS:

26.1 The Contractor shall keep at the site of the work, one copy of the plans and specifications signed and identified by the Engineer and shall at all times give the Engineer and other representatives of the Owner access. Anything shown on the plans and not mentioned in the specifications, or mentioned in the specifications and not shown in the plans, shall have the same effect as if shown or mentioned respectively in both. In case of any conflict or inconsistency between the plans and specifications the decision of the Engineer shall govern. Also, any discrepancy between the figures and drawings shall be submitted by the Contractor to the Engineer whose decision shall be conclusive.

27. USE OF PREMISES:

27.1 The contractor confine the apparatus, storage of materials, and activities of personnel on or about

the premises and adjacent areas, in accordance with the law, ordinances, permits and the directions of the Owner's representative. The contractor shall not encumber the premises with such materials or apparatus or adjacent areas. The work site shall be kept in such orderly fashion as will not interfere with the progress of the work or the work of any other contractor.

27.2 The contractor is responsible for repairing or replacing any work damaged by his/her operations within ten (10) days after notification by the Owner's representative.

27.3 It is the responsibility of the contractor to report in writing, to the Project Engineer any damages found prior to any work at the site.

28. PROTECTION OF WORK AND PROPERTY:

28.1 The contractor shall protect the Owner's property from injury or losses in connection with this contract at all times. The contractor's own work and that of adjacent property (as provided by law and the contract documents) from damage shall be guarded. The contractor shall replace or make good any such damage, loss or injury unless caused directly by errors contained in the contract documents or by the Owner or by his/her duly authorized representatives. All passageways, guard fences, lights and other facilities required for protection by local authorities or local conditions must be provided and maintained.

29. STORAGE OF MATERIALS:

29.1 Materials shall be stored so as to insure the preservation of their quality and fitness for the work. When considered necessary, they shall be placed on wooden platforms or other hard clean surfaces and not on the ground and shall be placed under cover when directed. Stored materials shall be located so as to facilitate proper inspection. Equipment that is delivered crated shall remain crated until ready for installation. Lawns, grass plots or other private property shall not be used for storage purposes without the written permission of the Owner or lessee.

30. STANDARD PRODUCTS:

30.1 All materials, supplies, and articles furnished shall be the standard products of recognized, reputable manufacturers, as specified and otherwise practicable. The standard products of manufacturers other than those specified, will be accepted when it is proved to be the satisfaction of the Engineer, that they are equal in strength, durability, usefulness and convenience for the purpose intended. Any changes required in the detail and dimensions indicated on the drawings, for the substitution of standard products other than those provided for, shall be made as approved by the Engineer and at the expense of the contractor.

31. ALL WORK SUBJECT TO CONTROL OF ENGINEER:

31.1 In the performance of the work, the Contractor shall abide by all orders, directions and requirements of the Engineer and shall perform all work to the satisfaction of the Engineer and at such times and places, by such methods and in such manner and sequence as he may require. The Engineer shall determine the amount, quality, acceptability and fitness of all parts of the work, shall interpret the plans, specifications, Contract Documents, and any extra work orders and shall decide all other questions in connection with the work. The Contractor shall employ no plans, equipment, materials, methods or persons to which the engineer objects and shall remove no plant, materials, equipment or other facilities from the site of the work without the Engineer's permission. The Engineer shall confirm in writing, any oral order, direction, requirement or determination.

SPECIAL PROVISIONS

32. ENGINEER'S CONTROL NOT LIMITED:

32.1 The County's Project Manager will control the work under the contract. The contractor must perform all the work to the complete satisfaction of the Project Manager. Examples given or statements made in the Special Provisions and the Contract Documents pertaining to the method of work performance are examples, only. Bidders should not assume that the Project Manager's direction is limited to those items only, but applies to all work performed under the contract.

33. INCOMPETENT OR DISORDERLY EMPLOYEES:

33.1 If any person employed on the work by the Contractor shall appear to the Engineer to be incompetent or to act in a disorderly or improper manner, such person shall be removed immediately on the requisition of the Engineer, and shall not again be reemployed (on subject project) except on written consent of the Engineer.

34. WORKMANSHIP:

34.1 Only first-class work shall be performed and all materials furnished in carrying out this contract and shall be of character and quality required by the specifications. Such work or materials shall be the best of their respective kinds, where no standard is specified. Any unsatisfactory work done or materials furnished shall be immediately removed and satisfactorily replaced by the contractor when notified to do so by the Engineer at whatever time the inferior work or materials may be discovered.

34.2 If the contractor neglects or refuses to remove such unsatisfactory work or materials within forty-eight hours after the receipt of notice, or if satisfactory progress is not made in doing so, the Engineer may effect removal of the inferior work or materials and the expense shall be charged to the contractor. Such expense shall be deducted from any monies due or to become due the contractor under the contract. Upon completion of the contract the entire work shall be delivered to the Owner perfect and complete in satisfactory working condition.

34.3 The contractor expressly undertakes at his own expense:

a. to effect all cutting, fitting or patching of his work required to make same conform to the plans and specifications and except with consent of the Engineer not to cut or otherwise alter the work of any other contractor, and

b. to place upon the work or any part thereof only such loads as are consistent with the safety of that portion of the work.

35. CHANGES AND ALTERATIONS:

35.1 The Owner reserves the right to make alterations in the installation of items of work shown on the plans, as may be necessitated by conditions found during construction that in the judgment of the Engineer appear advisable. The Contractor shall not claim forfeiture of contract by reasons of such changes by the Owner's Engineer.

36. NECESSARY DETAILS NOT SPECIFICALLY MENTIONED:

36.1 Any and all work that may be called for in the specifications and not shown on the plans, or shown on the plans and not called for in the specifications, shall be furnished and executed by the Contractor as if designated. The contractor shall furnish all required work or material which is not denoted in the plans and specifications either directly or indirectly, but which is necessary for

project.

37. EXTRA WORK:

37.1 The Owner may require the performance of extra work and/or changes as necessary or desirable, at any time, by a written order and without notice to the sureties.

37.2 The amount of compensation to be paid to the Contractor for any extra work shall be determined by unit prices, or by a lump sum mutually agreed upon by the Owner and the Contractor.

37.3 A change proposed must be submitted within ten (10) days from the request for a proposal to change, add or delete work.

37.4 The Contractor's proposal shall be on a lump sum basis and shall be itemized and segregated by labor, materials and equipment for the various components of the change in the work (no aggregate labor total will be acceptable) and shall be accompanied by signed proposals of any subcontractors who will perform any portion of the change in the work and of any persons who will furnish materials or equipment for incorporation therein.

37.5 The portion of the proposal relating to labor, whether by the Contractor's forces or the forces of any of its subcontractors, may include reasonable anticipated gross wages of job site labor including foremen, who will be directly involved in the change in the work (for such time as they will be so involved), plus payroll costs (including premium costs of overtime labor, if overtime is authorized, Social Security, Federal or State unemployment insurance taxes and fringe benefits required by collective bargaining agreements entered into by the Contractor or any such subcontractor in connection with such labor).

37.6 The portion of the proposal relating to material may include the reasonable anticipated costs to the Contractor or to any of its Sub-contractors of materials to be purchased for incorporation in the change in work, plus transportation and applicable sales or use taxes.

37.7 The proposal may further include the Contractor's and any of his/her subcontractor's reasonable anticipated rental costs, except small hand tools, in connection with the change in the work (either actual rates or discounted local published rates).

37.8 Base cost is defined as the total of labor, material and rental in the original contract. The actual net cost in money to the Owner for the change in the work shall be computed as follows:

a. If the Contractor performs the change in the work, his/her compensation will be the Base Costs as described above, plus a maximum mark-up of fifteen percent (15%) of the base cost for overhead and profit.
b. If the work is performed by a bona fide subcontractor, his/her compensation will be the base costs as herein described plus a maximum mark-up of fifteen percent (15%) of the base cost for overhead and profit. The Contractor's compensation will be a maximum mark-up of five percent (5%) of the subcontractor's base cost for his/her overhead and profit.
c. If the work is performed by a bona fide sub-subcontractor, his/her compensation will be the base costs as herein described plus a maximum mark-up of fifteen percent (15%) for overhead and profit. The subcontractor's compensation will be a maximum mark-up of five percent (5%) of the sub-subcontractor's base cost for his/her overhead and profit. The Contractor's compensation will be a maximum mark-up of five percent (5%) of the sub-subcontractor's base cost for his/her overhead and profit.
d. The fifteen percent (15%) mark-up on the cost of labor and materials described above shall compensate the Contractor or subcontractor or sub-subcontractor for all indirect

costs associated with or relating to the change of the work including, but not limited to, gross receipts tax, superintendence, small tools, reproduction, administration, insurance, bonds, safety, temporary structures and offices, all other general and administrative, home office and field office expenses and profit.

e. The five percent (5%) mark-up on the cost of labor and materials described above shall compensate the Contractor or subcontractor for all indirect costs associated with or relating to the change in the work including but not limited to, gross receipt tax, superintendence, reproduction, administration, insurance bonds.

f. In the event that it is necessary to increase the contract time in order to perform the change in the work, the Contractor shall provide an estimate of the increase in the contract time, which shall be negotiated by the parties to the contract.

g. If the Contractor's proposed change is rejected by the Owner as being with in the scope of the work required by the contract documents the Owner may, at its sole option and discretion, direct the Contractor to perform the work which is the subject of the said proposed change; the Contractor shall then promptly proceed with said work. Nothing shall excuse the timely performance by the Contractor of the work because any proposed change is pending.

37.9 These provisions shall not affect the power of the Contractor to act in case of an emergency.

38. DECREASES IN WORK UNDER LUMP SUM ITEMS:

38.1 The Owner or Engineer may, at any time, decrease in dimension, quantity of material or work, or alter the situation or levels, or vary the form of dimensions of any part of the work or alter the project in any way. Such changes shall be made in writing in accordance with the contract and the difference in expense resulting from the decrease or change ordered shall be deducted from the amount payable under this contract. If the incremental cost of the decrease is not identified in the project schedule, the Engineer shall determine the amount of deduction based on a proper, fair and reasonable allowance for the lesser amount of materials and labor required. If necessary in order to establish such fair allowance, the contractor may be required to submit a detailed breakdown of his/her original bid for the items of work involved. Alterations or changes that diminish the quantity of work to be done shall not constitute a claim for damages or for loss of anticipated profits in the work.

39. WEATHER CONDITIONS:

39.1 In the event of temporary suspension of work or during inclement weather, or whenever the Engineer shall direct, the Contractor will require any subcontractors to protect carefully all materials and work against damage or injury from the weather. If, in the opinion of the Engineer, any work or materials have been damaged or injured by reason of failure on the part of the Contractor or any subcontractors to protect his/her work and materials shall be removed and replaced at the expense of the Contractor.

40. EXTENSION OF TIME: NO WAIVER:

40.1 If the Contractor is delayed in the completion of his/her work by reason of unforeseeable causes beyond his/her control and without his/her fault of negligence, including but not restricted to acts of God or the public enemy; acts of neglect to the Owner, acts or neglect of any other Contractor, fires, floods, epidemics, quarantine restrictions, strikes, riots, civil commotion, or freight embargoes, the period specified for the completion of his/her work shall be extended by such time as shall be fixed by the Owner.

40.2 No such extension of time shall be deemed a waiver by the Owner or his right to terminate the

contract for abandonment or delay by the Contractor as herein provided to relieve the Contractor from full responsibility for performance of his/her obligations hereunder.

40.3 Paragraph 49 of the General Conditions is amended to read, "DELAY - Should the contractor be delayed by the County, there shall be added to the time of completion a time equal to the period of such delay caused by the County. Claims for damages or extra compensation shall be limited to direct costs attributed to the delay."

a. A Contractor making a claim against the County for costs or damages due to the alleged delaying of the Contractor in the performance of its work under any County Construction contract shall be liable to the County and shall pay it for a percentage of all costs incurred by the County in investigating, analyzing, negotiating, litigating and arbitrating the claim, which percentage shall be equal to the percentage of the Contractor's total delay claim which is determined through litigation or arbitration to be false or to have no basis in law or in fact.

41. CLEANING UP:

41.1 The contractor shall keep the premises and adjacent areas free from accumulations of waste material or rubbish at all times. At the completion of the work, all rubbish, tools, used for work and surplus materials shall be removed from and about the premises and adjacent areas, and the area shall be "broom cleaned" and ready for use. In case of a dispute, Fairfax County may remove rubbish or otherwise clean up, and may charge the Contractor either by deduction from amounts unpaid to the Contractor, or by other means with such cost as the Project Engineer shall determine to be fair and equitable.

42. EXAMINATION OF DEFECTIVE WORK:

42.1 If required by the Engineer under execution of this contract, the contractor shall at any time pull down or undo any part of the work and make such openings as may be required and enable the Engineer to make proper inspection and the contractor shall make good again the work so pulled down, undone or opened to the Engineer's satisfaction. If the work is found faulty, in any respect the whole of the expenses incurred shall be incurred by the Contractor, but if the work be found not faulty by the Engineer, the expenses thereby incurred shall be incurred by the Owner.

43. REJECTION OF INFERIOR MATERIAL:

43.1 An inspection and approval of the materials by the Engineer shall not in any way subject the Owner to pay for any portion of the materials, even if said materials, incorporated in the work, turn out to be unfit. Such inspection shall not be considered as any waiver of objection to the work on account of the unsoundness of the material used.

44. PAYMENTS:

44.1 Payments to the Contractor will be made as follows:

The Owner will make partial payment to the Construction Contractor on the basis of a duly certified approved estimate of the work performed during the preceding calendar month by the Construction Contractor, not later than the 30 days from receipt by the County of a properly completed invoice. The Owner will retain 5 percent of the amount of each such estimate until final completion and acceptance of all work covered by this contract. Upon filing with the Engineer copies of invoices for material, there may be included in the monthly estimates 95% of the value of all materials delivered to the site of the work which is to enter into actual construction. Each monthly payment request document shall be an original and four copies and

shall be submitted to the Engineer. The original document shall include original typing and signatures. The four copies shall include original signatures. All five documents shall be notarized. Payment will be made after submittal of an approved pay estimate. The amounts of monthly certifications for payment shall be considered approximate. The Owner reserves the right to withhold monthly payments if work is not proceeding according to contract.

45. OWNER'S RIGHT TO WITHHOLD PAYMENTS:

45.1 The Owner may withhold from the Contractor so much of any approved payments due him as may in the judgment of the Owner be necessary:

a. To assure the payment of just claims then due and unpaid of any persons supplying labor or materials for the work;
b. To protect the Owner from loss due to defective work not remedied or;
c. To protect the Owner from loss due to injury to persons or damage to the work or property of other contractors, subcontractors or others, caused by the act or neglect of the Contractor or of any of his/her subcontractors. The Owner shall have the right as Agent for the Contractor, to apply any such amounts so withheld in such manner as the Owner may deem proper to satisfy such claims or to accrue such protection. Such applications of such money shall be deemed payments for the account of the Contractor.

46. OWNER'S RIGHT TO STOP WORK OR TERMINATE CONTRACT:

46.1 If:

a. the Contractor shall be adjudged bankrupt or make an assignment for the benefit of creditors; or

b. a receiver or liquidator shall be appointed for the Contractor or for any of his/her property and shall not be dismissed within 20 days, or after such an appointment, or the proceedings in connection therewith shall not be stayed on appeal within the said 20 days; or

c. the Contractor shall refuse or fail, after Notice of Warning from the Engineer, to supply enough properly skilled workmen or proper materials; or

d. the Contractor shall refuse or fail to prosecute the work with such diligence as will insure its completion within the period specified (or any duly authorized extension) or shall fail to complete the work within said period; or

e. the Contractor shall fail to make prompt payment to persons supplying labor or materials for the work; or

f. the Contractor shall fail or refuse to regard laws, ordinances, or the instructions of the Engineer, or otherwise be guilty of a substantial violation of any provision of this contract, then and in any such event, the Owner, without prejudice to any other rights or remedy it may have, may by seven (7) days notice to the Contractor, terminate the employment of the Contractor and his/her right to proceed either as to the entire work or (at the option of the Owner) to any portion thereof as to which delay shall have occurred, and may take possession of the work and complete the work by contract or otherwise as the Owner may

deem expedient. In such case, the Contractor shall not be entitled to receive any further payment until the work is finished. If the unpaid balance of the compensation to be paid the Contractor shall exceed the expense of completing the work (including compensation for additional managerial, administrative and inspection services and any damages for delay) such excess shall be paid to the Contractor. If such expenses shall exceed such unpaid balance, the Contractor and his/her sureties shall be liable to the Owner for such excess. If the right of the Contractor to proceed with the work is terminated, the Owner may take possession of and use such materials, appliances, supplies, plans and equipment as may be on the site of the work, and necessary therefore, for completing the work. If the Owner does not so terminate the right of the Contractor to proceed, the Contractor shall continue the work.

47. WARRANTY:

47.1 All work provided under this contract shall have, as a minimum, a one (1) year warranty from the date of final acceptance thereof against any latent defects, design, materials, workmanship, installation, fraud, or such gross mistakes, as may amount to fraud. Bidder shall indicate on pricing page the manufacturers warranty on all mechanical equipment required if different than one year indicated above.

48. ACCEPTANCE OF FINAL PAYMENT CONSTITUTES RELEASE:

48.1 The acceptance by the Contractor of the final payment constitutes a release to the Owner of all claims and of all liability to the Contractor for all work or materials furnished in connection with agreement and for every act and neglect of the Owner and others relating to or arising out of this work, excepting the Contractor's claims for interest upon the final payment if this payment is improperly delayed. No payment, however, final or otherwise, shall operate to release the Contractor or his sureties from any obligations under this contract or the Performance Bond.

49. ERRORS:

49.1 The Contractor shall make no claim against the Owner because the estimates, tests or representations of any kind affecting the work made by any officer or agent of the Owner may prove to be erroneous, in any respect.

50. ORDER OF PRECEDENCE:

50.1 In the event of conflict, the Acceptance Agreement and the Special Provisions of this contract shall take precedence over the General Conditions and Instructions to Bidders, included herein.

51. SUBCONTRACTING:

51.1 If one or more subcontractors are required, the contractor is encouraged to utilize small, minority-owned, and women-owned business enterprises. For assistance in finding subcontractors, contact the Virginia Department of Business Assistance http://www.dba.state.va.us; the Virginia Department of Minority Business Enterprise http://www.dmbe.state.va.us/; local chambers of commerce and other business organizations.

SPECIAL PROVISIONS

51.2 As part of the contract award, the prime contractor agrees to provide the names and addresses of each subcontractor, that subcontractor's status as defined by Fairfax County, as a small, minority-owned and/or woman-owned business, and the type and dollar value of the subcontracted goods/services provided. Reference Appendix B to this solicitation.

52. NEWS RELEASES BY VENDORS:

52.1 As a matter of policy, the County does not endorse the products or services of a contractor. News releases concerning any resultant contract from this solicitation will not be made by a contractor without the prior written approval of the County. All proposed news releases will be routed to the Purchasing Agent for review and approval.

53. AMERICANS WITH DISABILITIES ACT REQUIREMENTS:

53.1 Fairfax County is committed to a policy of nondiscrimination in all County programs, services, and activities and will provide reasonable accommodations upon request. Bidders requesting special accommodations should call the Department ADA representative (703) 324-3201 or TTY 1-800-828-1140. Please allow seven (7) working days in advance of the event to make the necessary arrangements.

53.2 Fairfax County Government is fully committed to the Americans with Disabilities Act (ADA), which guarantees non-discrimination and equal access for persons with disabilities in employment, public accommodations, transportation, and all County programs, activities and services. Fairfax County government contractors, subcontractors, vendors, and/or suppliers are subject to this ADA policy. All individuals having any County contractual agreement must make the same commitment.

Your acceptance of this contract acknowledges your commitment and compliance with ADA.

54. HIPAA COMPLIANCE:

54.1 Fairfax County Government has designated certain health care components as covered by the Health Insurance Portability and Accountability Act of 1996. The successful vendor will be designated a business associate pursuant to 45 CFR part 164.504(e) of those agencies identified as health care components of the County, including the Fairfax-Falls Church Community Services Board, upon award of contract. The successful vendor shall be required to execute a Fairfax County Business Associate Agreement and must adhere to all relevant federal, state, and local confidentiality and privacy laws, regulations, and contractual provisions of that agreement. These laws and regulations include, but are not limited to: (1) HIPAA – 42 USC 201, et seq., and 45 CFR Parts 160 and 164; and (2) Va Code – Title 32.1, Health, § 32.1-1 et seq. The vendor shall have in place appropriate administrative, technical, and physical safeguards to ensure the privacy and confidentiality of protected health information.

54.2 Further information regarding HIPAA Compliance is available on the County's website at http://www.fairfaxcounty.gov/HIPAA.

55. STATE CORPORATION COMMISSION IDENTIFICATION NUMBER:

55.1 Pursuant to *Code of Virginia*, §2.2-4311.2 subsection B, a bidder or offeror organized or authorized to transact business in the Commonwealth pursuant to Title 13.1 or Title 50 is required to include in its bid or proposal the identification number issued to it by the State Corporation Commission (SCC). Any bidder or offeror that is not required to be authorized to transact business in the Commonwealth as a foreign business entity under Title 13.1 or Title 50

or as otherwise required by law is required to include in its bid or proposal a statement describing why the bidder or offeror is not required to be so authorized. Any bidder or offeror that fails to provide the required information may not receive an award

COUNTY OF FAIRFAX

COMMONWEALTH OF VIRGINIA

GENERAL CONDITIONS AND INSTRUCTIONS TO BIDDERS

(Vendor: The general rules and conditions which follow apply to all purchases and become a definite part of each formal solicitation and resulting contract award issued by the DEPARTMENT OF PURCHASING & SUPPLY MANAGEMENT, unless otherwise specified. Bidders or their authorized representatives are expected to inform themselves fully as to the conditions, requirements, and specifications before submitting bids; failure to do so will be at the bidder's own risk and relief cannot be secured on the plea of error.)

Subject to all State and local laws, policies, resolutions, and regulations and all rules, regulations and limitations imposed by legislation of the Federal Government, bids on all solicitations issued by the DEPARTMENT OF PURCHASING & SUPPLY MANAGEMENT will bind bidders to applicable conditions and requirements herein set forth unless otherwise specified in the solicitation.

I. AUTHORITY -The Purchasing Agent has the sole responsibility and authority for negotiating, placing and when necessary modifying every solicitation, contract and purchase order (except for capital construction projects) issued by the County of Fairfax. In the discharge of these responsibilities, the Purchasing Agent may be assisted by assigned buyers. Unless specifically delegated by the County Purchasing Agent, no other County officer or employee is authorized to order supplies or services, enter into purchase negotiations or contracts, or in any way obligate the government of the County of Fairfax for an indebtedness. Any purchase ordered or contract made which is contrary to these provisions and authorities shall be of no effect and void and the County shall not be bound thereby.

2. DEFINITIONS-

AGENCY: Any Department, Agency, Authority, Commission, Board or other unit in the Administrative Service of the County.

BEST VALUE: As predetermined in the solicitation, means the overall combination of quality, price, and various elements of required services that in total are optimal relative to a public body's needs.

BID: The offer of a bidder to provide specific goods or services at specified prices and/or other conditions specified in the solicitation.

BIDDER/OFFEROR: Any individual, company, firm, corporation, partnership or other organization bidding on solicitations issued by the Purchasing Agent and offering to enter into contracts with the County. The term "bidder" will be used throughout this document and shall be construed to mean "offeror" where appropriate.

CONSULTANT SERVICES: Any type of services required by the County, but not furnished by its own employees, which is in its nature so unique that it should be obtained by negotiation on the basis of demonstrated competence and qualification for the type of service required and at fair and reasonable compensation, rather than by competitive sealed bidding.

CONTRACTOR: Any individual, company, firm, corporation, partnership or other organization to whom an award is made by the County.

COUNTY: County of Fairfax.

GOODS: All material, equipment, supplies, printing, and automated data processing/information technology hardware and software.

INFORMALITY: A minor defect or variation of a bid or proposal from the exact requirements of the invitation to bid or the request for proposal which does not affect the price, quality, quantity or delivery schedule for the goods, services or construction being procured.

INVITATION FOR BID (IFB): A request which is made to prospective suppliers (bidders) for their quotation on goods or services desired by the County. The issuance of an IFB will contain or incorporate by reference the specifications and contractual terms and conditions applicable to the procurement.

PROFESSIONAL SERVICES: Any type of professional service performed by an independent contractor within the practice of accounting, actuarial services, architecture, dentistry, land surveying, landscape architecture, law, medicine, optometry, pharmacy, or professional engineering (which shall be procured as set forth in the Code of Virginia §2.2-4301 in the definition of competitive negotiation at paragraph 3 (a), and in conformance with the Fairfax County Purchasing Resolution).

PURCHASING AGENT: The Purchasing Agent employed by the Board of Supervisors of Fairfax County, Virginia.

QUICK QUOTE (QQ): A method of competitive bidding for the purchase or lease of goods, non professional services or for the purchase of insurance, construction, or construction management when the estimated cost thereof shall be less the $50,000.

REQUEST FOR PROPOSAL (RFP): A request for an offer from prospective offerors which will indicate the general terms which are sought to be procured from the offeror. The RFP will specify the evaluation factors to be used and will contain or incorporate by reference other contractual terms and conditions applicable to the procurement.

RESPONSIBLE BIDDER/OFFEROR: An individual, company, firm, corporation, partnership or other organization having the capability in all respects to perform fully the contract requirements, and also having the moral and business integrity and reliability which will assure good faith performance, and having been prequalified, if required. (Reference paragraph 24, General Conditions and Instructions to Bidders).

GENERAL CONDITIONS AND INSTRUCTIONS TO BIDDERS

RESPONSIVE BIDDER/OFFEROR: An individual, company, firm, corporation, partnership or other organization having submitted a bid which conforms in all material respects to the invitation for bid or request for proposal.

SERVICES: Any work performed by an independent contractor wherein the service rendered does not consist primarily of acquisition of equipment or materials, or the rental of equipment, materials and supplies.

SOLICITATION: The process of notifying prospective bidders that the County wishes to receive bids on a set of requirements to provide goods or services. The notification of County requirements may consist of public advertising (newspaper, County Web Site, or other electronic notification), the mailing of Notices of Solicitation, Invitation for Bid (IFB) or Request for Proposal (RFP), the public posting of notices, issuance of an Open Market Procurement (OMP), or telephone calls to prospective bidders.

STATE: Commonwealth of Virginia.

CONDITIONS OF BIDDING

3. BID FORMS-Unless otherwise specified in the solicitation, all bids shall be submitted on the forms provided, to include the bid Cover Sheet and Pricing Schedule(s), properly signed in ink in the proper spaces and submitted in a sealed envelope or package. The item pages of the Pricing Schedule which do not include any items for which a bid is required need not be included in the submission of a bid.

Should the bid prices and/or any other submissions differ on the copy of the submitted bid, the ORIGINAL copy shall prevail.

4. LATE BIDS & MODIFICATIONS OF BIDS-

a. Any bid/modification received at the office designated in the solicitation after the exact time specified for receipt of the bid/modification is considered a late bid/modification. A late bid/modification will not be considered for award except under the following conditions only:

   1. It was sent by registered or certified mail not later than the fifth (5th) calendar date prior to the date specified for receipt of the bid/modification; or
   2. The bid/modification was sent by mail and it is determined by the County Purchasing Agent that the late receipt was due solely to mishandling by the County after receipt at the address specified in the solicitation.

b. If an emergency or unanticipated event or closing interrupts or suspends normal County business operations so that bids cannot be received at the County office designated for receipt of bids by the exact time specified in the solicitation, the due date/time specified for receipt of bids will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal County business operations resume.
c. The official time used for receipt of bids/modifications is the Bid Clerk's time and date stamp clock located in the Department of Purchasing and Supply Management. All bidders are responsible for ensuring all bids/modifications are received prior to the scheduled due date/time.
d. A late hand-carried bid, or any other late bid not submitted by mail, shall not be considered for award.

5. WITHDRAWAL OF BIDS-

a. A bidder for a public construction contract, other than a contract for construction or maintenance of public highways, may withdraw his or her bid from consideration if the price bid was substantially lower than the other bids due solely to a mistake therein, provided the bid was submitted in good faith, and the mistake was a clerical mistake as opposed to a judgment mistake, and was actually due to an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of a bid, which unintentional arithmetic error or unintentional omission can be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the bid sought to be withdrawn. If a bid contains both clerical and judgment mistakes, a bidder may withdraw his bid from consideration if the price bid would have been substantially lower than the other bids due solely to the clerical mistake, that was an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of a bid which shall be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the bid sought to be withdrawn. The bidder shall give notice in writing to the Purchasing Agent of his or her claim of right to withdraw his or her bid within two (2) business days after the conclusion of the bid opening procedure and shall submit original work papers with such notice.

b. A bidder for a contract other than for public construction may request withdrawal of his or her bid under the following circumstances:

   1. Requests for withdrawal of bids prior to opening of such bids shall be transmitted to the County Purchasing Agent in writing.

   2. Requests for withdrawal of bids after opening of such bids but prior to award shall be transmitted to the County Purchasing Agent, in writing, accompanied by full documentation supporting the request. If the request is based on a claim of error, documentation must show the basis of the error. Such documentation may take the form of supplier quotations, vendor work sheets, etc. If bid bonds were tendered with the bid, the County may exercise its right of collection.

c. No bid may be withdrawn under this paragraph when the result would be the awarding of the contract on another bid of the same bidder or of another bidder in which the ownership of the withdrawing bidder is more than five percent.
d. If a bid is withdrawn under the authority of this paragraph, the lowest remaining bid shall be deemed to be the low bid.
e. No bidder who is permitted to withdraw a bid shall, for compensation, supply any material or labor to or perform any subcontract or other work agreement for the person or firm to whom the contract is awarded or otherwise benefit, directly or indirectly, from the performance of the project for which the

withdrawn bid was submitted.

f. If the county denies the withdrawal of a bid under the provisions of this paragraph, it shall notify the bidder in writing stating the reasons for its decision and award the contract to such bidder at the bid price, provided such bidder is a responsible and responsive bidder.

g. Work papers, documents, and materials submitted in support of a withdrawal of bids may be considered as trade secrets or proprietary information subject to the conditions of the Virginia Freedom of Information Act.

6. ERRORS IN BIDS-When an error is made in extending total prices, the unit bid price will govern. Erasures in bids must be initialed by the bidder. Carelessness in quoting prices, or in preparation of bid otherwise, will not relieve the bidder. Bidders are cautioned to recheck their bids for possible error. Errors discovered after public opening cannot be corrected and the bidder will be required to perform if his or her bid is accepted.

7. MAILING OF BIDS – All bids and proposals submitted in response to a Fairfax County solicitation shall be submitted in a sealed envelope or package identified with the solicitation number, title, bidder's name and address, and due date/time of opening/closing clearly marked on the outside of such envelope or package.

8. COMPLETENESS-To be responsive, a bid must include all information required by the solicitation.

9. ACCEPTANCE OF BIDS/BINDING 90 DAYS-Unless otherwise specified, all formal bids submitted shall be binding for ninety (90) calendar days following bid opening date, unless extended by mutual consent of all parties.

10. CONDITIONAL BIDS-Conditional bids are subject to rejection in whole or in part.

11. BIDS FOR ALL OR PART-Unless otherwise specified by the County Purchasing Agent or by the bidder, the Purchasing Agent reserves the right to make award on all items in the aggregate or on any of the items on an individual basis, whichever is in the best interest of the County. A bidder may restrict his or her bid to consideration in the aggregate by so stating but shall name a single unit price on each item bid. Any bid in which the bidder names a total price for all the articles without quoting a unit price for each and every separate item may not be considered for award.

12. AREA BIDS-For the purchase and delivery of certain goods and services the County may be divided into Areas (e.g., Areas I, II, III, and IV). When such goods and services are included in the Pricing Schedule, bidders may bid on all areas or an individual area. A map showing the areas of the County will be furnished with the solicitation when required.

13. TIME FOR RECEIVING BID-Bids received prior to the time of opening will be securely kept, unopened. The representative of the Purchasing Agent assigned to open them will decide when the specified time has arrived, and no bid received thereafter will be considered, except as provided in paragraph 4, General Conditions and Instructions to Bidders. No responsibility will attach to the Purchasing Agent or his or her representative for the premature opening of a bid not properly addressed and identified. Unless specifically authorized in the solicitation, telegraphic, electronic, or facsimile bids/modifications will not be considered.

14. BID OPENING-All bids received in response to an Invitation for Bid (IFB) will be opened at the date, time and place specified, read publicly, and made available for inspection as provided in paragraph 68, General Conditions and Instructions to Bidders. Tabulations of bids received are posted on the Department of Purchasing & Supply Management Bulletin Board as well as the County's web site: http://www.fairfaxcounty.gov/dpsm/solic.htm. Proposals received in response to a Request for Proposal (RFP) will be made available as provided in paragraph 68, General Conditions and Instructions to Bidders.

15. OMISSIONS & DISCREPANCIES-Any items or parts of any equipment listed in this solicitation which are not fully described or are omitted from such specification, and which are clearly necessary for the completion of such equipment and its appurtenances, shall be considered a part of such equipment although not directly specified or called for in the specifications.

Should a bidder find discrepancies or ambiguities in, or omissions from, the solicitation, including the drawings and/or specifications, he or she shall notify the Purchasing Agent at least five (5) days prior to the date set for the opening of bids. If necessary, the Purchasing Agent will send a written addendum for clarification to all bidders no later than three (3) days before the date set for opening of bids. Notifications regarding specifications will not be considered if received within five days of the date set for opening of bids.

16. RESPONSE TO SOLICITATIONS-In the event a vendor cannot submit a bid on a solicitation, he or she is requested to return the solicitation cover sheet with an explanation as to why he or she is unable to bid on these requirements.

17. BIDDER INTERESTED IN MORE THAN ONE BID-If more than one bid is offered by any one party, either directly or by or in the name of his or her clerk, partner, or other persons, all such bids may be rejected. A party who has quoted prices on work, materials, or supplies to a bidder is not thereby disqualified from quoting prices to other bidders or firms submitting a bid directly for the work, materials or supplies.

18. TAX EXEMPTION-The County is exempt from the payment of any federal excise or any Virginia sales tax. The price bid must be net, exclusive of taxes. However, when under established trade practice any federal excise tax is included in the list price, a bidder may quote the list price and shall show separately the amount of federal tax, either as a flat sum or as a percentage of the list price, which shall be deducted by the County. Fairfax County's Federal Excise Tax Exemption Number is 54-74-0127K. Contractors located outside the Commonwealth of Virginia are advised that when materials are picked up by the County at their place of business, they may charge and collect their own local/state sales tax. Materials used in the performance of construction contracts are subject to Virginia Sales/Use Tax as described in Section 630-10-27J of the Virginia Retail Sales and Use Tax Regulations.

GENERAL CONDITIONS AND INSTRUCTIONS TO BIDDERS

19. PROHIBITION AGAINST UNIFORM PRICING-The County Purchasing Agent shall encourage open and competitive bidding by all possible means and shall endeavor to obtain the maximum degree of open competition on all purchase transactions using the competitive sealed bidding, competitive negotiation, or open market methods of procurement. In submitting a bid each bidder shall, by virtue of submitting a bid, guarantee that he or she has not been a party with other bidders to an agreement to bid a fixed or uniform price. Violation of this implied guarantee shall render void the bids of participating bidders. Any disclosure to or acquisition by a competitive bidder, in advance of the opening of the bids, of the terms or conditions of the bid submitted by another competitor may render the entire proceedings void and may require re-advertising for bids.

SPECIFICATIONS

20. QUESTIONS CONCERNING SPECIFICATIONS-Any information relative to interpretation of specifications and drawings shall be requested of the Purchasing Agent, in writing, in ample time before the opening of bids. No inquiries, if received by the Purchasing Agent within five (5) days of the date set for the opening of bids, will be given any consideration. Any material interpretation of a specification, as determined by the County Purchasing Agent, will be expressed in the form of an addendum to the specification which will be sent to all prospective bidders no later than three (3) days before the date set for receipt of bids. Oral answers will not be authoritative.

21. BRAND NAME OR EQUAL ITEMS-Unless otherwise provided in the invitation for bid, the name of a certain brand, make or manufacturer does not restrict bidders to the specific brand, make or manufacturer named; it conveys the general style, type, character, and quality of the article desired, and any article which the County in its sole discretion determines to be the equal of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted.

22. FORMAL SPECIFICATIONS-When a solicitation contains a specification which states no substitutes, no deviation therefrom will be permitted and the bidder will be required to furnish articles in conformity with that specification.

The bidder shall abide by and comply with the true intent of the specifications and not take advantage of any unintentional error or omission, but shall fully complete every part as the true intent and meaning of the specifications and drawings. Whenever the mention is made of any articles, material, or workmanship to be in accordance with laws, ordinances, building codes, underwriter's codes, A.S.T.M. regulations or similar expressions, the requirements of these laws, ordinances, etc., shall be construed as to the minimum requirements of these specifications.

23. FEDERAL SPECIFICATIONS-Any Federal Specifications referred to herein may be obtained from the GSA Federal Supply Service Bureau - Specification Section, 470 East L'Enfant Plaza, S.W., Suite #8100, Washington, D.C. 20407 (Voice: 1-202-619-8925, Fax: 1-202-619-8978).

AWARD

24. AWARD OR REJECTION OF BIDS-The Purchasing Agent shall award the contract to the lowest responsive and responsible bidder complying with all provisions of the IFB, provided the bid price is reasonable and it is in the best interest of the County to accept it. Awards made in response to a RFP will be made to the highest qualified offeror whose proposal is determined, in writing, to be the most advantageous to the County taking into consideration the evaluation factors set forth in the RFP. The Purchasing Agent reserves the right to award a contract by individual items, in the aggregate, or in combination thereof, or to reject any or all bids and to waive any informality in bids received whenever such rejection or waiver is in the best interest of the County. Award may be made to as many bidders as deemed necessary to fulfill the anticipated requirements of Fairfax County. The Purchasing Agent also reserves the right to reject the bid of a bidder deemed to be a non-responsible bidder.

In determining the responsibility of a bidder, the following criteria will be considered:

a. The ability, capacity and skill of the bidder to perform the contract or provide the service required;
b. Whether the bidder can perform the contract or provide the service promptly, or within the time specified, without delay or interference;
c. The character, integrity, reputation, judgment, experience and efficiency of the bidder;
d. The quality of performance of previous contracts or services;
e. The previous and existing compliance by the bidder with laws and ordinances relating to the contract or services;
f. The sufficiency of the financial resources and ability of the bidder to perform the contract or provide the service;
g. The quality, availability and adaptability of the goods or services to the particular use required;
h. The ability of the bidder to provide future maintenance and service for the use of the subject of the contract;
i. The number and scope of the conditions attached to the bid;
j. Whether the bidder is in arrears to the County on debt or contract or is a defaulter on surety to the County or whether the bidder's County taxes or assessments are delinquent; and
k. Such other information as may be secured by the County Purchasing Agent having a bearing on the decision to award the contract. If an apparent low bidder is not awarded a contract for reasons of nonresponsibility, the County Purchasing Agent shall so notify that bidder and shall have recorded the reasons in the contract file.

25. NOTICE OF ACCEPTANCE/CONTRACT DOCUMENTS-A written award (or Acceptance Agreement) mailed (or otherwise furnished) to the successful bidder within the time for acceptance specified in the solicitation shall be deemed to result in a binding contract. The following documents which are included in the solicitation shall be incorporated by reference in the resulting contract and become a part of said contract:

a. County of Fairfax Solicitation Form/Acceptance Agreement (Cover Sheet) and other documents which may be incorporated by reference, if applicable,

GENERAL CONDITIONS AND INSTRUCTIONS TO BIDDERS

b. General Conditions and Instructions to Bidders,
c. Special Provisions and Specifications,
d. Pricing Schedule,
e. Any Addenda/Amendments/Memoranda of Negotiations

26. TIE-BIDS – If all bids are for the same total amount or unit price (including authorized discounts and delivery times), and if the public interest will not permit the delay of readvertisement for bids, the County Purchasing Agent is authorized to award the contract to the resident Fairfax County tie bidder whose firm has its principal place of business in the County, or if there be none, to the resident Virginia tie bidder, or if there be none, to one of the tie bidders by drawing lots in public; or the County Purchasing Agent may purchase the goods or services in the open market except that the price paid shall not exceed the lowest contract bid price submitted for the same goods or services. The decision of the County to make award to one or more such bidders shall be final.

27. PROMPT PAYMENT DISCOUNT-

a. Unless otherwise specified in the solicitation, prompt payment discounts requiring payment in less than fifteen (15) days will not be considered in evaluating a bid for award. However, even though not considered in the evaluation, such discounts will be taken if payment is to be made within the discount period.

b. In connection with any discount offered, time will be computed from the date of delivery of the supplies to the carrier when delivery, inspection and acceptance are at the point of origin; or, from date of delivery, inspection and acceptance at destination; or, from date correct invoice or voucher is received in the office specified by the County, if the latter is later than the date of acceptance. In the event the bidder does not indicate a prompt payment discount, it shall be construed to mean NET 30 days.

For the purpose of earning the discount, payment is deemed to be made as of the date of mailing of the County check or issuance of an Electronic Funds Transfer.

28. INSPECTION-ACCEPTANCE-For determining acceptance of supplies in accordance with the provisions of the prompt payment discount paragraph, inspection and acceptance shall be accomplished only after examination (including testing) of supplies and services to determine whether the supplies and services conform to the contract requirements. Acceptance shall occur only after receipt and inspection provided such inspection, as appropriate, is accomplished within a reasonable time.

29. DEFINITE BID QUANTITIES-Where definite quantities are specifically stated, acceptance will bind the County to order quantities specified and to pay for, at contract prices, all such supplies or services delivered that meet specifications and conditions of the contract. However, the County will not be required to accept delivery of any balances unordered, as of the contract expiration date, unless the Contractor furnished the Purchasing Agent with a statement of unordered balances not later than ten (10) days after the termination date of the contract.

30. REQUIREMENT BID QUANTITIES-On "Requirement" bids, acceptance will bind the County to pay for, at unit bid prices, only quantities ordered and delivered. Where the County specifies estimated quantities, the Contractor shall not be required to deliver more than ten (10) percent in excess of the estimated quantity of each item, unless otherwise agreed upon.

CONTRACT PROVISIONS

31. TERMINATION OF CONTRACTS-Contracts will remain in force for full periods specified and/or until all articles ordered before date of termination shall have been satisfactorily delivered and accepted and thereafter until all requirements and conditions shall have been met, unless:

a. Terminated prior to expiration date by satisfactory deliveries of entire contract requirements, or upon termination by the County for Convenience or Cause.

b. Extended upon written authorization of the Purchasing Agent and accepted by Contractor, to permit ordering of unordered balances or additional quantities at contract prices and in accordance with contract terms.

32. TERMINATION FOR CONVENIENCE-A contract may be terminated in whole or in part by the County in accordance with this clause whenever the County Purchasing Agent shall determine that such a termination is in the best interest of the County. Any such termination shall be effected by delivery to the Contractor at least five (5) working days prior to the termination date of a Notice of Termination specifying the extent to which performance shall be terminated and the date upon which termination becomes effective. An equitable adjustment in the contract price shall be made for completed service, but no amount shall be allowed for anticipated profit on unperformed services.

33. TERMINATION OF CONTRACT FOR CAUSE-

a. If, through any cause, the Contractor shall fail to fulfill in a timely and proper manner his or her obligations under this contract, or if the Contractor violates any of the covenants, agreements, or stipulations of this contract, in addition to the County's remedies under the contract and all other rights available at law or in equity, the County shall have the right to immediately terminate this contract. Such termination shall be effected by delivering a notice of termination to the Contractor at any time specifying the effective date of such termination. In such event all finished or unfinished documents, data, studies, surveys, drawings, maps, models, and reports prepared by the Contractor under the contract shall, at the option of the County, become its property and the Contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents.

b. Notwithstanding the above, the Contractor shall not be relieved of liability to the County for damages sustained by the County by virtue of any breach of contract by the Contractor for the purpose of set off until such time as the exact amount of damages due to the County from the Contractor is determined.

34. CONTRACT ALTERATIONS-No alterations in the terms of a contract shall be valid or binding upon the County unless made in writing and signed by the Purchasing Agent or his or her authorized agent.

35. SUBLETTING OF CONTRACT OR ASSIGNMENT OF CONTRACT FUNDS-It is mutually understood and agreed that the Contractor shall not assign, transfer, convey, sublet or otherwise dispose of his or her contractual duties to any other person, firm or corporation, without the previous written consent of the Purchasing Agent. If the Contractor desires to assign his or her right to payment of the contract, Contractor shall notify the Purchasing Agent immediately, in writing, of such assignment of right to payment. In no case shall such assignment of contract relieve the Contractor from his or her obligations or change the terms of the contract.

36. FUNDING-A contract shall be deemed binding only to the extent of appropriations available to each Agency for the purchase of goods and services.

37. DELIVERY/SERVICE FAILURES-Failure of a Contractor to deliver goods or services within the time specified, or within reasonable time as interpreted by the Purchasing Agent, or failure to make replacements/corrections of rejected articles/services when so requested, immediately or as directed by the Purchasing Agent, shall constitute authority for the Purchasing Agent to purchase in the open market articles/services of comparable grade/quality to replace the services, articles rejected, and/or not delivered. On all such purchases, the Contractor shall reimburse the County, within a reasonable time specified by the Purchasing Agent, for any expense incurred in excess of contract prices. Such purchases shall be deducted from the contract quantities if applicable. Should public necessity demand it, the County reserves the right to use or consume articles delivered or services performed which are substandard in quality, subject to an adjustment in price to be determined by the Purchasing Agent.

38. NON-LIABILITY-The Contractor shall not be liable in damages for delay in shipment or failure to deliver when such delay or failure is the result of fire, flood, strike, the transportation carrier, act of God, act of Government, act of an alien enemy or by any other circumstances which, in the Purchasing Agent's opinion, are beyond the control of the Contractor. Under such circumstances, however, the Purchasing Agent may, at his or her discretion, cancel the contract.

39. NEW GOODS, FRESH STOCK-All Contractors, unless otherwise specifically stated, shall provide new commodities, fresh stock, latest model, design or pack.

40. NON-DISCRIMINATION-During the performance of this contract, the Contractor agrees as follows:

a. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.

b. The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state that such Contractor is an equal opportunity employer.

c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.

d. The Contractor will include the provisions of the foregoing paragraphs a, b, and c above in every subcontract or purchase order of over $10,000 so that the provisions will be binding upon each subcontractor or vendor.

e. Contractor and Subcontractor hereunder shall, throughout the term of this contract, comply with the Human Rights Ordinance, Chapter 11 of the Code of the County of Fairfax, Virginia, as reenacted or amended.

41. SMALL AND MINORITY BUSINESS UTILIZATION

a. It is the policy of the County of Fairfax as declared by the Fairfax County Board of Supervisors' adoption of a Small and Minority Business Enterprise Program, April 6, 1981, that Fairfax County and its employees undertake every effort to increase opportunity for utilization of small or minority businesses in all aspects of procurement to the maximum extent feasible.

b. Where it is practicable for any portion of the awarded contract to be subcontracted to other suppliers, the contractor is encouraged to offer such subcontracting opportunities to small, women and minority businesses.

c. Where Federal grants or monies are involved it is the policy of Fairfax County, through its agents and employees, to comply with the requirements set forth in the U.S. Office of Management and Budget Circular No. A-102, uniform administrative requirements for Grants and Cooperative Agreements with State and Local Governments, as they pertain to small and minority business utilization.

42. GUARANTEES & WARRANTIES-All guarantees and warranties required shall be furnished by the Contractor and shall be delivered to the Purchasing Agent before final payment on the contract is made. Unless otherwise stated, manufacturer's standard warranty applies.

GENERAL CONDITIONS AND INSTRUCTIONS TO BIDDERS

43. PRICE REDUCTION-If at any time after the date of the bid the Contractor makes a general price reduction in the comparable price of any material covered by the contract to customers generally, an equivalent price reduction based on similar quantities and/or considerations shall apply to this contract for the duration of the contract period (or until the price is further reduced). Such price reduction shall be effective at the same time and in the same manner as the reduction in the price to customers generally. For purpose of this provision, a "general price reduction" shall mean any horizontal reduction in the price of an article or service offered (1) to Contractor's customers generally, or (2) in the Contractor's price schedule for the class of customers, i.e., wholesalers, jobbers, retailers, etc., which was used as the basis for bidding on this solicitation. An occasional sale at a lower price, or sale of distressed merchandise at a lower price, would not be considered a "general price reduction" under this provision. The Contractor shall submit his or her invoice at such reduced prices indicating on the invoice that the reduction is pursuant to the "Price Reduction" provision of the contract documents. The Contractor in addition will within ten days of any general price reduction notify the Purchasing Agent of such reduction by letter. FAILURE TO DO SO MAY REQUIRE TERMINATION OF THE CONTRACT. Upon receipt of any such notice of a general price reduction, all ordering offices will be duly notified by the Purchasing Agent.

The Contractor, if requested, shall furnish, within ten days after the end of the contract period, a statement certifying either (1) that no general price reduction, as defined above, was made after the date of the bid, or (2) if any such general price reductions were made, that as provided above, they were reported to the Purchasing Agent within ten (10) days and ordering offices were billed at the reduced prices. Where one or more such general price reductions were made, the statement furnished by the Contractor shall include with respect to each price reduction (1) the date when notice of any such reduction was issued, (2) the effective date of the reduction, and (3) the date when the Purchasing Agent was notified of any such reduction.

44. CHANGES-Should it become proper or necessary in the execution of this contract to make any change in design, or to make any alterations which will increase the expense, the Purchasing Agent shall determine an equitable adjustment. No payment shall be made to the Contractor for any extra material or services, or of any greater amount of money than stipulated to be paid in the contract, unless some changes in or additions to the contract requiring additional outlay by the Contractor shall first have been expressly authorized and ordered in writing by contract amendment or otherwise furnished by the Purchasing Agent.

45. PLACING OF ORDERS-Orders against contracts will be placed with the Contractor on a Purchase Order (or Procurement Card) executed and released by the Purchasing Agent or his or her designee. The Purchase Order must bear the appropriate contract number and date. Where Blanket Purchase Agreements (BPAs) have been executed and a Blanket Purchase Order has been released by the Purchasing Agent, telephonic orders may be placed directly with the Contractor by authorized personnel in the ordering Agency.

DELIVERY PROVISIONS

46. SHIPPING INSTRUCTIONS - CONSIGNMENT-Unless otherwise specified in the solicitation each case, crate, barrel, package, etc., delivered under the contract must be plainly stenciled or securely tagged, stating the Contractor's name, purchase order number, and delivery address as indicated in the order. Where shipping containers are to be used, each container must be marked with the purchase order number, name of the Contractor, the name of the item, the item number, and the quantity contained therein. Deliveries must be made within the hours of 8:00 AM - 3:00 PM. Deliveries at any other time will not be accepted unless specific arrangements have been previously made with the receiver at the delivery point. No deliveries will be accepted on Saturdays, Sundays and holidays, unless previous arrangements have been made. It shall be the responsibility of the Contractor to insure compliance with these instructions for items that are drop-shipped.

47. RESPONSIBILITY FOR SUPPLIES TENDERED-Unless otherwise specified in the solicitation, the Contractor shall be responsible for the materials or supplies covered by the contract until they are delivered at the designated point, but the Contractor shall bear all risk on rejected materials or supplies after notice of rejection. Rejected materials or supplies must be removed by and at the expense of the Contractor promptly after notification of rejection, unless public health and safety require immediate destruction or other disposal of rejected delivery. If rejected materials are not removed by the Contractor within ten (10) days after date of notification, the County may return the rejected materials or supplies to the Contractor at his or her risk and expense or dispose of them as its own property.

48. INSPECTIONS-Inspection and acceptance of materials or supplies will be made after delivery at destinations herein specified unless otherwise stated. If inspection is made after delivery at destination herein specified, the County will bear the expense of inspection except for the value of samples used in case of rejection. Final inspection shall be conclusive except in regard to latent defects, fraud or such gross mistakes as to amount to fraud. Final inspection and acceptance or rejection of the materials or supplies will be made as promptly as practicable, but failure to inspect and accept or reject materials or supplies shall not impose liability on the County for such materials or supplies as are not in accordance with the specifications.

49. COMPLIANCE-Delivery must be made as ordered and in accordance with the solicitation or as directed by the Purchasing Agent when not in conflict with the bid. The decision of the Purchasing Agent as to reasonable compliance with delivery terms shall be final. Burden of proof of delay in receipt of goods by the purchaser shall rest with the Contractor. Any request for extension of time of delivery from that specified must be approved by the Purchasing Agent, such extension applying only to the particular item or shipment affected. Should the Contractor be delayed by the County, there shall be added to the time of completion a time equal to the period of such delay caused by the County. However, the contractor shall not be entitled to claim damages or extra compensation for such delay or suspension. These conditions may vary for construction contracts. See Special Provisions for the individual solicitation.

50. POINT OF DESTINATION-All materials shipped to the County must be shipped F.O.B. DESTINATION unless otherwise stated in the contract or purchase order. The materials must be delivered to the "Ship to" address indicated on the purchase order.

51. ADDITIONAL CHARGES-Unless bought F.O.B. "shipping point" and Contractor prepays transportation, no delivery charges shall be added to invoices except when express delivery is authorized and substituted on orders for the method specified in the contract. In such cases, difference between freight or mail and express charges may be added to invoice.

GENERAL CONDITIONS AND INSTRUCTIONS TO BIDDERS

52. METHOD AND CONTAINERS-Unless otherwise specified, goods shall be delivered in commercial packages in standard commercial containers, so constructed as to ensure acceptance by common or other carrier for safe transportation to the point of delivery. Containers become the property of the County unless otherwise specified by bidder.

53. WEIGHT CHECKING-Deliveries shall be subject to re-weighing over official sealed scales designated by the County. Payments shall be made on the basis of net weight of materials delivered. Normal shrinkage may be allowed in such instances where shrinkage is possible. Net weights only, exclusive of containers or wrapping, shall be paid for by the County.

54. DEMURRAGE AND RE-SPOTTING-The County will be responsible for demurrage charges only when such charges accrue because of the County's negligence in unloading the materials. The County will pay railroad charges due to the re-spotting of cars, only when such re-spotting is ordered by the County.

55. REPLACEMENT-Materials or components that have been rejected by the Purchasing Agent, in accordance with the terms of a contract, shall be replaced by the Contractor at no cost to the County.

56. PACKING SLIPS OR DELIVERY TICKETS-All shipments shall be accompanied by Packing Slips or Delivery Tickets and shall contain the following information for each item delivered:

1. The Purchase Order Number,
2. The Name of the Article and Stock Number (Supplier's),
3. The Fairfax County Identification Number (FCIN), if specified in the order,
4. The Quantity Ordered,
5. The Quantity Shipped,
6. The Quantity Back Ordered,
7. The Name of the Contractor.

Contractors are cautioned that failure to comply with these conditions shall be considered sufficient reason for refusal to accept the goods.

BILLING

57. BILLING-Billing for the Fairfax County Public Schools and for County agencies: Unless otherwise specified on the contract or purchase order (PO), invoices are to be submitted, in DUPLICATE, for each purchase order immediately upon completion of the shipment or services. If shipment is made by freight or express, the original Bill of Lading, properly receipted, must be attached to the invoice. Invoices should be mailed to the "BILL TO" address on the PO or to the appropriate address specified in the contract.

PAYMENTS

58. PAYMENT-Payment shall be made after satisfactory performance of the contract, in accordance with all of the provisions thereof, and upon receipt of a properly completed invoice. Fairfax County reserves the right to withhold any or all payments or portions thereof for Contractor's failure to perform in accordance with the provision of the contract or any modifications thereto.

59. PARTIAL PAYMENTS-Unless otherwise specified, partial payments will be made upon acceptance of materials or services so invoiced if in accordance with completion date. However, up to 5 percent (5%) of the value of the entire order may be retained until completion of contract.

60. PAYMENT FOR EQUIPMENT, INSTALLATION, AND TESTING-When equipment requires installation (which shall also be interpreted to mean erection and/or setting up or placing in position, service, or use) and test, and where such installation or testing is delayed, payment may be made on the basis of 50% of the contract price when such equipment is delivered on the site. A further allowance of 25% may be made when the equipment is installed and ready for test. The balance shall be paid after the equipment is tested and found to be satisfactory. If the equipment must be tested, but installation is not required to be made by the Contractor or if the equipment must be installed but testing is not required, payment may be made on the basis of 75% at the time of delivery and the balance shall be paid after satisfactory test or installation is completed.

GENERAL

61. GENERAL GUARANTY-Contractor agrees to:

a. Save the County, its agents and employees harmless from liability of any nature or kind for the use of any copyrighted or uncopyrighted composition; secret process, patented or unpatented; invention; article or appliance furnished or used in the performance of a contract for which the Contractor is not the patentee, assignee, licensee or owner.
b. Protect the County against latent defective material or workmanship and to repair or replace any damages or marring occasioned in transit or delivery.
c. Furnish adequate protection against damage to all work and to repair damages of any kind to the building or equipment, to his or her own work or to the work of other contractors, for which his or her workers are responsible.
d. Pay for all permits, licenses and fees and give all notices and comply with all laws, ordinances, rules and regulations of the County.
e. Protect the County from loss or damage to County owned property while it is in the custody of the Contractor.

GENERAL CONDITIONS AND INSTRUCTIONS TO BIDDERS

62. SERVICE CONTRACT GUARANTY-Contractor agrees to:

a. Furnish services described in the solicitation and resultant contract at the times and places and in the manner and subject to conditions therein set forth provided that the County may reduce the said services at any time.
b. Enter upon the performance of services with all due diligence and dispatch, assiduously press to its complete performance, and exercise therein the highest degree of skill and competence.
c. All work and services rendered in strict conformance to all laws, statues, and ordinances and the applicable rules, regulations, methods and procedures of all government boards, bureaus, offices and other agents.
d. Allow services to be inspected or reviewed by an employee of the County at any reasonable time and place selected by the County. Fairfax County shall be under no obligation to compensate Contractor for any services not rendered in strict conformity with the contract.
e. Stipulate that the presence of a County Inspector shall not lessen the obligation of the Contractor for performance in accordance with the contract requirements, or be deemed a defense on the part of the Contractor for infraction thereof. The Inspector is not authorized to revoke, alter, enlarge, relax, or release any of the requirements of the contract documents. Any omission or failure on the part of the Inspector to disapprove or reject any work or material shall not be construed to be an acceptance of any such defective work or material. Notification of an omission or failure will be documented by the Purchasing Agent.

63. INDEMNIFICATION-Contractor shall indemnify, keep and save harmless the County, its agents, officials, employees and volunteers against claims of injuries, death, damage to property, theft, patent claims, suits, liabilities, judgments, cost and expenses which may otherwise accrue against the County in consequence of the granting of a contract or which may otherwise result therefrom, if it shall be determined that the act was caused through negligence or error, or omission of the Contractor or his or her employees, or that of the subcontractor or his or her employees, if any; and the Contractor shall, at his or her own expense, appear, defend and pay all charges of attorneys and all costs and other expenses arising therefrom or incurred in connection therewith; and if any judgment shall be rendered against the County in any such action, the Contractor shall, at his or her own expense, satisfy and discharge the same. Contractor expressly understands and agrees that any performance bond or insurance protection required by this contract, or otherwise provided by the Contractor, shall in no way limit the responsibility to indemnify, keep and save harmless and defend the County as herein provided.

64. OFFICIALS NOT TO BENEFIT-

a. Each bidder or offeror shall certify, upon signing a bid or proposal, that to the best of his or her knowledge no Fairfax County official or employee having official responsibility for the procurement transaction, or member of his or her immediate family, has received or will receive any financial benefit of more than nominal or minimal value relating to the award of this contract. If such a benefit has been received or will be received, this fact shall be disclosed with the bid or proposal or as soon thereafter as it appears that such a benefit will be received. Failure to disclose the information prescribed above may result in suspension or debarment, or rescission of the contract made, or could affect payment pursuant to the terms of the contract.
b. Whenever there is reason to believe that a financial benefit of the sort described in paragraph "a" has been or will be received in connection with a bid, proposal or contract, and that the contractor has failed to disclose such benefit or has inadequately disclosed it, the County Executive, as a prerequisite to payment pursuant to the contract, or at any other time, may require the Contractor to furnish, under oath, answers to any interrogatories related to such possible benefit.
c. In the event the bidder or offeror has knowledge of benefits as outlined above, this information should be submitted with the bid or proposal. If the above does not apply at time of award of contract and becomes known after inception of a contract, the bidder or offeror shall address the disclosure of such facts to the Fairfax County Purchasing Agent, 12000 Government Center Parkway, Suite 427, Fairfax, Virginia 22035-0013. Relevant Invitation/Request for Proposal Number (see cover sheet) should be referenced in the disclosure.

65. LICENSE REQUIREMENT-All firms doing business in Fairfax County, shall obtain a license as required by Chapter 4, Article 7, of The Code of the County of Fairfax, Virginia, as amended, entitled "Business, Professional and Occupational Licensing (BPOL) Tax." Questions concerning the BPOL Tax should be directed to the Department of Tax Administration, telephone (703) 222-8234 or visit: http://www.fairfaxcounty.gov/dta/business_tax.htm. The BPOL Tax number must be indicated in the space provided on the Cover Sheet, "Fairfax License Tax No." when appropriate.

66. AUTHORIZATION TO CONDUCT BUSINESS IN THE COMMONWEALTH: A contractor organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the *Code of Virginia* or as otherwise required by law. Any business entity described above that enters into a contract with a Fairfax County pursuant to the Fairfax County Purchasing Resolution shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required under Title 13.1 or Title 50, to be revoked or cancelled at any time during the term of the contract. Fairfax County may void any contract with a business entity if the business entity fails to remain in compliance with the provisions of this section.

67. COVENANT AGAINST CONTINGENT FEES-The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For violation of this warranty, the County shall have the right to terminate or suspend this contract without liability to the County or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

68. VIRGINIA FREEDOM OF INFORMATION ACT-All proceedings, records, contracts and other public records relating to procurement transactions shall be open to the inspection of any citizen, or any interested person, firm or corporation, in accordance with the Virginia Freedom of Information Act (Reference Section 4.D., of the Fairfax County Purchasing Resolution)

BIDDER/CONTRACTOR REMEDIES

69. INELIGIBILITY-

a. Any person or firm suspended or debarred from participation in County procurement shall be notified in writing by the County Purchasing Agent.

1. The Notice of Suspension shall state the reasons for the actions taken and such decision shall be final unless the person or firm appeals within thirty (30) days of receipt of the Notice by instituting legal action as provided in the Code of Virginia.

2. The Notice of Debarment shall state the reasons for the actions taken and the decision shall be final unless the person or firm appeals within thirty (30) days of receipt of the notice by instituting legal action as provided in the Code of Virginia.

b. The County Purchasing Agent shall have the authority to suspend or debar a person or firm from bidding on any contract for the causes stated below:

1. Conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;

2. Conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a County contractor;

3. Conviction under the state or federal antitrust statutes arising out of the submission of bids or proposals;

4. Violation of contract provisions, as set forth below, of a character which is regarded by the County Purchasing Agent to be so serious as to justify suspension or debarment action:

(a) failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or
(b) a recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts; provided, that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for suspension or debarment;

5. Any other cause the County Purchasing Agent determines to be so serious and compelling as to affect responsibility as a contractor, such as debarment by another governmental entity for any cause listed herein, or because of prior reprimands;

6. The contractor has abandoned performance or been terminated for default on any other Fairfax County project;

7. The contractor is in default on any surety bond or written guarantee on which Fairfax County is an obligee.

c. If, upon appeal, it is determined that the action taken by the County Purchasing Agent was arbitrary or capricious, or not in accordance with the Constitution of Virginia, statutes or regulations, the sole relief available to the person or firm shall be restoration of eligibility. The person or firm may not institute legal action until all statutory requirements have been met.

70. APPEAL OF DENIAL OF WITHDRAWAL OF BID-

a. A decision denying withdrawal of a bid submitted by a bidder or offeror shall be final and conclusive unless the bidder appeals the decision within ten (10) days after receipt of the decision by instituting legal action as provided in the Code of Virginia. The bidder or offeror may not institute legal action until all statutory requirements have been met.

b. If no bid bond was posted, a bidder refused withdrawal of bid under the provisions of Article 2, Section 4 a.9, of the Fairfax County Purchasing Resolution, prior to appealing, shall deliver to the County a certified check or cash bond in the amount of the difference between the bid sought to be withdrawn and the next low bid. Such security shall be released only upon a final determination that the bidder was entitled to withdraw the bid.

c. If, upon appeal, it is determined that the decision refusing withdrawal of the bid was arbitrary or capricious, the sole relief shall be withdrawal of the bid.

71. APPEAL OF DETERMINATION OF NONRESPONSIBILITY-

a. Any bidder who, despite being the apparent low bidder, is determined not to be a responsible bidder for a particular County contract shall be notified in writing by the County Purchasing Agent. Such notice shall state the basis for the determination, which shall be final unless the bidder appeals the decision within ten (10) days of receipt of the notice by instituting legal action as provided in the Code of Virginia. The bidder may not institute legal action until all statutory requirements have been met.

b. If, upon appeal, it is determined that the decision of the County Purchasing Agent was arbitrary or capricious and the award for the particular County contract in question has not been made, the sole relief available to the bidder shall be a finding that the bidder is a responsible bidder for the County contract in question. Where the award has been made and performance has begun, the County may declare the contract void upon a finding that this action is in the best interest of the public. Where a contract is declared void, the performing contractor shall be compensated for the cost of performance up to the time of such declaration. In no event shall the performing contractor be entitled to lost profits.

GENERAL CONDITIONS AND INSTRUCTIONS TO BIDDERS

72. PROTEST OF AWARD OR DECISION TO AWARD-

a. Any bidder or offeror may protest the award or decision to award a contract by submitting a protest in writing to the County Purchasing Agent, or an official designated by the County of Fairfax, no later than ten (10) days after the award or the announcement of the decision to award, whichever occurs first. Any potential bidder or offeror on a contract negotiated on a sole source or emergency basis who desires to protest the award or decision to award such contract shall submit such protest in the same manner no later than ten days after posting or publication of the notice of such contract as provided in Article 3, Section 4, of the Fairfax County Purchasing Resolution. However, if the protest of any actual or potential bidder or offeror depends in whole or in part upon information contained in public records pertaining to the procurement transaction which are subject to inspection under Article 2, Section 4d of the Fairfax County Purchasing Resolution, then the time within which the protest must be submitted shall expire ten days after those records are available for inspection by such bidder or offeror under Article 2, Section 4d, or at such later time as provided herein. No protest shall lie for a claim that the selected bidder or offeror is not a responsible bidder or offeror. The written protest shall include the basis for the protest and the relief sought. The County Purchasing Agent shall issue a decision in writing within ten (10) days of the receipt of the protest stating the reasons for the action taken. This decision shall be final unless the bidder or offeror appeals within ten (10) days of receipt of the written decision by instituting legal action as provided in the Code of Virginia.

b. If prior to award it is determined that the decision to award is arbitrary or capricious, then the sole relief shall be a finding to that effect. The County Purchasing Agent shall cancel the proposed award or revise it to comply with the law. If, after an award, it is determined that an award of a contract was arbitrary or capricious, then the sole relief shall be as hereinafter provided. Where the award has been made but performance has not begun, the performance of the contract may be declared void by the County. Where the award has been made and performance has begun, the County Purchasing Agent may declare the contract void upon a finding that this action is in the best interest of the County. Where a contract is declared void, the performing contractor shall be compensated for the cost of performance at the rate specified in the contract up to the time of such declaration. In no event shall the performing contractor be entitled to lost profits.

c. Pending final determination of a protest or appeal, the validity of a contract awarded and accepted in good faith in accordance with this article shall not be affected by the fact that a protest or appeal has been filed.

d. An award need not be delayed for the period allowed a bidder or offeror to protest, but in the event of a timely protest, no further action to award the contract will be taken unless there is a written determination that proceeding without delay is necessary to protect the public interest or unless the bid or offer would expire.

73. CONTRACTUAL DISPUTES-

a. Any dispute concerning a question of fact as a result of a contract with the County which is not disposed of by agreement shall be decided by the County Purchasing Agent, who shall reduce his decision to writing and mail or otherwise forward a copy thereof to the contractor within thirty (30) days. The decision of the County Purchasing Agent shall be final and conclusive unless the contractor appeals within six (6) months of the date of the final written decision by instituting legal action as provided in the Code of Virginia. A contractor may not institute legal action, prior to receipt of the public body's decision on the claim, unless the public body fails to render such decision within the time specified.

b. Contractual claims, whether for money or other relief, shall be submitted in writing no later than sixty days after final payment; however, written notice of the contractor's intention to file such claim shall have been given at the time of the occurrence or beginning of the work upon which the claim is based. Nothing herein shall preclude a contract from requiring submission of an invoice for final payment within a certain time after completion and acceptance of the work or acceptance of the goods. Pendency of claims shall not delay payment of amounts agreed due in the final payment.

74. LEGAL ACTION-No bidder, offeror, potential bidder or offeror, or contractor shall institute any legal action until all statutory requirements have been met.

75. COOPERATIVE PURCHASING-The County may participate in, sponsor, conduct or administer a cooperative procurement agreement on behalf of or in conjunction with one or more other public bodies, or public agencies or institutions or localities of the several states, of the United States or its territories, or the District of Columbia, for the purpose of combining requirements to increase efficiency or reduce administrative expenses in any acquisition of goods and services. Except for contracts for professional services, a public body may purchase from another public body's contract even if it did not participate in the request for proposal (RFP) or invitation for bid (IFB), if the RFP or IFB specified that the procurement was being conducted on behalf of other public bodies. Nothing herein shall prohibit the assessment or payment by direct or indirect means of any administrative fee that will allow for participation in any such arrangement.

76. PROFESSIONAL AFFILIATION-The Department of Purchasing & Supply Management holds membership in the National Institute of Governmental Purchasing, Inc., a non-profit, educational and technical organization that includes among its goals and objectives the study, discussion, and recommendation of improvements in governmental purchasing and the interchange of ideas and experiences on local state, and national governmental purchasing problems.

77. DRUG FREE WORKPLACE-During the performance of a contract, the contractor agrees to (i) provide a drug-free workplace for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract of over $10,000, so that the provisions will be binding upon each subcontractor or vendor. For the purposes of this section, "drug-free workplace" means a site for the performance of work done in conjunction with a specific contract awarded to a contractor in accordance with this section, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

GENERAL CONDITIONS AND INSTRUCTIONS TO BIDDERS

78. VENUE: **This contract and its terms, including, but not limited to, the parties' obligations under it, the performance due from each party under it, and the remedies available to each party for breach of it, shall be governed by, construed and interpreted in accordance with the laws of the Commonwealth of Virginia. Any jurisdiction's choice of law, conflict of laws, rules, or provisions, including those of the Commonwealth of Virginia, that would cause the application of any laws other than those of the Commonwealth of Virginia shall not apply. Any and all disputes, claims and causes of action arising out of or in connection with this contract or any performance hereunder, shall be brought in the applicable court of Fairfax County, Virginia, or in the United States District Court, Eastern District of Virginia, Alexandria Division.**

79. IMMIGRATION REFORM AND CONTROL ACT: Contractor certifies that it does not, and shall not during the performance of the contract for goods and services in the Commonwealth, knowingly employ an unauthorized alien as defined in the Federal Immigration Reform and Control Act of 1986.

80. CONTRACTOR NOT TO BENEFIT: Contractor agrees that the goods and/or services provided to Fairfax County pursuant to this Agreement are for the benefit of Fairfax County and that Contractor shall not undertake any actions or efforts stemming from or related to this Agreement that shall inure to the detriment of Fairfax County. Any information provided to the Contractor for the performance of this Contract shall not be used for any other purpose without the written consent of the Purchasing Agent.

APPROVED:

/S/ David P. Bobzien
COUNTY ATTORNEY

/S/ Cathy A. Muse
COUNTY PURCHASING AGENT

The following documents which are included in this Solicitation shall be incorporated by reference in the resulting contract and become a part of said contract:

A. County of Fairfax Cover Sheet (DPSM30)
B. Special Provisions & Specifications
C. Appendix A (General Conditions)
D. Appendix B (Pricing Schedule, Small Business Classification Schedule, Sample Jurisdiction Listing and Subcontractors Notification Form)

CONTACT FOR ADMINISTRATION:

NAME: _____

ADDRESS: (Office)_____

TELEPHONE/FAX: (Office)_____

E-MAIL:_____

PAY TO ADDRESS: (If different from Firm address on Cover Sheet)

_____

_____

BIDDER'S REQUEST FOR EQUAL PRODUCT OR
SUBSTITUTION AND BIDDER'S REPRESENTATIONS

FROM:_____

_____

_____

In submitting this Bid, the Bidder declares its intention to provide the following equal product or substitution in accordance with the Addendum No. and warrants that he has complied with requirements of Special Provisions, paragraph 7.

(Description) _____

_____

_____

_____

_____

The undersigned Bidder hereby represents and certifies the following:

1. He/she has investigated the proposed product or method and determined that it is equal or better in all respects to that specified and that is fully complies with all requirements of the Contract Documents;

2. He/she will meet all contract obligations with regard to this substitution;

3. He/she will coordinate installation of accepted substitutions into the work, making all such changes and any required schedule adjustments, at no additional cost to the Owner, as may be required for the work to be completed in all respects;

4. He/she waives all claims for additional costs and additional time related to substitutions that consequently become apparent. He also agrees to hold the Owner harmless for claims for extra costs and time incurred by other subcontractors and suppliers for changes or extra work that may, at some later date, be determined to be necessary in order for the work to function in the manner intended in the Contract Documents;

5. He/she will provide the same warranty and guarantee, and perform any work required in accordance therewith, for the substitution that is applicable to the specified item for which the substitution is requested;

BIDDER'S REQUEST FOR EQUAL PRODUCT OR SUBSTITUTION AND BIDDER'S REPRESENTATIONS - Continued

6. Material will be installed, handled, stored, adjusted, tested, and operated in accordance with the manufacturers' recommendation and as specified in the Contract Documents;

7. In all cases new materials shall be used unless this provision is waived by notice from the Owner or unless otherwise specified in the Contract Documents; and

8. All material and workmanship shall in every respect be in accordance with what in the opinion of the Owner is in conformity with approved modern practice.

Bidder _

_____

By: _____

Title: _____

State of _____
to wit:
County of_____

On the _____ day of _____, 20____ before me

personally came and appeared _____, to me known, who

by me duly sworn, did depose and say that he is the
_____ of the
_____;
that he has the authority to bind the above named firm; and he represents and certifies the foregoing statements are, to the best of his knowledge, true and complete.

_____
(SEAL)

My Commission expires

CERTIFICATION OF SAFETY VIOLATIONS:

NAME(S) OF INSTALLER(S) AND/OR SUBCONTRACTOR: (Re: Paragraph 8)

NAME: _____

ADDRESS: _____

_____

_____

TELEPHONE NUMBER(S): _____

LIST SAFETY VIOLATIONS (Reference paragraph 4 Special Provisions).

_____

_____

_____

If there were no safety violations list each state in which work was performed in past 3 (three) years (Ref. Paragraph 8.):

_____

_____

I hereby certify that the above information is correct to the best of my knowledge.

_____
Principal

State of _____)

County of _____)

On this _____ day of _____, 20__, after first being duly sworn, appeared before me, the undersigned Notary Public and executed the foregoing instrument and acknowledge to me that he executed the same as and for the act and deed of said firm.

(SEAL)_____
Notary Public

My commission expires: _____

PRICE SUMMARY: Provide all labor, materials & equipment

1. DIRECT LABOR (Specify labor categories)	**ESTIMATED HOURS**	**HOURLY RATE**	**ESTIMATED COST**	**TOTALS**
		$	$	
DIRECT LABOR TOTAL				$
2. INDIRECT COSTS (Specify indirect cost categories)	RATE	x BASE =	ESTIMATED COST	
	$		$	
DIRECT COST TOTAL				$
3. PROFIT (BLOCKS 1 + 2) x __%				$
4. OTHER DIRECT COSTS				
			ESTIMATED COST	
a. TRAVEL				
1. Transportation			$	
2. Per Diem			$	
(check current County Travel Policy)				
TRAVEL SUBTOTAL			$	
b. EQUIPMENT, MATERIALS, SUPPLIES (Specify categories)	QUANTITY	COST	ESTIMATED COST	

		$	$	
EQUIPMENT SUBTOTAL			$	
c. SUBCONTRACTS				
SUBCONTRACTS SUBTOTAL			$	
d. OTHER (Specify categories)	QUANTITY	COST	ESTIMATED COST	
			$	
OTHER SUBTOTALS			$	
OTHER DIRECT COSTS TOTAL				$
5. TOTAL PRICE				**$**

1. Direct Labor – Block One
    a. The offeror must provide labor classifications and the average hourly rates which will be paid for each classification expected to work on the project. This schedule shall not disclose employee names.
    b. Direct Labor costs are defined as actual salaries and wages paid principals and employees for time directly chargeable to the project. Direct labor costs do not include fringe benefits such as social security contributions, unemployment, excise and payroll taxes, workmen's compensation, health and retirement benefits, sick leave, vacation, holiday pay, etc.

2. Indirect Costs (Overhead) – Block Two
    a. Overhead costs shall include fringe benefits, indirect salaries and wages, plus general and administrative expenses.
    b. Overhead costs shall not include the following disallowable costs: bad debts, contingencies, donations, entertainment, fines and penalties, interest expense, marketing and promotion, legislative lobbying costs, defense of fraud, alcoholic beverages, and dividend distribution to employees. Indirect salaries must be salaries paid only to active employees and principals. Bonuses are generally allowed.

3. Profit – Block Three
    a. Fees or profits shall be expressed as a percentage of the Total Estimated Cost minus consultant costs.

4. Other Direct Costs – Block Four
    a. Travel: The costs of travel and transportation (County mileage rates) will be entered in blocks 4a (1) and (2). These items will be broken down into separate costs and rates associated with each item (i.e., mileage rates, airfare cost, vehicle rental fees, lodging and / or meal rates, County per diem, etc.). Lodging and / or meal rates shall be consistent with the County's current Travel Policy in effect at the time the proposal is submitted.
    b. Equipment, Materials, Supplies: Block 4b
    c. Subcontracts: Block 4c
    d. Other: Block 4d

5. Total Price: Block 5 is the sum of blocks 1, 2, 3, 4a, b, c, and d.

Completion time_____days after notification to proceed.

References: List below two (2) references for which you have performed similar contract work, within the past two (2) years.

Company: _____

Reference Individual
& Position Title: _____

Telephone Number: _____

Company: _____

Reference Individual
& Position Title: _____

Telephone Number: _____

BUSINESS, PROFESSIONAL AND OCCUPATIONAL LICENSE

All firms located or operating in Fairfax County must obtain a Business, Professional and Occupational License (BPOL) as required by Chapter 4, Article 7, of the Code of the County of Fairfax, Virginia. In order for the Department of Tax Administration to determine your BPOL requirement prior to contract award, it is necessary for you to provide the following information:

- If you currently have a Fairfax County business license, please submit a copy with your proposal.
- Do you have an office in: Virginia ☐ Yes ☐ No
  Fairfax County ☐ Yes ☐ No
- Date business began/will begin work in Fairfax County _____

Provide a detailed description of the business activity that will take place in Fairfax County. If business is located outside of Fairfax County, give the percentage of work actually to be done in the County.

_____
_____
_____
_____
_____
_____
_____

_____ _____
Signature Date

For Office Use Only:

- Company name and address: _____
  _____
- Amount of Contract Award $ _____
- Fairfax County Department : _____
- Department Contact _____ Phone No. _____
- Company Contact_____ Phone No. _____
- Nature of business_____

Complete and return this form or a copy of your current Fairfax County Business License with your bid. Contract award may not be made without it.

BUSINESS CLASSIFICATION

DEFINITIONS

Small Business – means a business, independently owned or operated by one or more individuals who are U.S. citizens or legal resident aliens, and together with affiliates, has 250 or fewer employees, or average annual gross receipts of $10 million or less averaged over the previous three years. One or more of the individual owners shall control both the management and daily business operations of the small business.

Minority-Owned Business - means a business concern that is at least 51% owned by one or more minority individuals who are U.S. citizens or legal resident aliens, or in the case of a corporation, partnership, or limited liability company or other entity, at least 51% of the equity ownership interest in the corporation, partnership, or limited liability company or other entity is owned by one or more minority individuals who are U.S. citizens or legal resident aliens, and both the management and daily business operations are controlled by one or more minority individuals.

YOU MUST CLASSIFY YOUR BUSINESS/ORGANIZATION BY MARKING THE APPROPRIATE BOXES ON THE COVER SHEET (DPSM 30) **This designation is required of all business/organizations including publicly traded corporations, non-profits, sheltered work shops, government organizations, partnerships, sole proprietorships, etc.**

COUNTY OF FAIRFAX
DEPARTMENT OF PURCHASING & SUPPLY MANAGEMENT
SMALL AND MINORITY BUSINESS ENTERPRISE PROGRAM (SMBEP)
12000 Government Center Parkway, Suite 427
Fairfax, Virginia 22035-0013
Fax: 703-324-3228

SUBCONTRACTOR (S) NOTIFICATION FORM

Contract Number/Title: _____
Prime Contractors Name: _____

Prime Contractor's Classification Code: _____(from Business Classification Schedule)

In accordance with the Subcontracting paragraph of the Special Provisions for the above-cited contract, you are required to provide the County with names, addresses, anticipated dollar amount and small/minority classification (use code numbers from previous page) of each first-tier subcontractor. Please complete this form and return it to this office with your bid package.

Please check here if you are not using a subcontractor: _____

SUBCONTRACTOR(S) NAME	STREET ADDRESS	CITY	STATE	ZIP CODE	ANTICIPATED DOLLAR AMOUNT	SMALL/MINORITY CLASSIFICATION

Complete and return this form with your bid. Contract award may not be made without it.

Appendix 8: Documentation of Consultation and Outreach

Fairfax County Department of Purchasing and Supply Management, Supplier Diversity

From: Estelle, Michael W.
Sent: Friday, December 05, 2014 2:30 PM
To: Riddle, Michael
Subject: RE: Disadvantaged Business Enterprise Program

Here is the list of contacts per our conversation:

Asian Chamber of Commerce – My Lan Tran, Director 804-502-8081, aabac@aabac.org

Asian American Chamber of Commerce – Dr. Cindy Shao, President - 703-752-6292, cindy@asian-americanchamber.org

Capital Region Minority Supplier Diversity Council – Jonice Adams - (301) 593-5860, jonice.adams@crmsdc.org

NoVA Black Chamber of Commerce – Brad Ryant, Vice Chairman - 703-879-2770

Hispanic Business Council – Angie Carrera 703-324-5371 rosario.carrera@fairfaxcounty.gov

Women Presidents' Educational Organization-DC - SANDRA EBERHARD, Executive Director 202-595-2628 sandra@womenpresidentsorg.com

Sincerely,
Michael Estelle

From: Riddle, Michael
Sent: Friday, December 05, 2014 2:13 PM
To: Estelle, Michael W.
Subject: Disadvantaged Business Enterprise Program

Michael,
Thanks for your time. I really appreciate you providing a list of organizations that I can reach out to help DOT develop a DBE policy.

Best,
Brent

Brent Riddle, Sr Transportation Planner, AICP
Coordination and Funding Division
Fairfax County Department of Transportation
Phone: (703) 877-5659 Fax: (703) 877-5723
Email: Michael.Riddle@fairfaxcounty.gov

Hispanic Business Council

From: Riddle, Michael
Sent: Wednesday, December 10, 2014 3:59 PM
To: Carrera, Angie
Subject: FW: Disadvantaged Business Enterprise Program

Angie,
It was a pleasure meeting you today. Below is the list of contacts that I received from Michael Estelle. I have heard back from Jonice Adams and My Lan Tran.

Brent

Capital Region Minority Supplier Development Council

From: Jonice Adams [mailto:jonice.adams@crmsdc.org]
Sent: Monday, December 15, 2014 11:31 AM
To: Riddle, Michael
Subject: RE: Fairfax County Department of Transportation Disadvantaged Business Enterprise Policy and Goals for FY15-17

Good morning Brent,

I look forward to meeting with you in our office on the 17th at 10:00 AM.

Jonice S. Adams
Vice President, Operations
Capital Region Minority Supplier Development Council (CRMSDC)

10750 Columbia Pike, Suite 200
Silver Spring, MD 20901
301-593-5862 – Office
301-593-1364 – Fax
Jonice.adams@crmsdc.org
www.crmsdc.org

From: Riddle, Michael [mailto:Michael.Riddle@fairfaxcounty.gov]
Sent: Monday, December 15, 2014 10:29 AM
To: Jonice Adams
Subject: RE: Fairfax County Department of Transportation Disadvantaged Business Enterprise Policy and Goals for FY15-17

Hi Jonice,
Wednesday, December 17, works fine for me. I am happy to meet you in your office. Shall we set the meeting for 10am?

Thanks,
Brent

From: Jonice Adams [mailto:jonice.adams@crmsdc.org]
Sent: Saturday, December 13, 2014 12:50 PM
To: Riddle, Michael
Subject: RE: Fairfax County Department of Transportation Disadvantaged Business Enterprise Policy and Goals for FY15-17

Good afternoon Brent,

Wednesday, December 17, is the best day for me. If you can, I would like to meet you at our Silver Spring office. I am available between 10:00 am and 1:00pm.

Jonice

From: Riddle, Michael
Sent: Tuesday, December 09, 2014 9:56 AM
To: 'Jonice Adams'
Subject: RE: Fairfax County Department of Transportation Disadvantaged Business Enterprise Policy and Goals for FY15-17

Hi Ms. Adams,
Thanks for your reply. As for this week, tomorrow or Friday are both wide open for me. I can meet anytime. Next week Monday afternoon from 3-5 is open and Tuesday and Wednesday are both clear. Hopefully, we can find a good date and time from those options.

Also, I see that your office is located in Silver Spring. I am happy to meet with you there, if you prefer, or we can meet here at the Department of Transportation offices in Fairfax.

I look forward to your response.

Regards,
Brent

From: Jonice Adams [mailto:jonice.adams@crmsdc.org]
Sent: Monday, December 08, 2014 6:01 PM
To: Riddle, Michael
Subject: RE: Fairfax County Department of Transportation Disadvantaged Business Enterprise Policy and Goals for FY15-17

Good afternoon Mr. Riddle,

I will be pleased to discuss the proposed DBE policy and goals with you. Please provide me with a few dates and times that we can meet.

Regards,

Jonice S. Adams
Vice President, Operations
Capital Region Minority Supplier Development Council (CRMSDC)

10750 Columbia Pike, Suite 200
Silver Spring, MD 20901
301-593-5862 – Office
301-593-1364 – Fax
Jonice.adams@crmsdc.org
www.crmsdc.org

From: Riddle, Michael [mailto:Michael.Riddle@fairfaxcounty.gov]
Sent: Monday, December 08, 2014 2:17 PM
To: Jonice Adams
Subject: Fairfax County Department of Transportation Disadvantaged Business Enterprise Policy and Goals for FY15-17

Dear Ms Adams,
Fairfax County Department of Transportation (FCDOT) is in the process of developing a revised Disadvantaged Business Enterprise (DBE) policy and goal for FY15-17. As part of this process, FCDOT is consulting with community organizations and contractor groups representing minority-owned firms which are knowledgeable about the availability of disadvantaged and non-disadvantaged businesses and the effects of discrimination on opportunities for DBEs.

I would appreciate the opportunity to meet with you in the next few weeks to discuss the proposed DBE policy and goals. Your feedback is important to our efforts to ensure that the DBE policy is effective. Thank you in advance for your assistance.

Sincerely,
Brent

Brent Riddle, Sr Transportation Planner, AICP
Coordination and Funding Division
Fairfax County Department of Transportation
Phone: (703) 877-5659 Fax: (703) 877-5723
Email: Michael.Riddle@fairfaxcounty.gov

Greater Washington Hispanic Chamber of Commerce

Dear Mr. Riddle,

Thank you for joining us on Tuesday. Please find below the information for the event. Please be there by 9:10am. If you have any questions or need anything you can contact me on my cell 202 340 5157.

New Member Morning Reception
Date: May 12, 2015
Time: 9:00 am - 11:00 am

Location:
Pepco Edison Place Gallery
702 8th St. NW
Washington, DC 20068

Best,

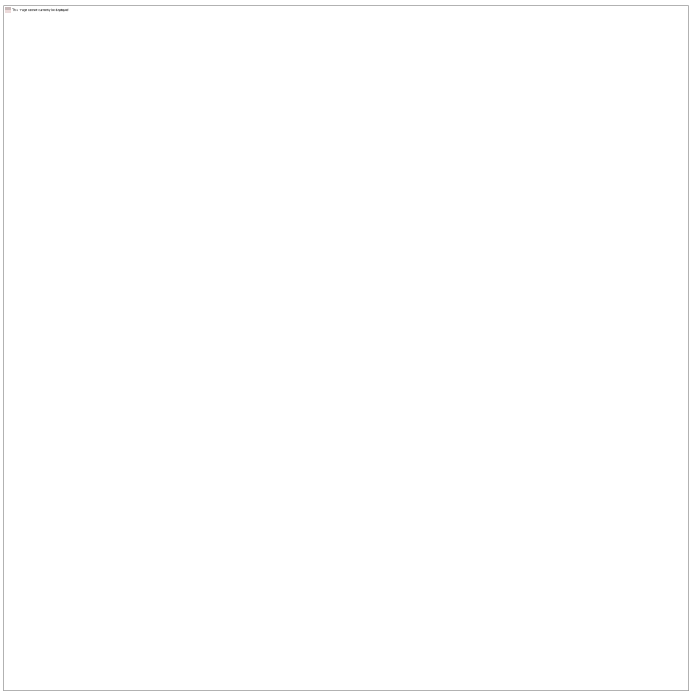
Pamela Nieto
Director of Marketing and Communications
Greater Washington Hispanic Chamber of Commerce
910 17th Street NW, Suite 1150 Washington DC, 20006 P: 202.728.0352.

On Wed, May 6, 2015 at 12:15 PM, Linda Mayo <lmayo@gwhcc.org> wrote:
Brent,

We are very appreciative of your commitment to our event. I am copying Pamela Nieto, our Director of Marketing and Communications, who will respond to your questions about the reception. I am attaching the invitation below.

We look forward to seeing you there!

Linda



Linda Mayo
Executive Assistant to the President & CEO
and Office Manager
GWHCC
910 17th Street, NW, Suite 1150
Washington, DC 20006
202.728.0352 (O)
240.994.2506 (C)

On Wed, May 6, 2015 at 8:42 AM, Riddle, Michael <Michael.Riddle@fairfaxcounty.gov> wrote:

Linda,
I am happy to attend the New Member Reception on May 12. Where is the event being held? What time do you anticipate me speaking? I have been asked to help out with another project from 6-9am, but GWHCC's event is more important. So, I will definitely be there. However, if I can manage both I would like to try.

Thanks,
Brent

From: Linda Mayo [mailto:lmayo@gwhcc.org]
Sent: Tuesday, May 05, 2015 4:23 PM
To: Riddle, Michael
Subject: BRENT RIDDLE TO SPEAK AT NEW MEMBER RECEPTION ON MAY 12TH

Dear Brent,

I just wanted to confirm that you will attend the New Member Reception on May 12th from 9-11am and speak briefly for 2 minutes?

I look forward hearing from you!

Linda

Linda Mayo
Executive Assistant to the President & CEO
and Office Manager
GWHCC
910 17th Street, NW, Suite 1150
Washington, DC 20006
202.728.0352 (O)
240.994.2506 (C)

---------- Forwarded message ----------
From: Linda Mayo <lmayo@gwhcc.org>
Date: Fri, Apr 17, 2015 at 4:51 PM
Subject: BRENT RIDDLE TO SPEAK FOR 2 MIN AT NEW MEMBER RECEPTION ON MAY 12TH
To: Pamela Nieto <pnieto@gwhcc.org>
Cc: Angela Franco <afranco@gwhcc.org>

Pam, Brent Riddle will speak at the next event briefly for 2 minutes. He spoke with Angela today.

Brent Riddle, Sr Transportation Planner
Coordination and Funding Division
Fairfax County Department of Transportation
Phone: (703) 877-5659 Fax: (703) 877-5723
Email: Michael.Riddle@fairfaxcounty.gov

Linda Mayo
Executive Assistant to the President & CEO
and Office Manager
GWHCC
910 17th Street, NW, Suite 1150
Washington, DC 20006
202.728.0352 (O)
240.994.2506 (C)

Virginia Hispanic Chamber of Commerce

From: Michel Zajur [zajur@vahcc.com]
Sent: Thursday, March 26, 2015 8:13 PM
To: Riddle, Michael
Cc: Carrera, Angie
Subject: Re: DBE email to GWHCC

Brent
Let's plan on talking tomorrow
by phone if that works then we can
meet in person in the very near future.
Best regards Michel

Sent from my iPhone

Michel Zajur
President/CEO
Virginia Hispanic Chamber of Commerce
WWW.VAHCC.COM
Cell. 804-306-4404

On Mar 26, 2015, at 1:11 PM, Riddle, Michael <Michael.Riddle@fairfaxcounty.gov> wrote:

Angie,
Thank you again for the introduction.

Dear Michel,
As Angie mentioned, I am trying to identify ways to promote participation of Disadvantaged Business Enterprises (DBEs) in Fairfax County Department of Transportation contracts. I would very much the opportunity to meet with you or speak over the phone to discuss how we might be able to assist one another. Feel free to email me or give me a call. My contact information is below.

Regards
Brent

Brent Riddle, Sr Transportation Planner
Coordination and Funding Division
Fairfax County Department of Transportation
Phone: (703) 877-5659 Fax: (703) 877-5723
Email: Michael.Riddle@fairfaxcounty.gov

Asian American Chamber of Commerce

Dear Dr. Shao,
Fairfax County Department of Transportation (FCDOT) is in the process of developing a revised Disadvantaged Business Enterprise (DBE) policy and goal for FY15-17. As part of this process, FCDOT is consulting with community organizations and contractor groups representing minority-owned firms which are knowledgeable about the availability of disadvantaged and non-disadvantaged businesses and the effects of discrimination on opportunities for DBEs.

I would appreciate the opportunity to meet with you in the next few weeks to discuss the proposed DBE policy and goals. Your feedback is important to our efforts to ensure that the DBE policy is effective. Thank you in advance for your assistance.

Sincerely,
Brent

Brent Riddle, Sr Transportation Planner, AICP
Coordination and Funding Division
Fairfax County Department of Transportation
Phone: (703) 877-5659 Fax: (703) 877-5723
Email: Michael.Riddle@fairfaxcounty.gov

Board Agenda Item
June 23, 2015

ACTION - 7

Approval of a Standard Project Agreement with the Northern Virginia Transportation Authority for the West Ox Bus Garage Phase II (Springfield District)

ISSUE:
Board of Supervisors' authorization for the Fairfax County Director of the Department of Transportation to sign a project funding agreement substantially in the form of Attachment 2 with the Northern Virginia Transportation Authority (NVTA) for $20 million in funding for construction of the West Ox Bus Garage Phase II project for the Fairfax Connector.

RECOMMENDATION:
The County Executive recommends that the Board approve a resolution (Attachment 1) authorizing the County Director of the Department of Transportation to execute a project funding agreement, in substantial form, with NVTA for $20 million in funding for the West Ox Garage Phase II (Attachment 2).

TIMING:
The Board of Supervisors should act on this item on June 23, 2015, so that NVTA can release funding for the West Ox Garage Phase II project.

BACKGROUND:
On January 28, 2014, the Board of Supervisors approved the Transportation Priorities Plan (TPP), which included the West Ox Garage Phase II project. That same day, the Board of Supervisors also approved staff's recommended project submissions for NVTA consideration for FY2015-2016 funding. On April 23, 2015, the NVTA approved its FY 2015-2016 Two-Year program, which included approximately $346 million for 37 projects across Northern Virginia. The program included $20 million for the West Ox Garage Phase II project. This project expands capacity of the West Ox bus facility, including the construction of nine maintenance bays, expanded and improved facilities for bus drivers and managers, and security enhancements. These improvements are necessary for facilitating increased Fairfax Connector bus service included in the TPP. The description sheet for this approved project is included as Attachment 3. The proposed SPA for the West Ox Garage Phase II project is included in Attachment 2.

HB 2313 (2013) directs the NVTA to use 70 percent of the revenue collected from the three Northern Virginia taxes and fees for (i) transportation projects selected by NVTA that are contained in the regional transportation plan or (ii) mass transit capital projects that increase capacity.

Board Agenda Item
June 23, 2015

To facilitate the implementation of the regionally funded projects, NVTA and jurisdictional staff developed a Standard Project Agreement (SPA) to govern the terms and conditions associated with the funding the Authority approves for these regional projects. The SPA is based on the requirements of HB 2313, but it also includes practical provisions associated with the implementation of the law and standard contract language. County staff was extensively involved in drafting this SPA, and in subsequently tailoring it for the West Ox Garage Phase II project.

The major provisions of the SPA provide that the County will:

- Perform work in accordance with all applicable federal, state, and local laws and regulations, the SPA and the Project Description Sheet;
- Perform or have performed all environmental work, right-of-way acquisition, construction, contract administration, testing services, inspection services, or capital asset acquisition necessary to complete the project;
- Update project cash flow requirements periodically;
- Provide requests for payment consistent with the approved cash flow for a project on standard requisition forms;
- Notify NVTA's Executive Director of any additional project costs resulting from unanticipated circumstances. NVTA will decide whether to fund these additional costs, but only in accordance with NVTA's project selection process;
- Release or return any unexpended funds to NVTA no later than 90 days following final payment to contractors;
- Certify that any matching funds required for the project have been secured;
- Reimburse NVTA (with interest) for any funds misapplied or not used in accordance with the statutes governing NVTA's revenues;
- Certify that the County will use the project for its intended purpose for the duration of its useful life or reimburse NVTA for the residual value of the asset based on its depreciated value;
- Acknowledge that NVTA will not be responsible for operating or maintaining the project upon completion;
- Obtain all necessary permits or permissions necessary for construction and/or operating the project;
- Comply with all applicable federal and state funding requirements, if such other sources are used to fund the project;

The SPA provides that NVTA will:

- Provide funding for the project on a reimbursement basis, as outlined in the project agreement, project budget and cash flow as original or subsequently approved;
- Assign a project coordinator to monitor the project to ensure compliance with the agreement and review payment requisitions;
- Make project payments within 20 days, if the payment requisition is sufficient;
- Notify recipient of reasons a payment requisition is declined;
- Consider additional payment requests recommended by the Executive Director and the Finance Committee;

- Conduct periodic reviews of the project to ensure that it remains in compliance with the agreed-upon project scope;
- Advise the recipient in writing of any misused or misapplied funding and make recommendations to the Finance Committee, if the issue(s) is not resolved, and withhold additional funding for the project until final resolution of the matter.
- Secure reimbursement (with interest) of any misused or misapplied funding;
- Make guidelines available to assist with complying with the terms of the agreement.

A specific project agreement must be executed for each project approved by NVTA.

FISCAL IMPACT:
The County will receive $20 million in funding from NVTA on a reimbursement basis to support the construction of the West Ox Bus Garage Phase II project. NVTA funds reimbursed to the County will be allocated to Fund 40010, County and Regional Transportation Projects.

ENCLOSED DOCUMENTS:
Attachment 1: Resolution to Execute Agreement with the Northern Virginia Transportation Authority
Attachment 2: West Ox Garage Phase II Project Agreement, including Related Appendices, with the Northern Virginia Transportation Authority
Attachment 3: Approved Project Description Sheet for the West Ox Garage Phase II

STAFF:
Robert A. Stalzer, Deputy County Executive
Tom Biesiadny, Director, Fairfax County Department of Transportation (FCDOT)
James W. Patteson, Director, Department of Public Works and Environmental Services
Dwayne Pelfrey, Director of Transit Services, FCDOT
Kris Miller, Project Coordinator, Transit Services, FCDOT
Todd Wigglesworth, Acting Chief, Coordination and Funding Division, FCDOT
Brent Riddle, Senior Transportation Planner, FCDOT
Joe LaHait, Debt Coordinator, Department of Management and Budget
Patricia McCay, Assistant County Attorney
Ellen Posner, Management Analyst/Counsel, Coordination and Funding Division, FCDOT

Fairfax County Board of Supervisors Resolution

At a regular meeting of the Board of Supervisors of Fairfax County, Virginia, held in the Board Auditorium in the Fairfax County Government Center of Fairfax, Virginia on Tuesday, June 23, 2015, at which meeting a quorum was present and voting, the following resolution was adopted.

AGREEMENT EXECUTION RESOLUTION

WHEREAS, in accordance with Northern Virginia Transportation Authority project agreement procedures, it is necessary that a resolution be received from the local government authorizing execution of an agreement.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of Fairfax County, Virginia, authorizes the County Director of the Department of Transportation, on behalf of the County of Fairfax, a Standard Project Agreement with the Northern Virginia Transportation Authority for funding of the West Ox Garage Phase II, substantially in the form of the NVTA SPA presented to the Board by staff on June 23, 2015.

Adopted this _____ day of_____, 2015, Fairfax, Virginia

ATTEST _____
Catherine A. Chianese
Clerk to the Board of Supervisors

Attachment 2

Standard Project Agreement for Funding and Administration
between
Northern Virginia Transportation Authority
and
Fairfax County
(Recipient Entity)

NVTA Project Number: West Ox Bus Garage Phase II 9M

This Standard Project Agreement for Funding and Administration ("this Agreement") is made and executed in duplicate on this_____ day of _____, 20 15, as between the Northern Virginia Transportation Authority ("NVTA") and Fairfax County ("Recipient Entity").

WITNESSETH

WHEREAS, NVTA is a political subdivision of the Commonwealth of Virginia created by the Northern Virginia Transportation Authority Act ("the NVTA Act"), Chapter 25 of Title 33.2 of the Code of Virginia, as amended;

WHEREAS, Section 33.2-2500(4) of the Code of Virginia authorizes NVTA to enter into project agreements with certain statutorily designated entities for the provision of transportation facilities and services to the area embraced by NVTA;

WHEREAS, Section 33.2-2509 of the Code of Virginia authorizes NVTA to use funds from a fund established pursuant to that Code section (the "NVTA Fund") in order to assist in the financing, in whole or in part, of certain regional transportation projects in accordance with Code Section 33.2-2510;

WHEREAS, the NVTA Fund provides for the deposit therein of certain dedicated revenues and other funds appropriated by the Virginia General Assembly;

WHEREAS, Section 33.2-2510 of the Code of Virginia authorizes the use of funds from the NVTA Fund and the use of proceeds from NVTA debt issuances ("NVTA Bond Proceeds") to be used by NVTA solely for transportation purposes benefitting those counties and cities embraced by NVTA;

WHEREAS, the Project set forth and described on Appendix A to this Agreement ('the Project") satisfies the requirements of Virginia Code Section 33.2-2510;

WHEREAS, the Project is to be financed, as described in Appendix B, in whole or in part, by funds from the NVTA Fund and/or from NVTA Bond Proceeds, is located within a locality embraced by NVTA's geographical borders, or is located in an adjacent locality, but only to the extent that any such extension is an insubstantial part of the Project and is essential to the viability of the Project within the localities embraced by NVTA;

WHEREAS, Fairfax County formally requested that NVTA provide funding to the Project by timely submitting an application for NVTA funding in response to NVTA's call for projects;

WHEREAS, NVTA has reviewed Fairfax County's application for funding and has approved Fairfax County's administration and performance of the Project's described scope of work;

WHEREAS, based on the information provided by Fairfax County, NVTA has determined that the Project complies with all requirements of the NVTA Act related to the use of moneys identified in Virginia Code Sections 33.2-2510(A),(C)1 and all other applicable legal requirements;

WHEREAS, the funds to be provided by NVTA described in Appendix B have been duly authorized and directed by Fairfax County to finance the Project;

WHEREAS, NVTA agrees that Fairfax County will design and/or construct the Project or perform such other specific work for the Project and Fairfax County agrees that it will perform such work on the terms and conditions set forth in this Agreement and the Appendices appended thereto;

WHEREAS, both parties have concurred in the Fairfax County's administration, performance, and completion of the Project on the terms and conditions set forth in this Agreement and its Appendices and in accordance with all applicable federal, state, and local laws and regulations; and

WHEREAS, NVTA's governing body and Fairfax County's governing body have each authorized that their respective designee(s) execute this agreement on their respective behalf(s) as evinced by copies of each such entity's clerk's minutes which are appended hereto as Appendix E;.

NOW THEREFORE, in consideration of the promises made mutual covenants, and agreements contained herein, the parties hereto agree as follows:

A. Recipient Entity's Obligations

_____Fairfax County_____shall:

I. Complete or perform all said work as described in Appendix A, advancing such work diligently and ensuring that all work is completed in accordance with all applicable federal, state, and local laws and regulations, and all terms and conditions of this Agreement.

2. Ensure that all work performed or to be performed under this Agreement is in accordance with the Project Description Sheets attached to Appendix A and complies with Va. Code Ann. Sections 33.2-2510(A), (C)1.

3. Perform or have performed, and remit all payment requisitions and other requests for funding for design and engineering, including all environmental work, right-of-way acquisition, construction, contract administration, testing services, inspection services, or capital asset acquisitions for the Project, as is required by this Agreement and that may be necessary for completion of the Project.

4. Not use the NVTA funds specified on Appendix B to pay any Project cost if the NVTA Act does not permit such Project cost to be paid with NVTA funds.

5. Recognize that, if the Project contains "multiple phases" (as such "multiple phases" are defined for the Project on Appendix A), for which NVTA will provide funding for such multiple phases (as set forth on Appendix B), NVTA may not provide funding to _____Fairfax County_____ to advance the Project to the next phase until the current phase is completed. In any circumstance where _____Fairfax County_____ seeks to advance a Project to the next phase using NVTA funds, _____Fairfax County_____ shall submit a written request to NVTA's Executive Director explaining the need for NVTA's funding of an advanced phase. NVTA's Executive Director will thereafter review the circumstances underlying the request in conjunction with Appendix B and NVTA's current and projected cash flow position and make a recommendation to NVTA whether to authorize the requested advance phase funding. Nothing herein, however, shall prohibit _____Fairfax County_____ from providing its own funds to

advance a future phase of the Project and from requesting reimbursement from NVTA for having advance funded a future phase of the Project. However, Fairfax County further recognizes that NVTA's reimbursement to Fairfax County for having advance funded a Project phase will be dependent upon NVTA's cash flow position at the time such a request for reimbursement is submitted and to the extent that any such advanced funding is consistent with Appendix B.

6. Acknowledge that NVTA's Executive Director will periodically update NVTA's project cash flow estimates with the objective toward keeping those estimates accurate throughout the life of the Project. Fairfax County shall provide all information required by NVTA so as to ensure and facilitate accurate cash flow estimates and accurate updates to those cash flow estimates throughout the life of the Project as described in Appendix B.

7. Provide to NVTA requests for payment consistent with Appendix B and the most recently approved NVTA cash flow estimates that include NVTA's standard payment requisition(s), containing detailed summaries of actual project costs incurred with supporting documentation as determined by NVTA and that certify all such costs were incurred in the performance of work for the Project as authorized by this Agreement. Each payment requisition shall be in substantially the same form as set forth in Appendix C of this Agreement. If approved by NVTA, Fairfax County can expect to receive payment within twenty (20) days upon receipt by NVTA. Approved payments may be made by means of electronic transfer of funds from NVTA to or for the account of Fairfax County.

8. Promptly notify NVTA's Executive Director of any additional project costs resulting from unanticipated circumstances and provide to NVTA detailed estimates of additional costs associated with those circumstances. Fairfax County understands that it will be within NVTA's sole discretion whether to provide any additional funding to the Project in such circumstances and that NVTA will do so only in accordance with NVTA's approved Project Selection Process and upon formal action and approval by NVTA. Fairfax County shall timely provide to NVTA a

complete and accurate update to Appendix B, if NVTA approves funding of any additional Project costs for the Project under this Paragraph.

9. Release or return any unexpended funds to NVTA no later than 90 days after final payment has been made to the contractors.

10. Review and acknowledge the requirements of NVTA Resolution No. 14-08 adopted January 23, 2014; to wit that, if applicable to Fairfax County's Project: a) Prior to any NVTA funds being released for a project that may be part of a larger project, projects, or system undertaken with an extra-territorial funding partner, all such extra-territorial funding partners must commit to pay their appropriate, respective proportionate share or shares of the larger project or system cost commensurate with the benefits to each on a basis agreed upon by the NVTA member localities; b) any such funds released by NVTA for such project will be in addition to the funds that the NVTA member locality is to receive from or be credited with by the extra-territorial funding partner for the project or system; and c) there shall be no funding made available by NVTA until such time as all extra-territorial funding partners for such project or system pay or officially commit to fund their appropriate, respective proportionate shares of such large project or system commensurate with the benefits to each on a basis agreed upon with NVTA.

11. Should Fairfax County be required to provide matching funds in order to proceed or complete the funding necessary for the Project, Fairfax County shall certify to NVTA that all such matching funds have been either authorized and/or appropriated by Fairfax County's governing body or have been obtained through another, independent funding source;

12. Maintain complete and accurate financial records relative to the Project for all time periods as may be required by the Virginia Public Records Act and by all other applicable state or federal records retention laws or regulations, unless superseded by the laws that govern Fairfax County and provide copies of any such financial records to NVTA, free of charge, upon request.

13. Maintain all original conceptual drawings and renderings, architectural and engineering plans, site plans, inspection records, testing records, and as built drawings for the Project for the time periods required by the Virginia Public Records Act and any other applicable records retention laws or regulations, unless superseded by the laws that govern Fairfax County; and provide to NVTA copies of all such drawings and plans free of charge, upon request.

14. Reimburse NVTA for all NVTA funds (with interest earned at the rate earned by NVTA) that Fairfax County misapplied or used in contravention of Sections 33.2-2500 *et. seq*. of the Virginia Code ("the NVTA Act") Chapter 766 of the 2013 Virginia Acts of Assembly ("Chapter 766"), or any term or condition of this Agreement.

15. Name NVTA and its Bond Trustee or require that all Fairfax County's contractors name NVTA or its Bond Trustee as an additional insured on any insurance policy issued for the work to be performed by or on behalf of Fairfax County for the Project and present NVTA with satisfactory evidence thereof before any work on the Project commences or continues.

16. Give notice to NVTA that Fairfax County may use NVTA funds to pay outside legal counsel services (as opposed to utilizing the services of its own in-house counsel or NVTA's in-house legal counsel) in connection with the work performed under this Agreement Fairfax County so as to ensure that no conflict of interest may arise from any such representation.

17. Provide certification to NVTA, that upon final payment to all contractors for the Project, Fairfax County will use the Project for its intended purposes for the duration of the Project's useful life. Under no circumstances will NVTA be considered responsible or obligated to operate and/or maintain the Project after its completion.

18. Comply with all requirements of the Virginia Public Procurement Act and other applicable Virginia Code provisions, or local ordinances which govern the letting of public contracts, unless superseded by the laws that govern Fairfax County.

19. Acknowledge that if the Project is being funded in whole or in part by NVTA Bond Proceeds, comply with the tax covenants attached as Appendix D.

20. Acknowledge that if Fairfax County expects and/or intends that the Project is to be submitted for acceptance by the Commonwealth into its system that Fairfax County agrees to comply with the Virginia Department of Transportation's ("VDOT's") "Standards, Requirements and Guidance."

21. Recognize that Fairfax County is solely responsible for obtaining all permits and permissions necessary to construct and/or operate the Project, including but not limited to, obtaining all required VDOT and local land use permits, applications for zoning approvals, and regulatory approvals.

22. Recognize that if Fairfax County is funding the Project, in whole or in part, with federal and/or state funds, in addition to NVTA funds and/or NVTA Bond Proceeds that Fairfax County will need to comply with all federal and Commonwealth funding requirements, including but not limited to, the completion and execution of VDOT's Standard Project Administration Agreement and acknowledges that NVTA will not be a party or signatory to that Agreement; nor will NVTA have any obligation to comply with the requirements of that Agreement.

23. Provide a certification to NVTA no later than 90 days after final payment to the contractors that Fairfax County adhered to all applicable laws and regulations and all requirements of this Agreement.

B. NVTA's Obligations

NVTA shall:

I. Provide to Fairfax County the funding authorized by NVTA for design work, engineering, including all environmental work, all right-of-way acquisition, inspection services, testing services, construction, and/or capital asset acquisition(s) on a reimbursement basis as set forth in this Agreement and as specified in the Project Budget and Cash Flow contained in

Appendix B to this Agreement or the most updated amendment thereto, as approved by NVTA.

2. Assign a Program Coordinator for the Project. NVTA's Program Coordinator will be responsible for monitoring the Project on behalf of NVTA so as to ensure compliance with this Agreement and all NVTA's requirements and with overseeing, managing, reviewing, and processing, in consultation with NVTA's Executive Director and its Chief Financial Officer ("CFO") , all payment requisitions submitted by Fairfax County for the Project. NVTA's Program Coordinator will have no independent authority to direct changes or make additions, modifications, or revisions to the Project Scope of Work as set forth on Appendix A or to the Project Budget and Cash Flow as set forth on Appendix B.

3. Route to NVTA's assigned Program Coordinator all Fairfax County's payment requisitions, containing detailed summaries of actual Project costs incurred which are in substantially the same form as shown on Appendix C submitted to NVTA for the Project. After submission to NVTA, NVTA's Program Coordinator will conduct an initial review of all payment requisitions and supporting documentation for the Project in order to determine the submission's legal and documentary sufficiency. NVTA's Program Coordinator will then make a recommendation to the NVTA's CFO and Executive Director whether to authorize payment, refuse payment, or seek additional information from Fairfax County. If the payment requisition is sufficient as submitted, payment will be made within twenty (20) days from receipt. If the payment requisition is deemed insufficient, within twenty (20) days from receipt, NVTA's Program Coordinator will notify Fairfax County in writing and set forth the reasons why the payment requisition was declined or why and what specific additional information is needed for processing the payment request. Payment will be withheld until all deficiencies identified by NVTA have been corrected. Under no circumstances will NVTA authorize payment for any work performed by or on behalf of Fairfax County that is not in conformity with the requirements of the NVTA Act, Chapter 766, or this Agreement.

4. Route all Fairfax County's supplemental requests for funding from NVTA under Paragraphs A.5 and A.8 of this Agreement to NVTA's Executive Director. NVTA's Executive Director will initially review those requests and all supporting documentation with NVTA's CFO. After such initial review, NVTA's Executive Director will make a recommendation to NVTA's Finance Committee for its independent consideration and review. NVTA's Finance Committee will thereafter make a recommendation on any such request to NVTA for final determination by NVTA.

5. Conduct periodic compliance reviews scheduled in advance for the Project so as to determine whether the work being performed remains within the scope of this Agreement, the NVTA Act, Chapter 766, and other applicable law. Such compliance reviews may entail review of Fairfax County's financial records for the Project and on -site inspections.

6. Acknowledge that if, as a result of NVTA's review of any payment requisition or of any NVTA compliance review, NVTA staff determines that Fairfax County has misused or misapplied any NVTA funds in derogation of this Agreement or in contravention of the NVTA Act, Chapter 766 or applicable law, NVTA staff will promptly advise NVTA's Executive Director and will advise Fairfax County's designated representative in writing. Fairfax County will thereafter have thirty (30) days to respond in writing to NVTA's initial findings. NVTA's staff will review Fairfax County's response and make a recommendation to NVTA's Finance Committee. NVTA's Finance Committee will thereafter conduct its own review of all submissions and make a recommendation to NVTA. Pending final resolution of the matter, NVTA will withhold further funding on the Project. If NVTA makes a final determination that Fairfax County has misused or misapplied funds in contravention of this Agreement, the NVTA Act, Chapter 766, or other applicable law, NVTA will cease further funding for the Project and will seek reimbursement from Fairfax County of all funds previously remitted by NVTA (with interest earned at the rate earned by NVTA) which were misapplied or misused by Fairfax County. Nothing herein shall, however, be construed as denying, restricting or limiting the pursuit of either party's legal rights or available legal remedies.

7. Make guidelines available to Fairfax County to assist the parties in carrying out the terms of this Agreement in accordance with applicable law.

8. Upon recipient's final payment to all contractors, retain copies of all contracts, financial records, design, construction, and as-built project drawings and plans for the Project for the time periods required by the Virginia Public Records Act and as may be required by other applicable records retention laws and regulations.

9. Be the sole determinant of the amount and source of NVTA funds to be provided and allocated to the Project and the amounts of any NVTA funds to be provided in excess of the amounts specified in Appendix B.

C. Term

1. This Agreement shall be effective upon adoption and execution by both parties.

2. Fairfax County may terminate this Agreement, for cause, in the event of a material breach by NVTA of this Agreement. If so terminated, NVTA shall pay for all Project costs incurred through the date of termination and all reasonable costs incurred by Fairfax County to terminate all Project related contracts. The Virginia General Assembly's failure to appropriate funds to NVTA as described in paragraph F of this Agreement or repeal of the legislation establishing the NVTA fund created pursuant to Chapter 766 shall not be considered material breaches of this Agreement by NVTA. Before initiating any proceedings to terminate under this Paragraph, Fairfax County shall give NVTA sixty (60) days written notice of any claimed material breach of this Agreement; thereby allowing NVTA an opportunity to investigate and cure any such alleged breach.

3. NVTA may terminate this Agreement, for cause, resulting from Fairfax County's material breach of this Agreement. If so terminated, Fairfax County shall refund to NVTA all funds NVTA provided to Fairfax County for the Project (including interest earned at the rate earned by NVTA). NVTA will provide Fairfax County with sixty (60) days written notice that NVTA is exercising its rights to terminate this Agreement and the reasons for termination. Prior to termination, Fairfax County may

request that NVTA excuse Fairfax County from refunding all funds NVTA provided to Fairfax County for the Project based upon Fairfax County's substantial completion of the Project or severable portions thereof; and NVTA may, in its sole discretion, excuse Fairfax County from refunding all or a portion of the funds NVTA provided to Fairfax County for the Project. No such request to be excused from refunding will be allowed where Fairfax County has either misused or misapplied NVTA funds in contravention of applicable law.

4. Upon termination and payment of all eligible expenses as set forth in Paragraph C.3 above, Fairfax County will release or return to NVTA all unexpended NVTA funds with interest earned at the rate earned by NVTA no later than sixty (60) days after the date of termination.

D. Dispute

In the event of a dispute under this Agreement, the parties agree to meet and confer in order to ascertain if the dispute can be resolved informally without the need of a third party or judicial intervention. NVTA's Executive Director and Fairfax County's Chief Executive Officer or Chief Administrative Officer shall be authorized to conduct negotiations on behalf of their respective entities. If a resolution of the dispute is reached via a meet and confer dispute resolution method, it shall be presented to NVTA and to Fairfax County's governing body for formal confirmation and approval. If no satisfactory resolution can be reached via the meet and confer method, either party is free to pursue whatever remedies it may have at law, including all judicial remedies.

E. NVTA's Financial Interest in Project Assets

Fairfax County agrees to use the real property and appurtenances and fixtures thereto, capital assets, equipment and all other transportation facilities that are part of the Project and funded by NVTA under this Agreement ("Project Assets") for the designated transportation purposes of the Project under this Agreement and in accordance with applicable law throughout the useful life of each Project Asset. NVTA shall retain a financial interest in the value of each of the of the Project Assets, whether any such Project Asset may have depreciated or appreciated, throughout its respective useful life proportionate to the amount of the cost of the Project Asset funded by NVTA under this

Agreement. In the event that Fairfax County fails to use any of the Project Assets funded under this Agreement for the transportation purposes as authorized by this Agreement or applicable law throughout its respective useful life, Fairfax County shall refund to NVTA with interest at the rate earned by NVTA the amount attributable to NVTA's proportionate financial interest in the value of said Project Asset. If Fairfax County refuses or fails to refund said monies to NVTA, NVTA may recover its proportionate financial interest from Fairfax County by pursuit of any remedies available to NVTA, including but not limited to NVTA's withholding of commensurate amounts from future distributions of NVTA funds to Fairfax County.

F. Appropriations Requirements

1. Nothing herein shall require or obligate any party to commit or obligate funds to the Project beyond those funds that have been duly authorized and appropriated by their respective governing bodies.

2. The parties acknowledge that all funding provided by NVTA pursuant to Chapter 766 is subject to appropriation by the Virginia General Assembly. The parties further acknowledge that: (i) the moneys allocated to the NVTA Fund pursuant to Va. Code Ann. Sections 58.1-638, 58.1-802.2, and 58.1-1742 and any other moneys that the General Assembly appropriates for deposit into the NVTA Fund are subject to appropriation by the General Assembly and (ii) NVTA's obligations under this Agreement are subject to such moneys being appropriated for deposit in the NVTA Fund by the General Assembly.

G. Notices

All notices under this Agreement to either party shall be in writing and forwarded to the other party by U.S. mail, care of the following authorized representatives:

1) to: NVTA, to the attention of its Executive Director;
3040 Williams Drive, Suite 200
Fairfax, VA 22031

2) to Fairfax County, to the attention of Tom Biesiadny
4050 Legato Road, Suite 400
Fairfax, Virginia 22033-2895 (address)

H. Assignment

This Agreement shall not be assigned by either party unless express written consent is given by the other party.

I. Modification or Amendment

This Agreement may be modified, in writing, upon mutual agreement of both parties.

J. No Personal Liability or Creation of Third Party Rights

This Agreement shall not be construed as creating any personal liability on the part of any officer, employee, or agent of the parties; nor shall it be construed as giving any rights or benefits to anyone other than the parties hereto.

K. No Agency

Fairfax County
_____ represents that it is not acting as a partner or agent of NVTA; and nothing in this Agreement shall be construed as making any party a partner or agent with any other party.

L. Sovereign Immunity

This Agreement shall not be construed as a waiver of either party's sovereign immunity rights.

M. Incorporation of Recitals

The recitals to this Agreement are hereby incorporated into this Agreement and are expressly made a part hereof. The parties to this Agreement acknowledge and agree that such recitals are true and correct.

N. Mutual Preparation and Fair Meaning

The parties acknowledge that this Agreement has been prepared on behalf of all parties thereto and shall be construed in accordance with its fair meaning and not strictly construed for or against either party.

O. Governing Law

This Agreement is governed by the laws of the Commonwealth of Virginia.

IN WITNESS WHEREOF, each party hereto has caused this Agreement to be executed as of the day, month, and year first herein written by their duly authorized representatives.

Northern Virginia Transportation Authority

By:_____

Date:_____

_____Fairfax County_____ (Name of Recipient Entity)

By: _____

Date:_____

Appendix A –Narrative Description of Project

Attach- Approved NVTA Project Description Sheet

NVTA Project Title: West Ox Garage Phase II 9M

Recipient Entity: Fairfax County

Recipient Entity/Project Manager Contact Information: Kris Miller

NVTA Program Coordinator Contact information:

Project Scope
Only Complete if Different from the Approved NVTA Project Description Sheet

Detailed Scope of Services
Only Complete if Different from the Approved NVTA Project Description Sheet

APPENDIX B-PROJECT BUDGET & CASH FLOW

PROJECT IDENTIFICATION AND PROPOSED FUNDING

NVTA Project Title: West Ox Garage Phase II 9M
Recipient Entity: Fairfax County
Project Contact Information: Kris Miller

PROJECT COSTS & FUNDING SOURCE

Project Cost Category	Total Project Costs	NVTA PayGo Funds	NVTA Financed Funds	*Description Other Sources of Funds*	Amount Other Sources of Funds	Recipient Entity Funds
Design Work	$ -	$ -	$ -		$ -	$ -
Engineering						
Environmental Work						
Right-of-Way Acquisition						
Construction						
Contract Administration						
Testing Services						
Inspection Services						
Capital Asset Acquisitions						
Other						
Total Estimated Cost	$ -	$ -	$ -	$ -	$ -	$ -

FISCAL YEAR ANNUAL PROJECT CASH FLOW

	Total Fiscal Year 2015		Total Fiscal Year 2016		Total Fiscal Year 2017		Total Fiscal Year 2018		Total Fiscal Year 2019	
Project Phase	PayGo	Financed	PayGo	Financed	PayGo	Financed	PayGo	Financed	PayGo	Financed
Design Work	$ 1,210,000.00		$ 150,000.00		$ 10,000.00					
Engineering	125,000.00		200,000.00		50,000.00					
Environmental Work										
Right-of-Way Acquisition										
Construction	40,000.00		10,500,000.00		7,878,391.00					
Contract Administration	75,000.00		300,000.00		125,000.00					
Testing Services			20,000.00		3,768.00					
Inspection Services			100,000.00		10,690.00					
Capital Asset Acquisitions										
Other	50,000.00									
Total Estimated Cost	$ 1,500,000.00	$ -	$ 11,270,000.00	$ -	$ 8,077,849.00	$ -	$ -	$ -	$ -	$ -

Please Note: If additional years are needed, please submit a separate form with additional columns

FISCAL YEAR ESTIMATED PROJECT CASH FLOW

	FY 15 Mthly Cash Flow		FY 16 Mthly Cash Flow		FY 17 Qtrly Cash Flow		FY 18 Qtrly Cash Flow		FY 19 Qtrly Cash Flow	
	PayGo	Financed	PayGo	Financed	PayGo	Financed	PayGo	Financed	PayGo	Financed
July	$ 100,000.00		$ 100,000.00		$ 1,500,000.00					
August	$ 100,000.00		$ 120,000.00		$ 1,500,000.00					
September	$ 100,000.00		$ 150,000.00		$ 1,500,000.00					
October	$ 100,000.00		$ 250,000.00		$ 1,500,000.00					
November	$ 100,000.00		$ 350,000.00		$ 1,300,000.00					
December	$ 100,000.00		$ 1,000,000.00		$ 400,000.00					
January	$ 100,000.00		$ 1,500,000.00		$ 200,000.00					
February	$ 100,000.00		$ 1,500,000.00		$ 100,000.00					
March	$ 100,000.00		$ 1,600,000.00		$ 50,000.00					
April	$ 200,000.00		$ 1,600,000.00		$ 27,849.00					
May	$ 200,000.00		$ 1,600,000.00							
June	$ 200,000.00		$ 1,500,000.00							
Total per Fiscal Year	**$ 1,500,000.00**	**$ -**	**$ 11,270,000.00**	**$ -**	**$ 8,077,849.00**	**$ -**	**$ -**	**$ -**	**$ -**	**$ -**

Please Note: If additional years are needed, please submit a separate form with additional columns

This attachment is certified and made an official attachment to the Standard Project Agreement document by the parties of this agreement.

Recipient Entity Official

Signature
Director of the Department of Transportation
Title

Date
Tom Biesiadny
Print name of person signing

Northern Virginia Transportation Authority

Signature
NVTA Executive Director
Title

Date

Print name of person signing

Northern Virginia Transportation Authority
The Authority for Transportation in Northern Virginia

FY 2015-16 PROJECT DESCRIPTION FORM (9M)

Basic Project Information

Submitting Agency: Fairfax County

Project Title: West Ox Bus Garage Phase II 9M

Project Type *(check one)*:
Roadway ( ) Transit (X)

VA State Route Number (if applicable) and NVTA Corridor Number (1-8): Multiple Corridors

1. **Project Description:** This project expands capacity of the West Ox bus facility and allows for additional, increased Fairfax Connector bus service. This funding would allow the project to proceed with construction of nine (9) maintenance bays, and expansion of facilities for bus drivers and security.

2. **Requested NVTA Funds:** $20,000,000

3. **Phase(s) of Project Covered by Requested NVTA Funds:** Construction

4. **Total Cost to Complete Project:** $20,000,000

5. **Project Milestone -Study Phase:** Start of Study - November 2012

6. **Project Milestone -Preliminary Engineering (30% Design):** Start of PE - December 2013

7. **Project Milestones -Final Design:** Start of Final Design - June 2015

8. **Project Milestones -Right-of-Way:** ROW acquisitions completed - No land acquisition necessary

9. **Project Milestone – Construction:** Start of Construction - August 2015

10. **Project Milestone – Mass Transit Vehicle Acquisition:** Start of Construction - FY 2016

11. **Is Project in Transaction 2040:**
    Yes (X), Supports Connector Bus Service Expansion, which is in TransAction 2040 No ( )

12. **Project in 2010 CLRP:** No

13. **Project Leverages other Funding:** (please state amount)
    - Local (X) See note below
    - State ( )
    - Federal ( )
    - Other: Project design is fully funded at approximately $3.5 million using commercial and industrial tax revenues. NVTA regional revenues would be used to fund all construction costs.

Stated Benefits

- **What Regional benefit(s) does this project offer?**
  By expanding capacity of the West Ox bus facility, additional maintenance capabilities for support of the increased transit service will be provided. The Fairfax Connector bus service not only provides transit options across Fairfax County, but also provides connections to other transit facilities in the region, including rail and air.

- **How does the project reduce congestion?**
  By expanding maintenance capacity for the facility, this project improves the mass transit system and encourages its use. The increase in mass transit ridership would result in a reduction of vehicular traffic and hence reduction in traffic congestion.

- **How does project increase capacity? (Mass Transit Projects only)**
  By expanding the maintenance facility, Fairfax Connector will be able to support increased bus service and expanded route coverage.

- **How does project improve auto and pedestrian safety?**
  By expanding transit system capacity, vehicular traffic will be reduced. As a result, vehicular and pedestrian safety will be improved.

- **List internet links below to any additional information in support of this project:**
  Included in the Fairfax County Transit Development Plan: Transit Development Plan - Fairfax County, Virginia
  Transaction 2040 and the CLRP include bus service expansion, which will require additional capacity expansion at the West Ox Bus Garage.

Virginia Dept of Transportation
Fairfax County PSTOC
Fairfax County Pkwy
286

Board Agenda Item
June 23, 2015

ACTION - 8

Approval of a Standard Project Funding Agreement with the Northern Virginia Transportation Authority for the Purchase of Fairfax Connector Buses

ISSUE:
Board of Supervisors' authorization, in the form of a resolution, is requested for the Director of the Department of Transportation to sign a project funding agreement substantially in the form of Attachment 2 with the Northern Virginia Transportation Authority (NVTA) for $6 million in funding for the Fairfax Connector Bus Service Expansion Project.

RECOMMENDATION:
The County Executive recommends that the Board approve a resolution authorizing the Director of the Department of Transportation to execute a project funding agreement, in substantial form, with NVTA for $6 million in funding for the purchase of Fairfax Connector buses.

TIMING:
The Board of Supervisors should act on this item on June 23, 2015, so that NVTA can release funding for the Fairfax Connector Bus Service Expansion.

DISCUSSION:
On January 28, 2014, the Board of Supervisors approved staff's recommended project submissions for NVTA consideration for FY2015-2016 regional funding. The approved submission called for 22 buses for expanded service on I-66 corridors and the southern portion of Fairfax County, including the Huntington and Springfield areas. NVTA is providing $6 million in FY2015-2016 for the purchase of 12 buses. It is anticipated that staff will pursue additional NVTA regional funding in FY2017 for the remaining 10 buses. The purchase of these buses is consistent with the Board's Transportation Priorities Plan approved January 28, 2014.

HB 2313 (2013) directs the NVTA to use 70 percent of the revenue collected from the three Northern Virginia taxes and fees for (i) transportation projects selected by NVTA that are contained in the regional transportation plan or (ii) mass transit capital projects that increase capacity.

Board Agenda Item
June 23, 2015

On April 23, 2015, the Authority approved its FY 2015-2016 program, which included approximately $345 million for 37 projects across Northern Virginia. The program included $6 million for the Fairfax Connector Bus Service Expansion project. The description sheet for this approved project is included as Attachment 3.

To facilitate the implementation of the regionally funded projects, NVTA and jurisdictional staff developed a Standard Project Agreement (SPA) to govern the terms and conditions associated with the funding the Authority approves for these regional projects. The SPA is based on the requirements of HB 2313, but it also includes practical provisions associated with the implementation of the law and standard contract language. County staff was extensively involved in drafting this SPA, and in subsequently tailoring it for the Fairfax Connector Bus Service Expansion.

The major provisions of the SPA provide that the County will:

- Perform work in accordance with all applicable federal, state, and local laws and regulations, the SPA and the Project Description Sheet;
- Perform or have performed all environmental work, right-of-way acquisition, construction, contract administration, testing services, inspection services, or capital asset acquisition necessary to complete the project;
- Update project cash flow requirements periodically;
- Provide requests for payment consistent with the approved cash flow for a project on standard requisition forms;
- Notify NVTA's Executive Director of any additional project costs resulting from unanticipated circumstances. NVTA will decide whether to fund these additional costs, but only in accordance with NVTA's project selection process;
- Release or return any unexpended funds to NVTA no later than 90 days following final payment to contractors;
- Certify that any matching funds required for the project have been secured;
- Reimburse NVTA (with interest) for any funds misapplied or not used in accordance with the statutes governing NVTA's revenues;
- Certify that the County will use the project for its intended purpose for the duration of its useful life or reimburse NVTA for the residual value of the asset based on its depreciated value;
- Acknowledge that NVTA will not be responsible for operating or maintaining the project upon completion;
- Obtain all necessary permits or permissions necessary for construction and/or operating the project;
- Comply with all applicable federal and state funding requirements, if such other sources are used to fund the project;

The SPA provides that NVTA will:

- Provide funding for the project on a reimbursement basis, as outlined in the project agreement, project budget and cash flow as original or subsequently approved;

- Assign a project coordinator to monitor the project to ensure compliance with the agreement and review payment requisitions;
- Make project payments within 20 days, if the payment requisition is sufficient;
- Notify recipient of reasons a payment requisition is declined;
- Consider additional payment requests recommended by the Executive Director and the Finance Committee;
- Conduct periodic reviews of the project to ensure that it remains in compliance with the agreed-upon project scope;
- Advise the recipient in writing of any misused or misapplied funding and make recommendations to the Finance Committee, if the issue(s) is not resolved, and withhold additional funding for the project until final resolution of the matter.
- Secure reimbursement (with interest) of any misused or misapplied funding;
- Make guidelines available to assist with complying with the terms of the agreement.

A specific project agreement must be executed for each project approved by NVTA.

FISCAL IMPACT:
The County will receive $6 million from NVTA as a reimbursement for bus purchases undertaken by the County as part of the approved project. NVTA monies reimbursed to the County will be allocated to Fund 40010 (County and Regional Transportation Projects).

ATTACHMENTS:
Attachment 1: Resolution to Execute Agreement with the Northern Virginia Transportation Authority
Attachment 2: Standard Project Agreement, including Related Appendices, with the Northern Virginia Transportation Authority
Attachment 3: Approved Project Description Sheet

STAFF:
Robert A. Stalzer, Deputy County Executive
Tom Biesiadny, Director, Fairfax County Department of Transportation (FCDOT)
Joe LaHait, Debt Coordinator, Department of Management and Budget
Patricia McCay, Assistant County Attorney
Todd Wigglesworth, Acting Chief, Coordination and Funding Division (CFD), FCDOT
Ray Johnson, Senior Transportation Planner, CFD, FCDOT
Kenneth Kanownik, Transportation Planner II, CFD, FCDOT

Attachment 1

At a regular meeting of the Board of Supervisors of Fairfax County, Virginia, held in the Board Auditorium in the Fairfax County Government Center of Fairfax, Virginia on Tuesday, June 23, 2015, at which meeting a quorum was present and voting, the following resolution was adopted.

AGREEMENT EXECUTION RESOLUTION

WHEREAS, in accordance with Northern Virginia Transportation Authority project agreement procedures, it is necessary that a resolution be received from the local government authorizing execution of an agreement.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of Fairfax County, Virginia, authorizes the Director of the Department of Transportation to execute on behalf of the County of Fairfax a Standard Project Agreement with the Northern Virginia Transportation Authority for the Fairfax Connector Bus Service Expansion Project (9K), substantially in the form of the NVTA SPA presented to the Board by staff on June 23, 2015.

Adopted this 23th day of June, 2015, Fairfax, Virginia

ATTEST _____
Catherine A. Chianese
Clerk to the Board of Supervisors

Standard Project Agreement for Funding and Administration
between
Northern Virginia Transportation Authority
and
Fairfax County
(Recipient Entity)

NVTA Project Number: 9K

This Standard Project Agreement for Funding and Administration ("this Agreement") is made and executed in duplicate on this_____ day of _____, 20__, as between the Northern Virginia Transportation Authority ("NVTA") and Fairfax County ("Recipient Entity").

WITNESSETH

WHEREAS, NVTA is a political subdivision of the Commonwealth of Virginia created by the Northern Virginia Transportation Authority Act ("the NVTA Act"), Chapter 25 of Title 33.2 of the Code of Virginia, as amended;

WHEREAS, Section 33.2-2500(4) of the Code of Virginia authorizes NVTA to enter into project agreements with certain statutorily designated entities for the provision of transportation facilities and services to the area embraced by NVTA;

WHEREAS, Section 33.2-2509 of the Code of Virginia authorizes NVTA to use funds from a fund established pursuant to that Code section (the "NVTA Fund") in order to assist in the financing, in whole or in part, of certain regional transportation projects in accordance with Code Section 33.2-2510;

WHEREAS, the NVTA Fund provides for the deposit therein of certain dedicated revenues and other funds appropriated by the Virginia General Assembly;

WHEREAS, Section 33.2-2510 of the Code of Virginia authorizes the use of funds from the NVTA Fund and the use of proceeds from NVTA debt issuances ("NVTA Bond Proceeds") to be used by NVTA solely for transportation purposes benefitting those counties and cities embraced by NVTA;

WHEREAS, the Project set forth and described on Appendix A to this Agreement ('the Project") satisfies the requirements of Virginia Code Section 33.2-2510;

WHEREAS, the Project is to be financed, as described in Appendix B, in whole or in part, by funds from the NVTA Fund and/or from NVTA Bond Proceeds, is located within a locality embraced by NVTA's geographical borders, or is located in an adjacent locality, but only to the extent that any such extension is an insubstantial part of the Project and is essential to the viability of the Project within the localities embraced by NVTA;

WHEREAS, Fairfax County formally requested that NVTA provide funding to the Project by timely submitting an application for NVTA funding in response to NVTA's call for projects;

WHEREAS, NVTA has reviewed Fairfax County's application for funding and has approved Fairfax County's administration and performance of the Project's described scope of work;

WHEREAS, based on the information provided by Fairfax County, NVTA has determined that the Project complies with all requirements of the NVTA Act related to the use of moneys identified in Virginia Code Sections 33.2-2510(A),(C)1 and all other applicable legal requirements;

WHEREAS, the funds to be provided by NVTA described in Appendix B have been duly authorized and directed by Fairfax County to finance the Project;

WHEREAS, NVTA agrees that Fairfax County will design and/or construct the Project or perform such other specific work for the Project and Fairfax County agrees that it will perform such work on the terms and conditions set forth in this Agreement and the Appendices appended thereto;

WHEREAS, both parties have concurred in the Fairfax County's administration, performance, and completion of the Project on the terms and conditions set forth in this Agreement and its Appendices and in accordance with all applicable federal, state, and local laws and regulations; and

WHEREAS, NVTA's governing body and Fairfax County's governing body have each authorized that their respective designee(s) execute this agreement on their respective behalf(s) as evinced by copies of each such entity's clerk's minutes which are appended hereto as Appendix E;.

NOW THEREFORE, in consideration of the promises made mutual covenants, and agreements contained herein, the parties hereto agree as follows:

A. Recipient Entity's Obligations

Fairfax County shall:

I. Complete or perform all said work as described in Appendix A, advancing such work diligently and ensuring that all work is completed in accordance with all applicable federal, state, and local laws and regulations, and all terms and conditions of this Agreement.

2. Ensure that all work performed or to be performed under this Agreement is in accordance with the Project Description Sheets attached to Appendix A and complies with Va. Code Ann. Sections 33.2-2510(A), (C)1.

3. Perform or have performed, and remit all payment requisitions and other requests for funding for design and engineering, including all environmental work, right-of-way acquisition, construction, contract administration, testing services, inspection services, or capital asset acquisitions for the Project, as is required by this Agreement and that may be necessary for completion of the Project.

4. Not use the NVTA funds specified on Appendix B to pay any Project cost if the NVTA Act does not permit such Project cost to be paid with NVTA funds.

5. Recognize that, if the Project contains "multiple phases" (as such "multiple phases" are defined for the Project on Appendix A), for which NVTA will provide funding for such multiple phases (as set forth on Appendix B), NVTA may not provide funding to Fairfax County to advance the Project to the next phase until the current phase is completed. In any circumstance where Fairfax County seeks to advance a Project to the next phase using NVTA funds, Fairfax County shall submit a written request to NVTA's Executive Director explaining the need for NVTA's funding of an advanced phase. NVTA's Executive Director will thereafter review the circumstances underlying the request in conjunction with Appendix B and NVTA's current and projected cash flow position and make a recommendation to NVTA whether to authorize the requested advance phase funding. Nothing herein, however, shall prohibit Fairfax County from providing its own funds to

advance a future phase of the Project and from requesting reimbursement from NVTA for having advance funded a future phase of the Project. However, Fairfax County further recognizes that NVTA's reimbursement to Fairfax County for having advance funded a Project phase will be dependent upon NVTA's cash flow position at the time such a request for reimbursement is submitted and to the extent that any such advanced funding is consistent with Appendix B.

6. Acknowledge that NVTA's Executive Director will periodically update NVTA's project cash flow estimates with the objective toward keeping those estimates accurate throughout the life of the Project. Fairfax County shall provide all information required by NVTA so as to ensure and facilitate accurate cash flow estimates and accurate updates to those cash flow estimates throughout the life of the Project as described in Appendix B.

7. Provide to NVTA requests for payment consistent with Appendix B and the most recently approved NVTA cash flow estimates that include NVTA's standard payment requisition(s), containing detailed summaries of actual project costs incurred with supporting documentation as determined by NVTA and that certify all such costs were incurred in the performance of work for the Project as authorized by this Agreement. Each payment requisition shall be in substantially the same form as set forth in Appendix C of this Agreement. If approved by NVTA, Fairfax County can expect to receive payment within twenty (20) days upon receipt by NVTA. Approved payments may be made by means of electronic transfer of funds from NVTA to or for the account of Fairfax County.

8. Promptly notify NVTA's Executive Director of any additional project costs resulting from unanticipated circumstances and provide to NVTA detailed estimates of additional costs associated with those circumstances. Fairfax County understands that it will be within NVTA's sole discretion whether to provide any additional funding to the Project in such circumstances and that NVTA will do so only in accordance with NVTA's approved Project Selection Process and upon formal action and approval by NVTA. Fairfax County shall timely provide to NVTA a

complete and accurate update to Appendix B, if NVTA approves funding of any additional Project costs for the Project under this Paragraph.

9. Release or return any unexpended funds to NVTA no later than 90 days after final payment has been made to the contractors.

10. Review and acknowledge the requirements of NVTA Resolution No. 14-08 adopted January 23, 2014; to wit that, if applicable to Fairfax County's Project: a) Prior to any NVTA funds being released for a project that may be part of a larger project, projects, or system undertaken with an extra-territorial funding partner, all such extra-territorial funding partners must commit to pay their appropriate, respective proportionate share or shares of the larger project or system cost commensurate with the benefits to each on a basis agreed upon by the NVTA member localities; b) any such funds released by NVTA for such project will be in addition to the funds that the NVTA member locality is to receive from or be credited with by the extra-territorial funding partner for the project or system; and c) there shall be no funding made available by NVTA until such time as all extra-territorial funding partners for such project or system pay or officially commit to fund their appropriate, respective proportionate shares of such large project or system commensurate with the benefits to each on a basis agreed upon with NVTA.

11. Should Fairfax County be required to provide matching funds in order to proceed or complete the funding necessary for the Project, Fairfax County shall certify to NVTA that all such matching funds have been either authorized and/or appropriated by Fairfax County's governing body or have been obtained through another, independent funding source;

12. Maintain complete and accurate financial records relative to the Project for all time periods as may be required by the Virginia Public Records Act and by all other applicable state or federal records retention laws or regulations, unless superseded by the laws that govern Fairfax County and provide copies of any such financial records to NVTA, free of charge, upon request.

13. Maintain all original conceptual drawings and renderings, architectural and engineering plans, site plans, inspection records, testing records, and as built drawings for the Project for the time periods required by the Virginia Public Records Act and any other applicable records retention laws or regulations, unless superseded by the laws that govern Fairfax County; and provide to NVTA copies of all such drawings and plans free of charge, upon request.

14. Reimburse NVTA for all NVTA funds (with interest earned at the rate earned by NVTA) that Fairfax County misapplied or used in contravention of Sections 33.2-2500 *et. seq*. of the Virginia Code ("the NVTA Act") Chapter 766 of the 2013 Virginia Acts of Assembly ("Chapter 766"), or any term or condition of this Agreement.

15. Name NVTA and its Bond Trustee or require that all Fairfax County's contractors name NVTA or its Bond Trustee as an additional insured on any insurance policy issued for the work to be performed by or on behalf of Fairfax County for the Project and present NVTA with satisfactory evidence thereof before any work on the Project commences or continues.

16. Give notice to NVTA that Fairfax County may use NVTA funds to pay outside legal counsel services (as opposed to utilizing the services of its own in-house counsel or NVTA's in-house legal counsel) in connection with the work performed under this Agreement Fairfax County so as to ensure that no conflict of interest may arise from any such representation.

17. Provide certification to NVTA, that upon final payment to all contractors for the Project, Fairfax County will use the Project for its intended purposes for the duration of the Project's useful life. Under no circumstances will NVTA be considered responsible or obligated to operate and/or maintain the Project after its completion.

18. Comply with all requirements of the Virginia Public Procurement Act and other applicable Virginia Code provisions, or local ordinances which govern the letting of public contracts, unless superseded by the laws that govern Fairfax County.

19. Acknowledge that if the Project is being funded in whole or in part by NVTA Bond Proceeds, comply with the tax covenants attached as Appendix D.

20. Acknowledge that if Fairfax County expects and/or intends that the Project is to be submitted for acceptance by the Commonwealth into its system that Fairfax County agrees to comply with the Virginia Department of Transportation's ("VDOT's") "Standards, Requirements and Guidance."

21. Recognize that Fairfax County is solely responsible for obtaining all permits and permissions necessary to construct and/or operate the Project, including but not limited to, obtaining all required VDOT and local land use permits, applications for zoning approvals, and regulatory approvals.

22. Recognize that if Fairfax County is funding the Project, in whole or in part, with federal and/or state funds, in addition to NVTA funds and/or NVTA Bond Proceeds that Fairfax County will need to comply with all federal and Commonwealth funding requirements, including but not limited to, the completion and execution of VDOT's Standard Project Administration Agreement and acknowledges that NVTA will not be a party or signatory to that Agreement; nor will NVTA have any obligation to comply with the requirements of that Agreement.

23. Provide a certification to NVTA no later than 90 days after final payment to the contractors that Fairfax County adhered to all applicable laws and regulations and all requirements of this Agreement.

B. NVTA's Obligations

NVTA shall:

I. Provide to Fairfax County the funding authorized by NVTA for design work, engineering, including all environmental work, all right-of-way acquisition, inspection services, testing services, construction, and/or capital asset acquisition(s) on a reimbursement basis as set forth in this Agreement and as specified in the Project Budget and Cash Flow contained in

Appendix B to this Agreement or the most updated amendment thereto, as approved by NVTA.

2. Assign a Program Coordinator for the Project. NVTA's Program Coordinator will be responsible for monitoring the Project on behalf of NVTA so as to ensure compliance with this Agreement and all NVTA's requirements and with overseeing, managing, reviewing, and processing, in consultation with NVTA's Executive Director and its Chief Financial Officer ("CFO") , all payment requisitions submitted by Fairfax County for the Project. NVTA's Program Coordinator will have no independent authority to direct changes or make additions, modifications, or revisions to the Project Scope of Work as set forth on Appendix A or to the Project Budget and Cash Flow as set forth on Appendix B.

3. Route to NVTA's assigned Program Coordinator all Fairfax County's payment requisitions, containing detailed summaries of actual Project costs incurred which are in substantially the same form as shown on Appendix C submitted to NVTA for the Project. After submission to NVTA, NVTA's Program Coordinator will conduct an initial review of all payment requisitions and supporting documentation for the Project in order to determine the submission's legal and documentary sufficiency. NVTA's Program Coordinator will then make a recommendation to the NVTA's CFO and Executive Director whether to authorize payment, refuse payment, or seek additional information from Fairfax County. If the payment requisition is sufficient as submitted, payment will be made within twenty (20) days from receipt. If the payment requisition is deemed insufficient, within twenty (20) days from receipt, NVTA's Program Coordinator will notify Fairfax County in writing and set forth the reasons why the payment requisition was declined or why and what specific additional information is needed for processing the payment request. Payment will be withheld until all deficiencies identified by NVTA have been corrected. Under no circumstances will NVTA authorize payment for any work performed by or on behalf of Fairfax County that is not in conformity with the requirements of the NVTA Act, Chapter 766, or this Agreement.

4. Route all Fairfax County's supplemental requests for funding from NVTA under Paragraphs A.5 and A.8 of this Agreement to NVTA's Executive Director. NVTA's Executive Director will initially review those requests and all supporting documentation with NVTA's CFO. After such initial review, NVTA's Executive Director will make a recommendation to NVTA's Finance Committee for its independent consideration and review. NVTA's Finance Committee will thereafter make a recommendation on any such request to NVTA for final determination by NVTA.

5. Conduct periodic compliance reviews scheduled in advance for the Project so as to determine whether the work being performed remains within the scope of this Agreement, the NVTA Act, Chapter 766, and other applicable law. Such compliance reviews may entail review of Fairfax County's financial records for the Project and on -site inspections.

6. Acknowledge that if, as a result of NVTA's review of any payment requisition or of any NVTA compliance review, NVTA staff determines that Fairfax County has misused or misapplied any NVTA funds in derogation of this Agreement or in contravention of the NVTA Act, Chapter 766 or applicable law, NVTA staff will promptly advise NVTA's Executive Director and will advise Fairfax County's designated representative in writing. Fairfax County will thereafter have thirty (30) days to respond in writing to NVTA's initial findings. NVTA's staff will review Fairfax County's response and make a recommendation to NVTA's Finance Committee. NVTA's Finance Committee will thereafter conduct its own review of all submissions and make a recommendation to NVTA. Pending final resolution of the matter, NVTA will withhold further funding on the Project. If NVTA makes a final determination that Fairfax County has misused or misapplied funds in contravention of this Agreement, the NVTA Act, Chapter 766, or other applicable law, NVTA will cease further funding for the Project and will seek reimbursement from Fairfax County of all funds previously remitted by NVTA (with interest earned at the rate earned by NVTA) which were misapplied or misused by Fairfax County. Nothing herein shall, however, be construed as denying, restricting or limiting the pursuit of either party's legal rights or available legal remedies.

7. Make guidelines available to Fairfax County to assist the parties in carrying out the terms of this Agreement in accordance with applicable law.

8. Upon recipient's final payment to all contractors, retain copies of all contracts, financial records, design, construction, and as-built project drawings and plans for the Project for the time periods required by the Virginia Public Records Act and as may be required by other applicable records retention laws and regulations.

9. Be the sole determinant of the amount and source of NVTA funds to be provided and allocated to the Project and the amounts of any NVTA funds to be provided in excess of the amounts specified in Appendix B.

C. Term

1. This Agreement shall be effective upon adoption and execution by both parties.

2. Fairfax County may terminate this Agreement, for cause, in the event of a material breach by NVTA of this Agreement. If so terminated, NVTA shall pay for all Project costs incurred through the date of termination and all reasonable costs incurred by Fairfax County to terminate all Project related contracts. The Virginia General Assembly's failure to appropriate funds to NVTA as described in paragraph F of this Agreement or repeal of the legislation establishing the NVTA fund created pursuant to Chapter 766 shall not be considered material breaches of this Agreement by NVTA. Before initiating any proceedings to terminate under this Paragraph, Fairfax County shall give NVTA sixty (60) days written notice of any claimed material breach of this Agreement; thereby allowing NVTA an opportunity to investigate and cure any such alleged breach.

3. NVTA may terminate this Agreement, for cause, resulting from Fairfax County's material breach of this Agreement. If so terminated, Fairfax County shall refund to NVTA all funds NVTA provided to Fairfax County for the Project (including interest earned at the rate earned by NVTA). NVTA will provide Fairfax County with sixty (60) days written notice that NVTA is exercising its rights to terminate this Agreement and the reasons for termination. Prior to termination, Fairfax County may

request that NVTA excuse Fairfax County from refunding all funds NVTA provided to Fairfax County for the Project based upon Fairfax County's substantial completion of the Project or severable portions thereof; and NVTA may, in its sole discretion, excuse Fairfax County from refunding all or a portion of the funds NVTA provided to Fairfax County for the Project. No such request to be excused from refunding will be allowed where Fairfax County has either misused or misapplied NVTA funds in contravention of applicable law.

4. Upon termination and payment of all eligible expenses as set forth in Paragraph C.3 above, Fairfax County will release or return to NVTA all unexpended NVTA funds with interest earned at the rate earned by NVTA no later than sixty (60) days after the date of termination.

D. Dispute

In the event of a dispute under this Agreement, the parties agree to meet and confer in order to ascertain if the dispute can be resolved informally without the need of a third party or judicial intervention. NVTA's Executive Director and Fairfax County's Chief Executive Officer or Chief Administrative Officer shall be authorized to conduct negotiations on behalf of their respective entities. If a resolution of the dispute is reached via a meet and confer dispute resolution method, it shall be presented to NVTA and to Fairfax County's governing body for formal confirmation and approval. If no satisfactory resolution can be reached via the meet and confer method, either party is free to pursue whatever remedies it may have at law, including all judicial remedies.

E. NVTA's Financial Interest in Project Assets

Fairfax County agrees to use the real property and appurtenances and fixtures thereto, capital assets, equipment and all other transportation facilities that are part of the Project and funded by NVTA under this Agreement ("Project Assets") for the designated transportation purposes of the Project under this Agreement and in accordance with applicable law throughout the useful life of each Project Asset. NVTA shall retain a financial interest in the value of each of the of the Project Assets, whether any such Project Asset may have depreciated or appreciated, throughout its respective useful life proportionate to the amount of the cost of the Project Asset funded by NVTA under this

Agreement. In the event that Fairfax County fails to use any of the Project Assets funded under this Agreement for the transportation purposes as authorized by this Agreement or applicable law throughout its respective useful life, Fairfax County shall refund to NVTA with interest at the rate earned by NVTA the amount attributable to NVTA's proportionate financial interest in the value of said Project Asset. If Fairfax County refuses or fails to refund said monies to NVTA, NVTA may recover its proportionate financial interest from Fairfax County by pursuit of any remedies available to NVTA, including but not limited to NVTA's withholding of commensurate amounts from future distributions of NVTA funds to Fairfax County.

F. Appropriations Requirements

1. Nothing herein shall require or obligate any party to commit or obligate funds to the Project beyond those funds that have been duly authorized and appropriated by their respective governing bodies.

2. The parties acknowledge that all funding provided by NVTA pursuant to Chapter 766 is subject to appropriation by the Virginia General Assembly. The parties further acknowledge that: (i) the moneys allocated to the NVTA Fund pursuant to Va. Code Ann. Sections 58.1-638, 58.1-802.2, and 58.1-1742 and any other moneys that the General Assembly appropriates for deposit into the NVTA Fund are subject to appropriation by the General Assembly and (ii) NVTA's obligations under this Agreement are subject to such moneys being appropriated for deposit in the NVTA Fund by the General Assembly.

G. Notices

All notices under this Agreement to either party shall be in writing and forwarded to the other party by U.S. mail, care of the following authorized representatives:

1) to: NVTA, to the attention of its Executive Director;
3040 Williams Drive, Suite 200
Fairfax, VA 22031

2) to Fairfax County, to the attention of Tom Biesiadny
4050 Legato Road, Suite 400
Fairfax, VA 22033 (address)

H. Assignment

This Agreement shall not be assigned by either party unless express written consent is given by the other party.

I. Modification or Amendment

This Agreement may be modified, in writing, upon mutual agreement of both parties.

J. No Personal Liability or Creation of Third Party Rights

This Agreement shall not be construed as creating any personal liability on the part of any officer, employee, or agent of the parties; nor shall it be construed as giving any rights or benefits to anyone other than the parties hereto.

K. No Agency

Fairfax County
_____ represents that it is not acting as a partner or agent of NVTA; and nothing in this Agreement shall be construed as making any party a partner or agent with any other party.

L. Sovereign Immunity

This Agreement shall not be construed as a waiver of either party's sovereign immunity rights.

M. Incorporation of Recitals

The recitals to this Agreement are hereby incorporated into this Agreement and are expressly made a part hereof. The parties to this Agreement acknowledge and agree that such recitals are true and correct.

N. Mutual Preparation and Fair Meaning

The parties acknowledge that this Agreement has been prepared on behalf of all parties thereto and shall be construed in accordance with its fair meaning and not strictly construed for or against either party.

O. Governing Law

This Agreement is governed by the laws of the Commonwealth of Virginia.

IN WITNESS WHEREOF, each party hereto has caused this Agreement to be executed as of the day, month, and year first herein written by their duly authorized representatives.

Northern Virginia Transportation Authority

By:_____

Date:_____

_____Fairfax County_____ (Name of Recipient Entity)

By: _____

Date:_____

Appendix A –Narrative Description of Project

Attach- Approved NVTA Project Description Sheet

NVTA Project Title: Connector Bus Service Expansion – Capital Purchase 22 Buses (9K)

Recipient Entity: Fairfax County

Recipient Entity/Project Manager Contact Information:

Kris Miller
703-877-5622,
4050 Legato Road, Suite 400
Fairfax VA, 22033

NVTA Program Coordinator Contact information:

Keith Jasper
703-642-4652
3040 Williams Dr, Suite 200
Fairfax, VA

Project Scope
Only Complete if Different from the Approved NVTA Project Description Sheet

Detailed Scope of Services
Only Complete if Different from the Approved NVTA Project Description Sheet

APPENDIX B-PROJECT BUDGET & CASH FLOW

PROJECT IDENTIFICATION AND PROPOSED FUNDING

NVTA Project Title: Connector Bus Service Expansion - Capital Purchase 22 Buses (9K)
Recipient Entity: Fairfax County
Project Contact Information: Kris Miller, 703-877-5622, 4050 Legato Road Suite 400, Fairfax, VA 22033

PROJECT COSTS & FUNDING SOURCE

Project Cost Category	Total Project Costs	NVTA PayGo Funds	NVTA Financed Funds	*Description Other Sources of Funds*	Amount Other Sources of Funds	Recipient Entity Funds
Design Work	$ -	$ -	$ -		$ -	$ -
Engineering						
Environmental Work						
Right-of-Way Acquisition						
Construction						
Contract Administration						
Testing Services						
Inspection Services						
Capital Asset Acquisitions	$ 11,000,000	$ 6,000,000		*	$ 5,000,000	
Other						
Total Estimated Cost	$ 11,000,000	$ 6,000,000	$ -		$ 5,000,000	$ -

*Approximate request of NVTA FY17 Call for Projects.

FISCAL YEAR ANNUAL PROJECT CASH FLOW

	Total Fiscal Year 2015		Total Fiscal Year 2016		Total Fiscal Year 2017		Total Fiscal Year 2018		Total Fiscal Year 2019	
Project Phase	PayGo	Financed	PayGo	Financed	PayGo	Financed	PayGo	Financed	PayGo	Financed
Design Work										
Engineering										
Environmental Work										
Right-of-Way Acquisition										
Construction										
Contract Administration										
Testing Services										
Inspection Services										
Capital Asset Acquisitions			$ 6,000,000							
Other										
Total Estimated Cost	$ -	$ -	$ 6,000,000	$ -	$ -	$ -	$ -	$ -	$ -	$ -

Please Note: If additional years are needed, please submit a separate form with additional columns

FISCAL YEAR ESTIMATED PROJECT CASH FLOW

	FY 15 Mthly Cash Flow		FY 16 Mthly Cash Flow		FY 17 Qtrly Cash Flow		FY 18 Qtrly Cash Flow		FY 19 Qtrly Cash Flow	
	PayGo	Financed	PayGo	Financed	PayGo	Financed	PayGo	Financed	PayGo	Financed
July										
August										
September			$ 1,010,000							
October			$ 2,000,000							
November			$ 540,000							
December			$ 1,500,000							
January			$ 950,000							
February										
March										
April										
May										
June										
Total per Fiscal Year	**$ -**	**$ -**	**$ 6,000,000**	**$ -**	**$ -**	**$ -**	**$ -**	**$ -**	**$ -**	**$ -**

Please Note: If additional years are needed, please submit a separate form with additional columns

This attachment is certified and made an official attachment to the Standard Project Agreement document by the parties of this agreement.

Recipient Entity Official

Signature
Director, Department of Transportation
Title

Date
Tom Biesiadny
Print name of person signing

Northern Virginia Transportation Authority

Signature
NVTA Executive Director
Title

Date

Print name of person signing

Northern Virginia Transportation Authority
The Authority for Transportation in Northern Virginia

FY 2015-16 PROJECT DESCRIPTION FORM (9K)

Basic Project Information

Submitting Agency: Fairfax County

Project Title: Connector Bus Service Expansion – Capital Purchase 22 Buses (9K)

Project Type *(check one)*:
Roadway ( ) Transit (X)

VA State Route Number (if applicable) and NVTA Corridor Number (1-8): Multiple Corridors, including Corridors 5, 6, 7, and 8

1. **Project Description:** The County is planning to start two (2) new bus routes and improve service on nine (9) additional routes. New and improved service as part of this project would operate within the I-66 Corridor and locations in southern Fairfax County, including service between the Vienna Metrorail Station and Centerville, and in the Huntington and Springfield areas. The $11 million requested would cover the purchase of the 19 buses needed for peak service, plus 3 additional buses for use as spares to cover down time for bus servicing and repairs,

2. **Requested NVTA Funds:** $6,000,000

3. **Phase(s) of Project Covered by Requested NVTA Funds:** All phases of procurement for capital bus purchases.

4. **Total Cost to Complete Project:** $11,000,000

5. **Project Milestone -Study Phase:** Start of Study - This purchase would support those service enhancements mentioned in the project description above, and recommended in the County Transit Development Plan.

6. **Project Milestone -Preliminary Engineering (30% Design):** Start of PE - N/A

7. **Project Milestones -Final Design:** Start of Final Design - N/A

8. **Project Milestones -Right-of-Way:** ROW acquisitions completed - N/A

9. **Project Milestone – Construction:** Start of Construction - N/A

10. **Project Milestone – Mass Transit Vehicle Acquisition:** Start of Construction - Procurement and delivery anticipated in FY 2016.

11. Is Project in Transaction 2040:
Yes (X) No ( )

12. Project in 2010 CLRP: N/A

13. Project Leverages other Funding: (please state amount)

- Local ( )
- State ( )
- Federal ( )
- Other:

Stated Benefits

- **What Regional benefit(s) does this project offer?**
  Expands the Connector bus fleet; implements new routes serving two (2) major employment centers (Tysons, Fort Belvoir), provides connections to and from neighboring jurisdictions; increases capacity of Fairfax Connector bus system; contributes to congestion mitigation.

- **How does the project reduce congestion?**
  By expanding transit system capacity, reduces single-occupant vehicle travel on regional roadways.

- **How does project increase capacity? (Mass Transit Projects only)**
  Increases number of buses in the Fairfax Connector system, which allows the addition of new bus routes on regional corridors, and increased service levels on existing regional routes.

- **How does project improve auto and pedestrian safety?**
  By expanding the transit system capacity, reduces single-occupant vehicle travel on regional roadways, which increases both vehicular and pedestrian safety.

- **List internet links below to any additional information in support of this project:**
  Included in the Fairfax County Transit Development Plan,
  http://www.fairfaxcounty.gov/fcdot/tdp.htm.

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Board Agenda Item
June 23, 2015

ACTION – 9

Approval of Commuter Parking at Springfield Town Center License Agreement (Lee District)

ISSUE:
Execution of a License Agreement with the new owner of Springfield Mall. Springfield Mall was sold to PR Springfield Town Center LLC and renamed Springfield Town Center. The new owner would like to continue the license arrangement for commuter parking spaces with the County that was executed between the County and the previous owner on December 5, 2005.

RECOMMENDATION:
The County Executive recommends that the Board approve the License Agreement for commuter parking spaces with PR Springfield Town Center LLC and authorize the Director of the Fairfax County Department of Transportation (FCDOT) to execute this agreement.

TIMING:
Board approval is requested on June 23, 2015, so that the new License Agreement with PR Springfield Town Center LLC can be executed in a timely manner.

BACKGROUND:
Between 1990 and 2001, the Board approved license parking agreements with three entities to provide commuter parking spaces in support of the Springfield I-95/395/495 interchange construction project including one with the then owner of Springfield Mall. On June 7, 1999, the Board approved the lease of 1,000 spaces from Springfield Mall. The agreement was amended to 500 spaces on April 26, 2004, after the opening of additional parking at the Franconia-Springfield Metrorail Station.

The amended agreement between Springfield Mall and the County also allowed Fairfax Connector buses to operate on the property of Springfield Mall. The new License Agreement will continue to allow Fairfax Connector buses to operate on Springfield Town Center property.

In February 2004, the Virginia Department of Transportation (VDOT) informed FCDOT that as of December 31, 2005, VDOT would discontinue all funding for commuter parking. Subsequently, the County has continued to fund the lease, since renting these spaces is significantly cheaper than constructing new park-and-ride spaces.

Weekday commuter occupancy of these parking spaces is approximately 69 percent.

FISCAL IMPACT:
Funding in the amount of $11,250 and $45,000 for FY 2015 and FY 2016 respectively is available in Fund 4000, County Transit for both fiscal years. No additional funding is needed for FY 2015 or FY 2016, and there is no impact to the General Fund. Insurance coverage will be maintained by the County with PR Springfield Town Center LLC as an additional insured under the County's Commercial General Liability policy.

ENCLOSED DOCUMENTS
Attachment I - License Agreement between Fairfax County and PR Springfield Town Center LLC for Commuter Parking
Attachment II – December 5, 2005, Board Agenda Item
Attachment III – Transfer of Springfield Town Center letter from Franconia Two, L.P. to PR Springfield Town Center, LLC

STAFF:
Tom Biesiadny, Director, FCDOT
Dwayne Pelfrey, Chief, Transit Services Division, FCDOT
Karen Payne, Park and Ride Facilities Manager, FCDOT

Attachment I

LICENSE AGREEMENT BETWEEN FAIRFAX COUNTY
AND PR SPRINGFIELD TOWN CENTER LLC
FOR COMMUTER PARKING

THIS LICENSE AGREEMENT made this _____ day of _____, 2015, by and between PR Springfield Town Center LLC (hereafter referred to as SPRINGFIELD TOWN CENTER); having an address at 6500 Springfield Mall, Springfield Virginia, 22150, and the BOARD OF SUPERVISORS OF FAIRFAX COUNTY (hereinafter referred to as COUNTY), a body public of Virginia, having an address at 12000 Government Center Parkway, Fairfax, Virginia 232035.

WHEREAS, the COUNTY continues to support public transportation services, facilities, and commuter park-and-ride lots as effective traffic mitigation facilities;

WHEREAS, the COUNTY desires to license parking spaces at SPRINGFIELD TOWN CENTER to provide additional commuter parking in the area;

WHEREAS, Parking Deck "A" (known as the Macy Parking Deck), located at 6500 Springfield Mall, 2nd, 4th, and 6th level parking areas, have available at least 500 spaces for commuter parking on weekdays between 5:00 am and 8:00 pm;

WHEREAS, Springfield Town Center is the owner of Parking "A" at Springfield Town Center;

NOW, THEREFORE, for and in consideration of the mutual promises and agreements set forth below, SPRINGFIELD TOWN CENTER and the COUNTY agree as follows:

1. Five hundred (500) parking spaces on Parking Deck "A", 2nd, 4th and 6th level parking areas, which are shown on the plan attached hereto and incorporated herein as Exhibit A, will be reserved for use by commuters who carpool, vanpool, or ride public transportation.

2. a. The amount of license payments payable to SPRINGFIELD TOWN CENTER under the contract between SPRINGFIELD TOWN CENTER and the COUNTY shall be comprised of a parking fee of $3,750.00 per month, based on 500 spaces @$7.50 per space per month. Quarterly payments shall be in the amount of $11,250.00 for each full quarter through July 31, 2015. If the total number of parking spaces as required in Paragraph 1 are not available for the full quarter, such as due to delay start-up, the parking fee payment shall be prorated accordingly.

b. FAIRFAX COUNTY shall make license payments to PR SPRINGFIELD TOWN CENTER LLC on a quarterly basis, with payments being made within 30 working days after receipt of PR SPRINGFIELD TOWN CENTER LLC's quarterly invoice. Quarters are designated as July 1-September 30; October 1-December 31; January 1-March 31; and April 1-June 30.

c. SPRINGFIELD TOWN CENTER shall send a copy of the invoice to:

Park-and-Ride Manager
County of Fairfax
Department of Transportation
4050 Legato Road, Suite 400
Fairfax, Virginia 22033-2895

d. The license payments to SPRINGFIELD TOWN CENTER shall be made payable to PR SPRINGFELD TOWN CENTER LLC and forwarded to:

PR Springfield Town Center LLC
P.O. Box 932831
Cleveland, OH 44193

3. FAIRFAX CONNECTOR buses shall be permitted to access SPRINGFIELD TOWN CENTER and pick-up and drop-off passengers at a bus stop which is mutually acceptable to SPRINGFIELD TOWN CENTER and the COUNTY.

4. As part of its continuing maintenance of the parking lot, SPRINGFIELD TOWN CENTER shall continue to provide lighting, sweeping, and snow removal with respect to the commuter parking spaces.

5. In cooperation with SPRINGFIELD TOWN CENTER, the COUNTY shall provide signage on the premises to direct commuters to Parking Deck "A", 2nd, 4th and 6th level parking areas.

6. The COUNTY shall obtain and keep in force throughout the duration of this LICENSE AGREEMENT a Commercial General Liability Insurance policy in the limit of $2,000,000 per occurrence/aggregate to protect against losses involving the County's use of identified parking spaces, as described in this agreement. Claims, suits or actions brought on account of any injury or damage sustained to any person, or to the property of any person, while utilizing the commuter parking area as a park-and-ride on Parking Deck "A", should be directed to:

Claims Supervisor, Risk Management
County of Fairfax
12000 Government Center Parkway, Suite 215
Fairfax, Virginia 22035-5511

The liability insurance policy shall name PR SPRINGFIELD TOWN CENTER LLC as additional insured and shall provide that cancellation cannot occur without 45 days prior written notice to PR SPRINGFIELD TOWN CENTER from the insurance company. It is expressly agreed and understood that the COUNTY does not agree to indemnify or hold harmless PR SPRINGFIELD TOWN CENTER LLC for or against any claim brought by any party against PR SPRINGFIELD TOWN CENTER LLC.

7. SPRINGFIELD TOWN CENTER shall monitor and enforce all parking regulations concerning where and when commuter parking is permitted. Parking by commuters shall be permitted only in specific spaces on the levels 2, 4 and 6 of Parking Deck "A" (Macy's parking structure), Monday through Friday, between the hours of 5:00 am and 8:00 pm. These spaces shall be available for use by visitors to the SPRINGFIELD TOWN CENTER at all other times.

8. The COUNTY shall be permitted to include Parking Deck "A" commuter parking area at the SPRINGFIELD TOWN CENTER in promotional literature about commuter parking located in Fairfax County.

9. The parties agree that the LICENSE AGREEMENT shall be effective _____, 2015, and shall continue in force until terminated by either party, with or without cause, 30 days after receipt of written notice by the other party; however, the COUNTY's covenant to provide insurance as set forth in paragraph 6, to pay for the relocation of the bus stop, and to install and maintain signage is subject to annual appropriations by the Fairfax County Board of Supervisors. All notices under this agreement shall be sent to the following addresses:

Mr. Tom Biesiadny, Director
County of Fairfax County
Department of Transportation
4050 Legato Road, Suite 400
Fairfax, Virginia 22033-2895

PR Springfield Town Center LLC
c/o PREIT Services LLC
200 South Broad Street, 3rd Floor
Philadelphia, PA 19102
Attention: General Counsel

With Copy to:

Springfield Town Center Management Office
Attn: General Manager
6500 Springfield Mall
Springfield, Virginia 22150

10. Nothing contained in this LICENSE AGREEMENT shall be construed or interpreted as creating anything other than a license; that is this agreement shall not be construed or interpreted as creating any property rights at the location of Parking Deck “A” commuter parking area at the SPRINGFIELD TOWN CENTER.

11. This LICENSE AGREEMENT may not be modified except by a written instrument duly executed by the parties hereto.

12. If any provision of this LICENSE AGREEMENT shall be invalid or unenforceable to any extent, the remainder of this LICENSE AGREEMENT shall be valid and enforceable to the fullest extent permitted by law.

13. This LICENSE AGREEMENT shall be governed and construed in all respects as between the SPRINGFIELF TOWN CENTER and the COUNTY, in accordance with the laws of the Commonwealth of Virginia, without regard to conflicts of law principles. This License Agreement is also subject to and conditioned upon compliance with all applicable state and local building codes and zoning requirements.

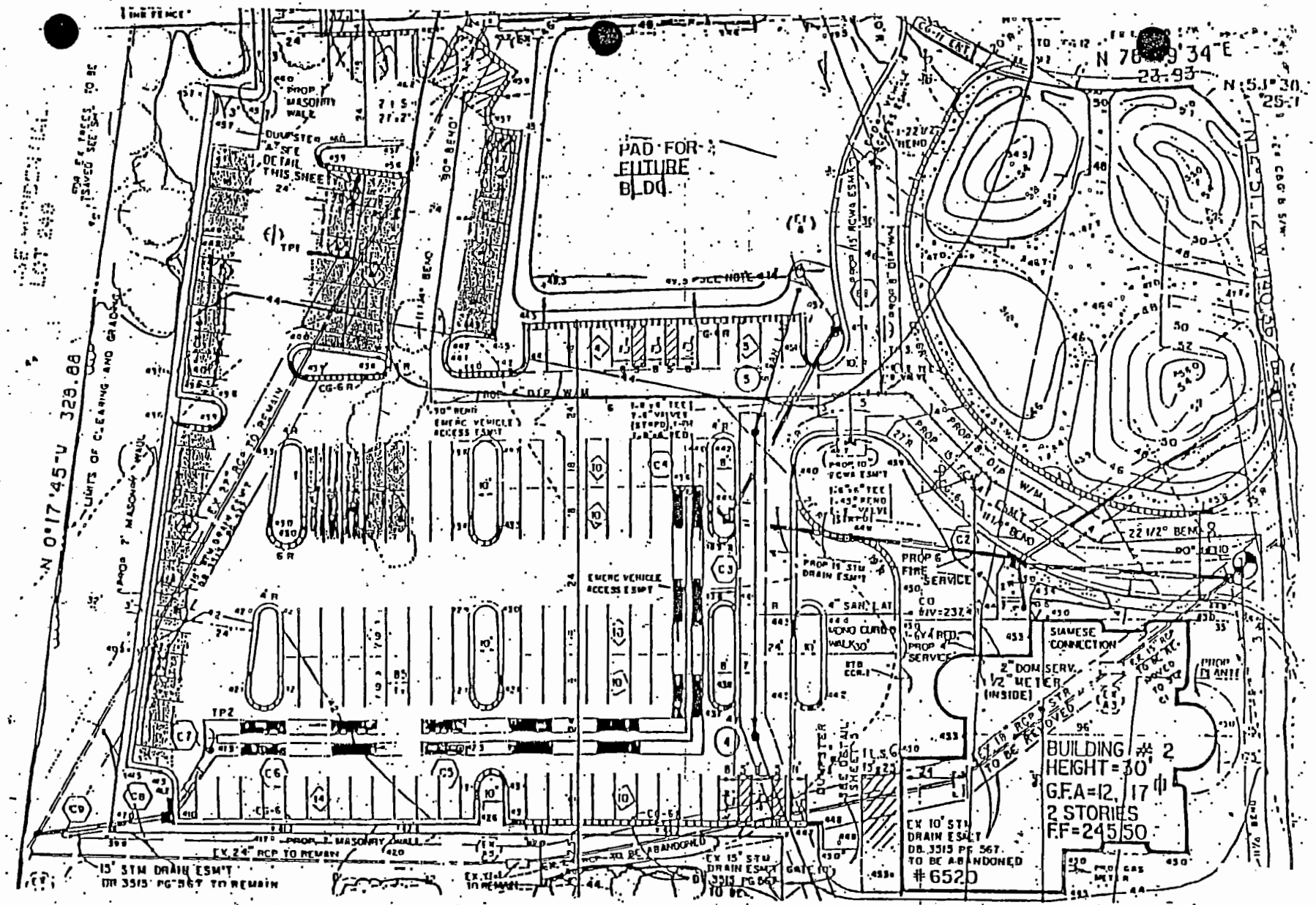
IN WITNESS WHEREOF the parties hereto have set their hands and seals the day and year first written above.

COUNTY OF FAIRFAX, VIRGINIA

BY: _____
Tom Biesiadny, Director
Department of Transportation

SPRINGFIELD TOWN CENTER LLC

BY:_____
General Manager
SPRINGFIELD TOWN CENTER LLC


PAD FOR FUTURE BLDG
BUILDING # 2
HEIGHT = 30'
G.F.A = 12,117 ±
2 STORIES
F.F = 245.50
PROP 6" FIRE SERVICE
PROP 2" DOM SERV. 1/2" METER (INSIDE)
SIAMESE CONNECTION
EMERG VEHICLE ACCESS ESMT
PROP 15' STM DRAIN ESMT
EX 10' STM DRAIN ESMT DB. 3515 PG. 567 TO BE ABANDONED #6520
EX 15" STM DRAIN ESMT DB. 3515 PG. 567 TO BE ABANDONED
15' STM DRAIN ESM'T DB 3515 PG 567 TO REMAIN
EX 24" RCP TO REMAIN
PROP 7' MASONRY WALL
DUMPSTER ENCL SEE DETAIL THIS SHEET
N 0°17'45"W 328.88
N 78°09'34"E 23.93
N 5.1°30" 25.1
PROP 4" D.I.P. W.M.
PROP 8" D.I.P. W.M.
PROP 10' PCWA ESMT
4" SAN. LAT.
LONG CURB WALK 30'
1-6" V. RED. PROP 4" SERVICE
CO DIV = 232.4
22 1/2° BEND
90° BEND
TEE
VALVE
TP1
TP2
CG-6
CG-6R
6R
4R
EX 2" AC TO REMAIN
EX 24" RCP TO BE REMOVED
EX 18" RCP TO BE REMOVED
EX 15" RCP TO BE REMOVED
EX 12" RCP TO BE REMOVED
EX 10" RCP TO BE REMOVED
EX 8" RCP TO BE REMOVED
EX 6" RCP TO BE REMOVED
EX 4" RCP TO BE REMOVED
EX 2" RCP TO BE REMOVED
EX 1" RCP TO BE REMOVED
EX 0.5" RCP TO BE REMOVED
EX 0.25" RCP TO BE REMOVED
EX 0.125" RCP TO BE REMOVED
EX 0.0625" RCP TO BE REMOVED
EX 0.03125" RCP TO BE REMOVED
EX 0.015625" RCP TO BE REMOVED
EX 0.0078125" RCP TO BE REMOVED
EX 0.00390625" RCP TO BE REMOVED
EX 0.001953125" RCP TO BE REMOVED
EX 0.0009765625" RCP TO BE REMOVED
EX 0.00048828125" RCP TO BE REMOVED
EX 0.000244140625" RCP TO BE REMOVED
EX 0.0001220703125" RCP TO BE REMOVED
EX 0.00006103515625" RCP TO BE REMOVED
EX 0.000030517578125" RCP TO BE REMOVED
EX 0.0000152587890625" RCP TO BE REMOVED
EX 0.00000762939453125" RCP TO BE REMOVED
EX 0.000003814697265625" RCP TO BE REMOVED
EX 0.0000019073486328125" RCP TO BE REMOVED
EX 0.00000095367431640625" RCP TO BE REMOVED
EX 0.000000476837158203125" RCP TO BE REMOVED
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EX 0.000000007450580596923828125" RCP TO BE REMOVED
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EX 0.0000000000000000000167047794380762227883783529196964617743156245967362830133648130963584416988638175754053406530401450702020065327489521820098161697387695312500" RCP TO BE REMOVED
EX 0.00000000000000000000835238971903811139418917645984823088715781229836814150668240654817922084943190878770267032652007253510100326637447609100490808486938476562500" RCP TO BE REMOVED
EX 0.000000000000000000004176194859519055697094588229924115443578906149184070753341203274089610424715954393851335163260036267555050163318738045502454042434692382812500" RCP TO BE REMOVED
EX 0.0000000000000000000208809742975952784854729411496205772178945307459203537667060163704480521235797719692566758163001813377525081659369022751227021217346191406250" RCP TO BE REMOVED
EX 0.00000000000000000001044048714879763924273647057481028860894726537296017688335300818522402606178988598462833790815009066887625408296845113756135106086730957031250" RCP TO BE REMOVED
EX 0.000000000000000000052202435743988196213682352874051443044736326864800884416765040926120130308949429923141689540750453344381270414842255687806755304336547851562500" RCP TO BE REMOVED
EX 0.0000000000000000002610121787199409810684117643702572152236816343240044220838252046306006515447471496157084477037522667219063520742112784390337765216827392578125" RCP TO BE REMOVED
EX 0.00000000000000000130506089359970490534205882185128607611840817162002211041912602315300325772373574807854223851876133360953176037105639219516888260841369628906250" RCP TO BE REMOVED
EX 0.000000000000000006525304467998524526710294109256430380592040858100110552095630115765016288618678740392711192592593806668047658801855281960975844130420684814453125" RCP TO BE REMOVED
EX 0.00000000000000032626522339992622633551470546282151902960204290500552760478151578825081443093393701963555962962969033340238294009276409804879220652103424072265625" RCP TO BE REMOVED
EX 0.000000000000001631326116999631131677573527314107595148010214525027638023907578941254072154669685098177981481484516670011914700463820490243961032605171203613281250" RCP TO BE REMOVED
EX 0.000000000000008156630584998155658387867636570537975740051072625138190119537894706270360773348425490889907407422583350059573502319102451219805163026585601806640625" RCP TO BE REMOVED
EX 0.000000000000040783152924990778291939338182852689878700255363125690950597689473531351803866742127454449537037112916750297867511595512256099025815132928009033203125" RCP TO BE REMOVED
EX 0.000000000000203915764624953891459696690914263449393501276815628454752988447367656759019333710637272247685185560814583751489337557977561280129075664640045166015625" RCP TO BE REMOVED
EX 0.000000000001019578823124769457298483454571317246967506384078142273764942236838283795096668553186361238425927804072918757446687789887806400645378323200225830078125" RCP TO BE REMOVED
EX 0.000000000005097894115623847286492417272856586234837531920390711368824711184191418975483342765931806192129639020364593787233438949439032003226891616001129150390625" RCP TO BE REMOVED
EX 0.000000000025489470578119236432462086364282931174187659601953556844123555920957094877416713829659030960648195101822968936167194747195160016134458080005645751953125" RCP TO BE REMOVED
EX 0.000000000127447352890596182162310431821414655870938298009767784220617779604785474387083569148295154803240975509114844680835973735975800080672290400028228759765625" RCP TO BE REMOVED
EX 0.000000000637236764452980910811552159107073279354691490048838921103088898023927371935417845741475774016204877545574223404179868679879000403361452000141143798828125" RCP TO BE REMOVED
EX 0.000000003186183822264904554057760795535366396773457450244194605515444490119636859677089228707378870081024387727871117020899343399395002016807260000705718994140625" RCP TO BE REMOVED
EX 0.000000015930919111324522770288803977676831983867287251220973027577222450598184298385446143536894350405121938639355585104496716996975010084036300003528594970703125" RCP TO BE REMOVED
EX 0.000000079654595556622613851444019888384159919336436256104865137886112252990921491927230717684471752025609693196777925522483584984875050420181500017642974853515625" RCP TO BE REMOVED
EX 0.000000398272977783113069257220099441920799596682181280524325689430561264954607459636153588422358760128048465983889627612417924924375252100907500088214874267578125" RCP TO BE REMOVED
EX 0.000001991364888915565346286100497209603997983410906402621628447152806324773037298180767942111793800640242329919448138062089624621876260504537500441074371337890625" RCP TO BE REMOVED
EX 0.000009956824444577826731430502486048019989917054532013108142235764031623865186490903839710558969003201211649597240690310448123109381302522687502205371856689453125" RCP TO BE REMOVED
EX 0.000049784122222889133657152512430240099949585272660065540711178820158119325932454519198552794845016006058247986203451552240615546906512613437511026859283447265625" RCP TO BE REMOVED
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EX 0.001244603055572228341428812810756002498739631816501638517779470503952983148311362979963819871125400151456199655086288806015388672662815335937775671482086181640625" RCP TO BE REMOVED
EX 0.006223015277861141707144064053780012493698159082508192588897352519764915741556814899819099355627000757280998275431444030076943363314076679688878357410430908203125" RCP TO BE REMOVED
EX 0.031115076389305708535720320268900062468490795412540962944486762598824578707784074499095496778135003786404991377157220150384716816570383398444391787052154541015625" RCP TO BE REMOVED
EX 0.155575381946528542678601601344500312342453977062704814722433812994122893538920372495477483890675018932024956885786100751923584082851916992221958935260772705078125" RCP TO BE REMOVED
EX 0.777876909732642713393008006722501561712269885313524073612169064970614467694601862477387419453375094660124784428930503759617920414259584961109794676303863525390625" RCP TO BE REMOVED
EX 3.889384548663213566965040033612507808561349426567620368060845324853072338473009312386937097266875473300623922144652518798089602071297924805548973381519317626953125" RCP TO BE REMOVED
EX 19.446922743316067834825200168062539042806747132838101840304226624265361692365046561934685486334377366503119610723262593990448010356489624027744866907596588134765625" RCP TO BE REMOVED
EX 97.234613716580339174126000840312695214033735664190509201521133121326808461825232809673427431671886832515598053616312969952240051782448120138724334537982940673828125" RCP TO BE REMOVED
EX 486.173068582901695870630004201563476070168678320952546007605665606634042309126164048367137158359434162577990268081564849761200258912240600693621672689914703369140625" RCP TO BE REMOVED
EX 2430.865342914508479353150021007817380350843391604762730038028328033170211545630820241835685791797170812889951340407824248806001294561203003468108363449573516845703125" RCP TO BE REMOVED
EX 12154.326714572542396765750105039086901754216958023813650190141640165851057728154101209178428958985854064449756702040391242403006472806015017340541817247867584228515625" RCP TO BE REMOVED
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EX 303858.167864313559919143752625977172543855423950595341254753541004146276443203852530229460723974646351611243917551009781060075161820150375433513545431196689605712890625" RCP TO BE REMOVED
EX 1519290.839321567799595718763129885862719277119752976706273767705020731382216019262651147303619873231758056219587755048905300375809100751877167567727155983448028564453125" RCP TO BE REMOVED
EX 7596454.196607838997978593815649429313596385598764883531368838525103656911080096313255736518099366158790281097938775244526501879045503759385837838635779917240142822265625" RCP TO BE REMOVED
EX 37982270.983039194989892969078247146567981927993824417656844192625518284555400481566278682590496830793951405489693876222632509395227518796929189193178899586200714111328125" RCP TO BE REMOVED
EX 189911354.915195974949464845391235732834909639969122088284220963127591422777002407831393412952484153969757027448469381113162546976137593984645945965894497931003570556640625" RCP TO BE REMOVED
EX 949556774.575979874747324226956178664174548199845610441421104815637957113885012039156967064762420769848785137242346905565812734880688967969229729829472489655017852783203125" RCP TO BE REMOVED
EX 4747783872.879899373736621134780893320872740999228052207105524078189785569425060195784835323812103849243925686211734527829063674403448359846148649147362448275089263916015625" RCP TO BE REMOVED
EX 23738919364.399496868683105673904466604363704995614026035527620390948927847125300978924176619060519246219628431055867632729145317018017241796923243073686812241375446319580078125" RCP TO BE REMOVED
EX 118694596821.997484343415528369522333021818524978070130177638101954744639235626504894620883095260962310981571552158663648645585090085120898461621536843406121120671597909927368164062500" RCP TO BE REMOVED
EX 593472984109.987421717077641847611665109092624890350650888190509773723196178132524473104415476304811554907857760793318243227925450425604492308107684217030560335798954963684082031250" RCP TO BE REMOVED
EX 2967364920549.937108585388209238058325545463124451753254440952548868615980890662622365522077381524057774539288803966591216139627252128022461540538421085152801678994774818420410156250" RCP TO BE REMOVED
EX 14836824602749.685542926941046190291627727315622258766272204762744343079904453313111827610386907620288872696444019832956080698136260640112307702692105425764008394973874092102050781250" RCP TO BE REMOVED
EX 74184123013748.427714634705230951458138636578111293831361023813721715399522266565559138051934538101444363482220099164780403490681303200561538513460527128820041974869370460510253906250" RCP TO BE REMOVED
EX 370920615068742.138573173526154757290693182890556469156805119068608576997611332827795690259672690507221817411100495823902017453406516002807692567302635644100209874346852302551269531250" RCP TO BE REMOVED
EX 1854603075343710.692865867630773786453465914452782345784025595343042884988056664138978451298363452536109087055502479119510087267032580014038462836513178220501049371734261512756347656250" RCP TO BE REMOVED
EX 9273015376718553.464329338153868932267329572263911728920127976715214424940283320694892256491817262680545435277512395597550436335162900070192314182565891102505246858671307563781738281250" RCP TO BE REMOVED
EX 46365076883592767.321646690769344661336647861319558644600639883576072124701416603474461282459086313402727176387561977987752181675814500350961570912829455512526234293356537818908691406250" RCP TO BE REMOVED
EX 231825384417963836.608233453846723306683239306597793223003199417880360623507083017372306412295431567013635881937809889938760908379072501754807854564147277562631171466782689094543457031250" RCP TO BE REMOVED
EX 1159126922089819183.041167269233616533416196532988966115015997089401803117535415086861532061477157835068179409689049449693804541895362508774039272820736387813155857333913445472717285156250" RCP TO BE REMOVED
EX 5795634610449095915.205836346168082667080982664944830575079985447009015587677075434307660307385789175340897048445247248469022709476812543870196364103681939065779286669567227363586425781250" RCP TO BE REMOVED
EX 28978173052245479576.029181730840413335404913324724152875399927235045077938385377171538301536928945876704485242226236242345113547384062719350981820518409695328896433347836136817932128906250" RCP TO BE REMOVED
EX 144890865261227397880.145908654202066677024566623620760764999636175225389691926885769150768464734729383522426211181212341725567692031359675490909102592047664482167333918680684089660644531250" RCP TO BE REMOVED
EX 724454326306136989400.729543271010333385122833118103803824998180876126948459634428845753842323673646917612131055906061708627838460156798377454545512960238322410836669593403420448303222656250" RCP TO BE REMOVED
EX 3622271631530684947003.647716355051666925614165590519019124990904380634742298172144228769211618368234588060655279530308543139192300783991887272727564801191612054183347967017102241516113281250" RCP TO BE REMOVED
EX 18111358157653424735018.238581775258334628070827952595095624954521903173711490860721143846058091841172940303276397651542715695961503919959436363637824005958060270916739835085511207580566406250" RCP TO BE REMOVED
EX 90556790788267123675091.192908876291673140354139762975478124772609515868557454303605719230290459205864701516381988257713578479807519599797181818189120029790301354583699175427556037902832031250" RCP TO BE REMOVED
EX 452783953941335618375455.964544381458365701770698814877390623863047579342787271518028596151452296029323507581909941288567892399037597998985909090945600148951506772918495877137780189514160156250" RCP TO BE REMOVED
EX 2263919769706678091877279.822721907291828508853494074386953119315237896713936357590142980757261480146617537909549706442839461995187989994929545454728000744757533864592479385688900947570800781250" RCP TO BE REMOVED
EX 11319598848533390459386399.113609536459142544267470371934765596576189483569681787950714903786307400733087689547748532214197309975939949974647727273640003723787669322962396928444504737854003906250" RCP TO BE REMOVED
EX 56597994242666952296931995.568047682295712721337351859673827982880947417848408939753574518931537003665438447738742661070986549879699749873238636368200018618938346614811984642222523689270019531250" RCP TO BE REMOVED
EX 282989971213334761484659977.840238411478563606686759298369139914404737089242044698767872594657685018327192238693713305354932749398498749366193181841000093094691733074059923211112618446350097656250" RCP TO BE REMOVED
EX 1414949856066673807423299889.201192057392818033433796491845699572023685446210223493839362973288425091635961193468566526774663746992493746830965909205000465473458665370299616055563092231750488281250" RCP TO BE REMOVED
EX 7074749280333369037116499446.005960286964090167168982459228497860118427231051117469196814866442125458179805967342832633873318734962468734154829546025002327367293326851498080277815461158752441406250" RCP TO BE REMOVED
EX 35373746401666845185582497230.029801434820450835844912296142489300592136155255587345984074332210627290899029836714163169366593674812343670774147730125011636836466342574904013890773057937622070312500" RCP TO BE REMOVED
EX 176868732008334225927912486150.149007174102254179224561480712446502960680775277936729920371661053136454495149183570815846832968374061718353870735650625058184182331712874520069453865289688110351562500" RCP TO BE REMOVED
EX 884343660041671129639562430750.745035870511270896122807403562232514803403876389683649601858305265682272475745917854079234164841870308591769353253125290920911658562372600347269329448440551757812500" RCP TO BE REMOVED
EX 4421718300208355648197812153750.372517935255635448061403701781162574017019381948418248009291526328411362378729589270396170824209351542958846766265626454604558292811862601736346647242202758789062500" RCP TO BE REMOVED
EX 22108591501041778240989060768750.186258967627817724030701850890581287008509690974209124004645763164205681189364794635198541210467577147942338331328132273022791464059313008673173236211013793945312500" RCP TO BE REMOVED
EX 110542957505208891204945303843750.093129483813908862015350925445290643504254845487104562002322881582102840594682397317599270605233788573971169165664066136511395732029656504336586618105506896972656250" RCP TO BE REMOVED
EX 552714787526044456024726519218750.046564741906954431007675462722645321752127422743552281001161440791051420297341198658799635302616894286985584582832033068255697866014828252168293309052753448486328125" RCP TO BE REMOVED
EX 2763573937630222280123632596093750.023282370953477215503837731361322660876063711371776140500580720395525710148670599329399817651308447143492791416016534127848933007414126084146654526376724243164062500" RCP TO BE REMOVED
EX 13817869688151111400618162980468750.011641185476738607751918865680661330438031855685888070250290360197762855074335299664699908825654223571746395708008267063924466503707063042073327263188362121582031250" RCP TO BE REMOVED
EX 69089348440755557003090814902343750.005820592738369303875959432840330665219015927842944035125145180098881427537167649832349954412827111785873197854004133531962233251853531521036663631594181060791015625" RCP TO BE REMOVED
EX 345446742203777785015454074511718750.002910296369184651937979716420165332609507963921472017562572549044440713768583824916174977206413555892936598927002066765981116625926765760518331815797090530395507812500" RCP TO BE REMOVED
EX 1727233711018888925077270372558593750.001455148184592325968989858210082666304753981960736008781286274522220356884291912458087488603206777946468299463501033382990558312963380259165907898545265197753906250" RCP TO BE REMOVED
EX 8636168555094444625386351862792968750.000727574092296162984494929105041333152376990980368004390643137261110178442145956229043744301603388973234149731750516691495279156481690129582953949272632598876953125" RCP TO BE REMOVED
EX 43180842775472223126931759313964843750.000363787046148081492247464552520666576188495490184002195321568630555221072978114521872150801694486617074865875258345747639578240845064791476974636316299438476562500" RCP TO BE REMOVED
EX 215904213877361115634658796569824218750.000181893523074040746123732276260333288094247745092001097660784315277610536489057260936075400847243308537432937629172873819789120422395738487318158149719238281250" RCP TO BE REMOVED
EX 1079521069386805578173293982849121093750.000090946761537020373061866138130166644047123872546000548830392157638805268244528630468037700423621654286716468814586436909894560211197869243659079359619140625" RCP TO BE REMOVED
EX 5397605346934027890866469914245605468750.000045473380768510186530933069065083322023561936273000274415196078819402634122264315234018850211827143358234407293218454947447280105598934621829539809570312500" RCP TO BE REMOVED
EX 26988026734670139454332349571228027343750.000022736690384255093265466534532541661011780968136500137207598039409701317061157617007425105913571679117203646609227473723640052799467310914769904785156250" RCP TO BE REMOVED
EX 134940133673350697271661747856140136718750.000011368345192127546632733267266270830505890484068250068603799019704850658530578808503712552956785839558601823304613736861820026399733655457384952392578125" RCP TO BE REMOVED
EX 674700668366753486358308739280700683593750.000005684172596063773316366633633135415252945242034125034301899509852425329265289

Board Agenda Item
December 5, 2005

ACTION -

Commuter Parking at Springfield Mall, Springfield Plaza, American Legion Post 176, and Continuation of the S91 Shuttle from Springfield Mall to Franconia-Springfield Metrorail Station (Lee District)

ISSUE:
Execution of amended agreements with the Springfield Plaza, American Legion Post 176, and Springfield Mall for additional commuter parking.

RECOMMENDATION:
The County Executive recommends that the Board:

1. Approve in substantial form the attached amended agreements with the following organizations to continue to provide essential commuter parking in the Springfield area:
   a. Springfield Plaza
   b. American Legion Post 176
   c. Springfield Mall

2. Authorize the Director of the Fairfax County Department of Transportation (FCDOT) to execute these agreements.

3. Authorize payment to the Washington Metropolitan Area Transit Authority (WMATA) to operate the S91 (Springfield Shuttle) route from Springfield Mall to the Franconia-Springfield Metrorail station.

TIMING:
Board approval is requested on December 5, 2005, so that amended agreements with Springfield Plaza, American Legion Post 176, and Springfield Mall can be executed in a timely manner and so that shuttle service on route S91 can be continued without disruption.

BACKGROUND:
Between 1999 and 2001, the Board approved license parking agreements with three organizations to provide commuter parking space in support of the Springfield

I-95/395/495 interchange construction project. On June 7, 1999, the Board approved the lease of 1000 spaces from Springfield Mall's Macy's parking garage. That agreement was amended to 500 spaces on April 26, 2004, after the opening of additional parking at the Franconia-Springfield Metrorail Station. On October 3, 2000, an agreement was made with Springfield Plaza for the lease of 75 spaces and on July 16, 2001, 100 spaces were leased from American Legion Post 176. The Board also approved simultaneous agreements with the Virginia Department of Transportation (VDOT) to fund the leases through December 31, 2005. VDOT had a separate agreement with WMATA to fund TAGS Route S91, which serves as a shuttle from the Springfield Mall commuter parking spaces to the Franconia-Springfield Metrorail Station. Payments for these services were made entirely from funds available from the Springfield Interchange Congestion Mitigation Plan (CMP). In addition, the amended agreement between Springfield Mall and the County allowed FAIRFAX CONNECTOR buses to operate on the property of Springfield Mall.

In February 2004, VDOT informed FCDOT that as of December 31, 2005, VDOT would discontinue all funding for commuter parking. VDOT will also suspend the funding for Route S91 which carries passengers from the Springfield Mall to the Franconia-Springfield Metrorail station. The enclosed amended agreements, dated December 5, 2005, upon execution, would effectuate the change in funding for the parking agreements and Route S91.

Currently virtually all of the spaces at Springfield Plaza and American Legion Post 176 are being utilized, while about 40% of the Springfield Mall parking is being used by commuters. The Fiscal Year (FY) 2006 average weekday ridership for the S91 route is 391 trips.

FISCAL IMPACT:

There is no General Fund impact for FY 2006 or FY 2007. Funding of $254,625 is available from the Northern Virginia Transportation Commission (NVTC) for all license parking agreements and the Metrobus Route S91 through FY 2007. The costs of the agreements for the remainder of FY 2006 are Springfield Plaza - $3,375, American Legion Post 176 - $9,000, Springfield Mall - $22,500, and Route S91 - $59,456. The total cost for this six-month period is $94,331. If approved, FY 2006 funding will be appropriated as part of the *FY 2006 Third Quarter Review*. The total cost to continue these agreements in FY 2007 is $160,294. FY 2007 funding will be appropriated at a future quarterly review. Staff will reassess funding for the license parking agreements at the three locations prior to the FY 2008 budget process. If applicable, funding for Route S91 will be requested in Fund 309, Metro Operations and Construction, as part of the FY 2008 budget process.

Board Agenda Item
December 5, 2005

ENCLOSED DOCUMENTS:
Attachment I - Amended Commuter Parking Agreement between Fairfax County and Springfield Plaza
Attachment II - Amended Commuter Parking Agreement between Fairfax County and Springfield Mall
Attachment III - Amended Commuter Parking Agreement between Fairfax County and American Legion Post 176
Attachment IV - Estimated Cost of route S91

STAFF:
Robert A. Stalzer, Deputy County Executive
Katharine D. Ichter, Acting Director, FCDOT
Rollo C. Axton, Chief, Transit Services Division, FCDOT
Carol G. Smith, Chief, Transportation Marketing Section, FCDOT

SPRINGFIELD PLAZA, SECTION II, LIMITED PARTNERSHIP
PARK-AND-RIDE LICENSE AGREEMENT

THIS LICENSE AGREEMENT, made this 5th day of December, 2005, by and between (a) SPRINGFIELD PLAZA, SECTION II, LIMITED PARTNERHIP ("Owner"), having an address of 9302 Lee Highway, Suite 300, Fairfax, Virginia 22031; and (b) the BOARD OF SUPERVISORS OF FAIRFAX COUNTY ("County"), a body politic of Virginia, having an address of 12000 Government Center Parkway, Fairfax, Virginia 22035.

WHEREAS, County continues to support public transportation services, facilities, and commuter park-and-ride lots as effective traffic mitigation facilities; and

WHEREAS, roadway improvements to the I-95/395/495 interchange for an extended construction period will contribute to increased Metrorail and High Occupancy Vehicle ("HOV") usage during peak travel times; and

WHEREAS, County desires to license parking spaces at the Springfield Plaza (Section II) Shopping Center (the "Center") to provide additional commuter parking; and

WHEREAS, the Center, located at the intersection of Blanch Avenue and Old Keene Mill Road in Springfield, Virginia, has available 75 spaces for commuter parking on weekdays between 5:00 a.m. and 8:00 p.m.; and

WHEREAS, Owner is the owner of the parking area to be designated as commuter parking pursuant to this Agreement;

NOW THEREFORE, for and in consideration of the mutual promises and agreements set forth below, Owner and County agree as follows:

1. Seventy-five (75) parking spaces in the Center parking lot (the "Commuter Parking Area"), which are shown on the plan attached hereto and incorporated herein as Exhibit A, will be reserved for use by commuters, who will carpool, vanpool, or ride public transportation.

2.a. The amount of license payments payable to Owner shall be Five Hundred and Sixty-Two and 50/100 Dollars ($562.50) per month, based on 75 spaces @ $7.50 per space per month. Quarterly payments shall be in the amount of One Thousand Six Hundred Eighty-Seven and 50/100 Dollars ($1,687.50) for each full quarter. If the parking spaces are not available for the full quarter (for reasons of delayed start-up, for example), the license payment shall be prorated accordingly.

b. Fairfax County Department of Transportation (FCDOT) shall make license payments to Owner on a quarterly basis, with payment being made within thirty (30) working days after receipt of Owner's quarterly invoice.

Quarters are designated as July 1 – September 30, October 1 – December 31, January 1 – March 31, and April 1 – June 30.

c. Owner shall submit a quarterly invoice to:

Ms. Carol G. Smith
County of Fairfax
Department of Transportation
12055 Government Center Parkway, Suite 1034
Fairfax, Virginia 22035-5511

d. The license payment to Owner shall be forwarded to:

Accounts Payable Department
A.J. Dwoskin & Associates
9302 Lee Highway, Suite 300
Fairfax, Virginia 22031

3. As part of its continuing maintenance of the parking lot, Owner will continue to provide lighting, sweeping, and snow removal with respect to the Commuter Parking Area; provided, however, that this obligation shall be fulfilled consistent with Owner's existing practices and contractual obligations at the Center, and that no additional obligations are undertaken by Owner pursuant to this paragraph.

4. In cooperation with Owner, County shall provide appropriate signage for the Center to direct commuters to the Commuter Parking Area (the location and installation of such signage to be subject to Landlord's prior approval), and may install commuter parking signs in the Commuter Parking Area (subject to Landlord's prior approval, and generally consistent with the signage attached hereto as Exhibit B). County shall maintain any signage installed under this paragraph to Landlord's reasonable satisfaction. County shall provide advance written notice to Owner of County's intention to install any signage in the Center, including the Commuter Parking Area.

5. County shall obtain and keep in force throughout the duration of this Agreement a Commercial General Liability Insurance policy in the limit of $2,000,000.00 per occurrence and in the aggregate. Claims, suits or actions brought on account of any injury or damage sustained to any person, or to the property of any person, while utilizing the Commuter Parking Area or as a direct result of utilizing the Commuter Parking Area, should be directed to:

Claims Manager, Risk Management
County of Fairfax
12000 Government Center Parkway, Suite 215
Fairfax, Virginia 22035-5511

The liability insurance policy shall name Owner and A.J. Dwoskin & Associates as additional insureds and shall provide 45 days prior written notice of cancellation to Owner from the insurance company. It is expressly agreed that County does not indemnify or hold harmless Owner or A.J. Dwoskin & Associates for or against any claim brought by any party against Owner or A.J. Dwoskin & Associates.

6. Owner shall monitor and enforce all parking regulations concerning where and when parking shall be permitted in the Commuter Parking Area, consistent with this Agreement and Landlord's general practices regarding parking in the Center. Parking by commuters in the Commuter Parking Area shall be permitted only in clearly identified spaces (consistent with paragraph 4 herein), between the hours of 5 a.m. and 8 p.m., Monday through Friday. These spaces shall be available for use by other visitors to the Center at all other times.

7. County shall be permitted to include the Center's Commuter Parking Area in promotional literature about commuter parking lots located in Fairfax County.

8. The parties agree that the Agreement shall be effective on the date that it is executed by all parties hereto, and shall continue in force, and that the obligation to pay the license payments provided herein shall accrue on that date; provided, however, that either party shall have the right to terminate this Agreement, with or without cause, upon thirty (30) days written notice to the other party. County's covenants to provide insurance (as provided in paragraph 5) and install and maintain signage (as provided in paragraph 4) are subject to annual appropriations by the Fairfax County Board of Supervisors. All notices under this Agreement shall be sent to the following addressees:

As to County:

Ms. Katherine D. Ichter, P.E.,
Acting Director
Department of Transportation
12055 Government Center Parkway, Suite 1034
Fairfax, Virginia 22035-5511.

As to Owner:

Michael T. Dean, Esq.
Springfield Plaza, Section II, Limited Partnership
c/o A.J. Dwoskin & Associates
9302 Lee Highway, Suite 300
Fairfax, Virginia 22031

9. Nothing in this Agreement shall be construed or interpreted as creating anything other than a license; that is, this agreement shall not be construed or interpreted as creating any property rights at the location of the Center.

10. This Agreement may not be modified except by a written instrument duly executed by the parties hereto.

11. If any provision of this Agreement shall be invalid or unenforceable to any extent, the remainder of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

14. The Agreement shall be governed and construed in all respects as between Owner and County, in accordance with the laws of the Commonwealth of Virginia, without regard to conflict of law principles. This Agreement is also subject to and conditioned upon compliance with all applicable state and local building codes and zoning requirements.

15. Nothing herein shall be construed by the parties or any third party as a waiver of the sovereign immunity of the County of Fairfax.

(Signature Page Follows)

WITNESS:

OWNER:

SPRINGFIELD PLAZA, SECTION II, LIMITED PARTNERSHIP, a Virginia limited partnership

_____

By:_____(Seal)
Albert J. Dwoskin,
General Partner

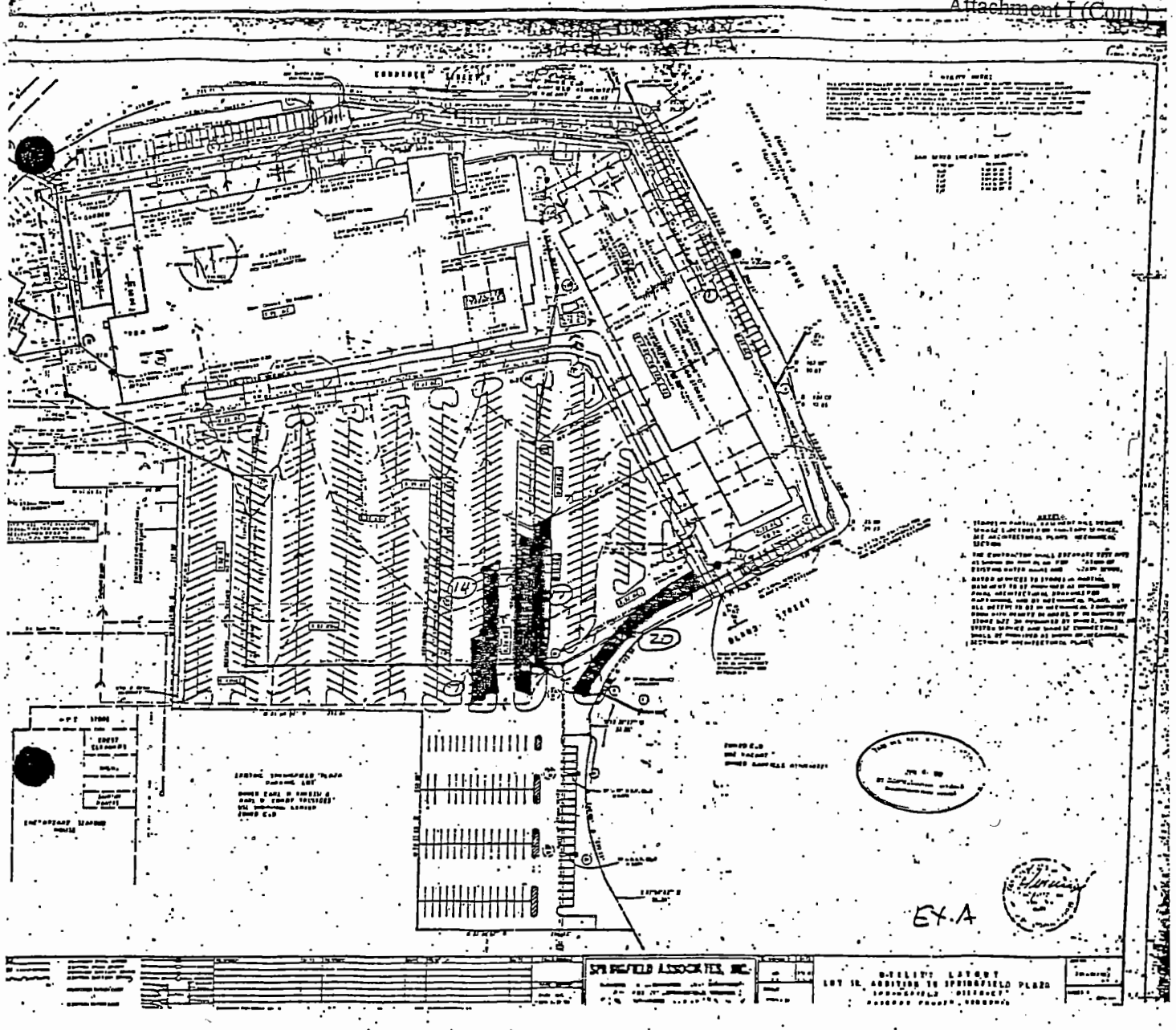
WITNESS:

COUNTY:

BOARD OF SUPERVISORS OF FAIRFAX COUNTY, a body politic

_____

By:_____(Seal)
Katherine D. Ichter, P.E.,
Director,
Fairfax County Department of Transportation
Authorized Agent


EX.A

Commuter Parking Sign

[18"x 24" Aluminum]

Blue background of Engineering Grade Reflective Covering;
Silver Reflective Lettering

Mon.--Fri.

5:00 AM – 8:00 PM

Blue Spaces Only

If Towed Call

(703) 691-2131

Ex B

AGREEMENT BETWEEN FAIRFAX COUNTY AND SPRINGFIELD MALL FOR COMMUTER PARKING

THIS LICENSE AGREEMENT made this 5th day of December 2005, by and between VORNADO REALTY TRUST (hereinafter referred to as SPRINGFIELD MALL), having an address at 6500 Springfield Mall, P.O. Box 789, Springfield, Virginia, 22150, and the BOARD OF SUPERVISORS OF FAIRFAX COUNTY (hereinafter referred to as COUNTY), a body politic of Virginia, having an address at 12000 Government Center Parkway, Fairfax, Virginia 22035.

WHEREAS, the COUNTY continues to support public transportation services, facilities, and commuter park-and-ride lots as effective traffic mitigation facilities;

WHEREAS, the COUNTY desires to license parking spaces at SPRINGFIELD MALL to provide additional commuter parking in the area;

WHEREAS, Parking Deck "A" (known as the Macy Parking Deck), located at 6500 Springfield Mall, 2nd, 4th and 6th level parking areas, have available at least 500 spaces for commuter parking on weekdays between 5:00 a.m. and 8:00 p.m.;

WHEREAS, VORNADO REALTY TRUST is the owner of Parking Deck "A" at Springfield Mall;

NOW THEREFORE, for and in consideration of the mutual promises and agreements set forth below, SPRINGFIELD MALL and the COUNTY agree as follows:

1. Five hundred (500) parking spaces on Parking Deck "A", 2nd, 4th and 6th level parking areas, which are shown on the plan attached hereto and incorporated herein as Exhibit A, will be reserved for use by commuters who carpool, vanpool, or ride public transportation.

2 a. The amount of license payments payable to SPRINGFIELD MALL under the contract between SPRINGFIELD MALL and the COUNTY shall be comprised of a parking fee of $3,750.00 per month, based on 500 spaces @ $7.50 per space per month. Quarterly payments shall be in the amount of $11,250.00 for each full quarter through December 31, 2005. If the total number of parking spaces as required in Paragraph 1 are not available for the full quarter, such as due to delayed start-up, the parking fee payment shall be prorated accordingly.

b. FAIRFAX COUNTY shall make license payments to SPRINGFIELD MALL on a quarterly basis, with payment being made within 30 working days after receipt of

SPRINGFIELD MALL's quarterly invoice. Quarters are designated as July 1-September 30; October 1-December 31; January 1-March 31; and April 1-June 30.

c. SPRINGFIELD MALL shall send a copy of the invoice to:

Ms. Carol G. Smith
County of Fairfax
Department of Transportation
12055 Government Center Parkway, Suite 1034
Fairfax, Virginia 22035-5511

d. The license payment to SPRINGFIELD MALL shall be made payable to VORNADO REALTY TRUST and forwarded to:

Mr. Jerry Robinson, General Manager
Springfield Mall
6500 Springfield Mall
P. O. Box 789
Springfield, Virginia 22150

3. FAIRFAX CONNECTOR buses shall be permitted to access Springfield Mall and pick-up and drop-off passengers at a bus stop which is mutually acceptable to SPRINGFIELD MALL and the COUNTY.

4. As part of its continuing maintenance of the parking lot, SPRINGFIELD MALL shall continue to provide lighting, sweeping, and snow removal with respect to the commuter parking spaces.

5. In cooperation with the SPRINGFIELD MALL, the COUNTY shall provide appropriate signage on the premises to direct commuters to Parking Deck "A", 2nd, 4th and 6th level parking areas.

6. The COUNTY shall obtain and keep in force throughout the duration of this LICENSE AGREEMENT a Commercial General Liability Insurance policy in the limit of $2,000,000 per occurrence/aggregate to protect against losses involving the County's use of identified parking spaces, as described in this agreement. Claims, suits or actions brought on account of any injury or damage sustained to any person, or to the property of any person, while utilizing the commuter parking area of Parking Deck "A", should be directed to:

Claims Supervisor, Risk Management
County of Fairfax
12000 Government Center Parkway, Suite 215
Fairfax, Virginia 22035-5511

The liability insurance policy shall name VORNADO REALTY TRUST as additional insureds and shall provide that cancellation cannot occur without 45 days prior written notice to VORNADO REALTY TRUST from the insurance company. It is expressly agreed and understood that the COUNTY does not agree to indemnify or hold harmless VORNADO REALTY TRUST for or against any claim brought by any party against VORNADO REALTY TRUST.

7. SPRINGFIELD MALL shall monitor and enforce all parking regulations concerning where and when commuter parking is permitted. Parking by commuters shall be permitted only in specific spaces on the Levels 2, 4, and 6 of Parking Deck "A" (Macy's parking structure), Monday through Friday, between the hours of 5:00 a.m. and 8:00 p.m. These spaces shall be available for use by visitors to the SPRINGFIELD MALL at all other times.

8. The COUNTY shall be permitted to include Parking Deck "A" commuter parking area at the SPRINGFIELD MALL in promotional literature about commuter parking located in Fairfax County.

9. The parties agree that the LICENSE AGREEMENT shall be effective December 5, 2005, and shall continue in force until terminated by either party, with or without cause, 30 days after receipt of written notice by the other party; however, the COUNTY's covenant to provide insurance as set forth in paragraph 6, to pay for the relocation of the bus stop, and to install and maintain signage is subject to annual appropriations by the Fairfax County Board of Supervisors. All notices under this agreement shall be sent to the following addressees:

Ms. Katherine D. Ichter P.E., Acting Director
County of Fairfax
Department of Transportation
12055 Government Center Parkway, Suite 1034
Fairfax, Virginia 22035-5511

Mr. Jerry Robinson, General Manager
Springfield Mall
6500 Springfield Mall
P. O. Box 789
Springfield, Virginia 22150

10. Nothing contained in this LICENSE AGREEMENT shall be construed or interpreted as creating anything other than a license; that is, this agreement shall not be construed or interpreted as creating any property rights at the location of Parking Deck "A" commuter parking area at the SPRINGFIELD MALL.

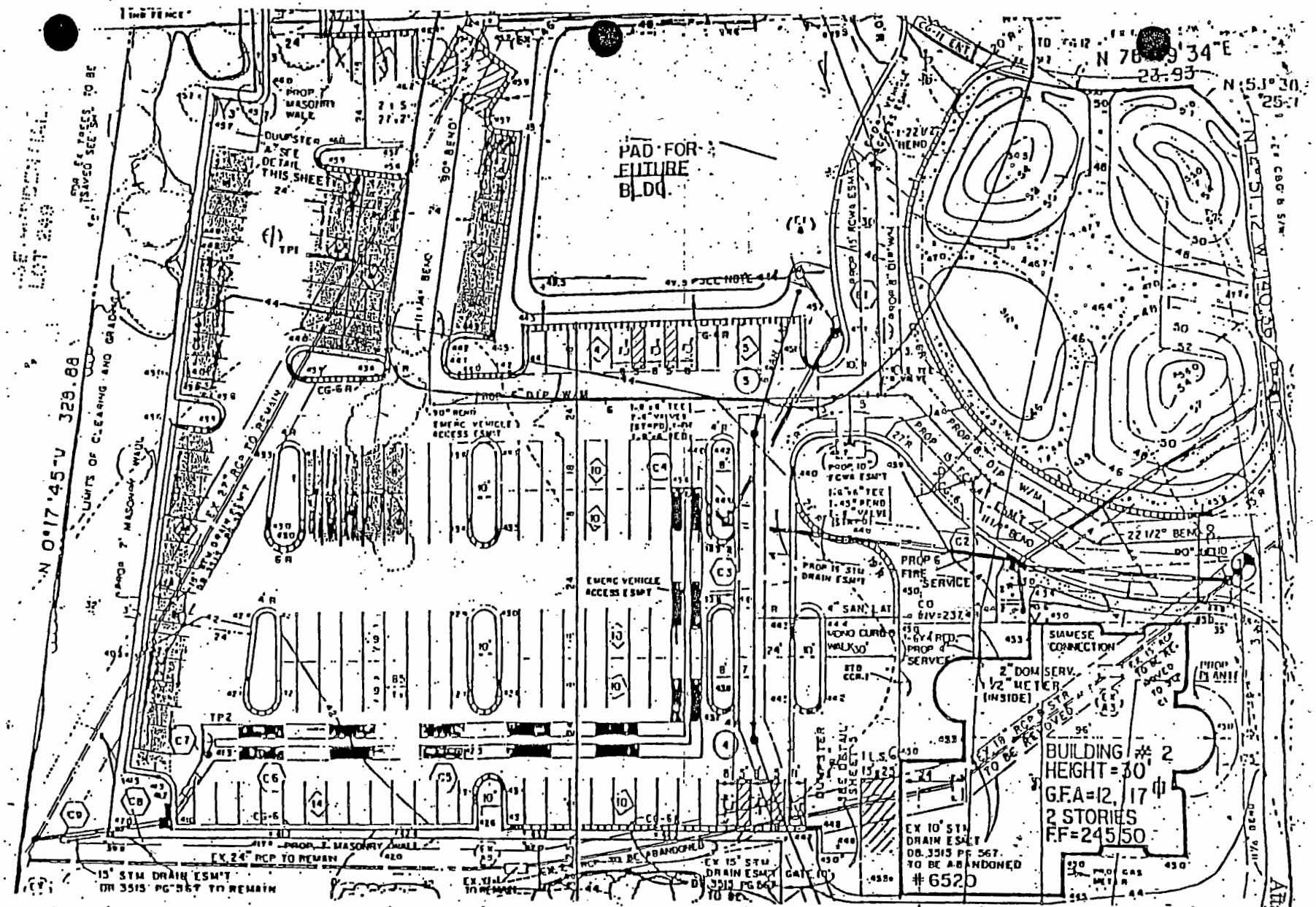
11. This LICENSE AGREEMENT may not be modified except by a written instrument duly executed by the parties hereto.

12. If any provision of this LICENSE AGREEMENT shall be invalid or unenforceable to any extent, the remainder of this LICENSE AGREEMENT shall be valid and enforceable to the fullest extent permitted by law.

13. This LICENSE AGREEMENT shall be governed and construed in all respects as between the SPRINGFIELD MALL and the COUNTY, in accordance with the laws of the Commonwealth of Virginia, without regard to conflicts of law principles. This License Agreement is also subject to and conditioned upon compliance with all applicable state and local building codes and zoning requirements.

IN WITNESS WHEREOF the parties hereto have set their hands and seals the day and year first written above.

COUNTY OF FAIRFAX, VIRGINIA	SPRINGFIELD MALL
BY: _____	BY: _____
Katherine D. Ichter, P.E., Acting Director Fairfax County Department of Transportation	Jerry Robinson, Vice President Franconia G.P. Corporation, General Partner Franconia Two, L.P.



Attachment II (Cont.

AMERICAN LEGION POST #176
PARK-AND-RIDE LICENSE AGREEMENT

THIS LICENSE AGREEMENT, made this 5th day of December, 2005, by and between (a) American Legion Post, #176 (herinafter referred to as the POST), having an address of 6520 Amherst Avenue, Springfield, Virginia 22150; and (b) the BOARD OF SUPERVISORS OF FAIRFAX COUNTY ("County"), a body politic of Virginia, having an address of 12000 Government Center Parkway, Fairfax, Virginia 22035.

WHEREAS, County continues to support public transportation services, facilities, and commuter park-and-ride lots as effective traffic mitigation facilities; and

WHEREAS, roadway improvements to the I-95/395/495 interchange for an extended construction period will contribute to increased Metrorail and High Occupancy Vehicle ("HOV") usage during peak travel times; and

WHEREAS, County desires to license parking spaces at the POST to provide additional commuter parking; and

WHEREAS, the Post, located at the 6520 Amherst Avenue, Springfield, Virginia, has available 100 spaces for commuter parking on weekdays between 5:00 a.m. and 8:00 p.m.; and

WHEREAS, the POST is the owner of the parking area to be designated as commuter parking pursuant to this Agreement;

NOW THEREFORE, for and in consideration of the mutual promises and agreements set forth below, The POST and County agree as follows:

1. One hundred (100) parking spaces in the POST parking lot, which are shown on the plan attached hereto and incorporated herein as Exhibit 1, will be reserved for use by commuters, who will carpool, vanpool, or ride public transportation.

2. a. The amount of license payments payable to POST shall be $1,500 per month based on 100 spaces @ $15.00 per space per month. Quarterly payments shall be in the amount of four thousand five hundred dollars ($4,500) for each full quarter. If the parking spaces are not available for the full quarter, such as for reasons due to delayed start-up, the license payment shall be prorated accordingly.

   b. Fairfax County Department of Transportation (FCDOT) shall make license payments to the POST on a quarterly basis, with payment being made within thirty (30) working days after receipt of The POST's quarterly invoice. Quarters are designated as July 1 – September 30, October 1 – December 31, January 1 – March 31, and April 1 – June 30.

c. The POST shall submit a quarterly invoice to:

Ms. Carol G. Smith
County of Fairfax
Department of Transportation
12055 Government Center Parkway, Suite 1034
Fairfax, Virginia 22035-5511

d. The license payment to The POST shall be forwarded to:

Mr. Jim Kampanos
Commander
American Legion Post # 176
6520 Amherst Avenue
Springfield, Virginia 22150

3. As part of its continuing maintenance of the parking lot, the POST will continue to provide lighting, sweeping, and snow removal with respect to the Commuter Parking spaces.

4. In cooperation with the POST, the County shall provide appropriate signage for the Center to direct commuters to the Commuter Parking Area (the location and installation of such signage to be subject to Landlord's prior approval), and may install commuter parking signs if indicated by the POST, at no expense to the POST.

5. County shall obtain and keep in force throughout the duration of this Agreement a Commercial General Liability Insurance policy in the limit of $2,000,000.00 per occurrence and in the aggregate. Claims, suits or actions brought on account of any injury or damage sustained to any person, or to the property of any person, while utilizing the Commuter Parking Area or as a direct result of utilizing the Commuter Parking Area, should be directed to:

Claims Manager, Risk Management
County of Fairfax
12000 Government Center Parkway, Suite 215
Fairfax, Virginia 22035-5511

The liability insurance policy shall name the POST as additional insured and shall provide 45 days prior written notice of cancellation to the POST from the insurance company. It is expressly agreed that County does not indemnify or hold harmless the POST for or against any claim brought by any party against the POST.

6. The POST shall monitor and enforce all parking regulations concerning where and when parking shall be permitted , consistent with this Agreement and

Landlord's general practices regarding parking in the Center. Parking by commuters in the Commuter Parking Area shall be permitted only in clearly identified spaces (consistent with paragraph 4 herein), between the hours of 5 a.m. and 11 p.m., Monday through Friday. These spaces shall be available for use by other visitors to the POST at all other times.

7. County shall be permitted to include the Center's Commuter Parking Area in promotional literature about commuter parking lots located in Fairfax County.

8. The parties agree that the Agreement shall be effective on the date that it is executed by all parties hereto, and shall continue in force, and that the obligation to pay the license payments provided herein shall accrue on that date; provided, however, that either party shall have the right to terminate this Agreement, with or without cause, upon thirty (30) days written notice to the other party. County's covenants to provide insurance (as provided in paragraph 5) and install and maintain signage (as provided in paragraph 4) are subject to annual appropriations by the Fairfax County Board of Supervisors. All notices under this Agreement shall be sent to the following addressees:

As to County:

Ms. Katherine D. Ichter, P.E.,
Acting Director
Department of Transportation
12055 Government Center Parkway, Suite 1034
Fairfax, Virginia 22035-5511.

As to The POST:

Mr. Jim Kampanos
Commander
American Legion Post # 176
6520 Amherst Avenue
Springfield, Virginia 22150

9. Nothing in this Agreement shall be construed or interpreted as creating anything other than a license; that is, this agreement shall not be construed or interpreted as creating any property rights at the location of the Center.

10. This Agreement may not be modified except by a written instrument duly executed by the parties hereto.

11. If any provision of this Agreement shall be invalid or unenforceable to any extent, the remainder of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

14. The Agreement shall be governed and construed in all respects as between The POST and County, in accordance with the laws of the Commonwealth of Virginia, without regard to conflict of law principles. This Agreement is also subject to and conditioned upon compliance with all applicable state and local building codes and zoning requirements.

15. Nothing herein shall be construed by the parties or any third party as a waiver of the sovereign immunity of the County of Fairfax.

(Signature Page Follows)

WITNESS:

_____

THE POST:

By:_____(Seal)
Jim Kampanos
Commander
American Legion Post #176

WITNESS:

_____

COUNTY:

BOARD OF SUPERVISORS OF FAIRFAX COUNTY, a body politic

By:_____(Seal)
Katherine D. Ichter, P.E.,
Director
Fairfax County Department of Transportation
Authorized Agent

Cost of S91 Service

For the balance of '06 (January 1, 2006 thru June 30, 2006) the cost would be $59,456.
An FY07 rate has not been established so the FY '07 annual cost would be at least $119,000.

The current WMATA rate is $73.63 per hour.

RSPM/0316A
County of Fairfax Park & Ride

FRANCONIA TWO, L.P.
C/O VORNADO REALTY TRUST
210 ROUTE 4 EAST
PARAMUS, NJ 07652

March 31, 2015

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Department of Transportation
Ms. Karen Robinson
4050 Legato Rd. Suite 400
Fairfax, VA 22033

RE: Transfer of Springfield Town Center, Springfield, Virginia

Ladies and Gentlemen:

Please be advised that Franconia Two, L.P. (the "Prior Owner") has this day transferred the above referenced property to PR Springfield Town Center LLC (the "New Owner"). The New Owner has assumed all obligations of the landlord under your lease from and after the above date. All security deposits in the possession of the Prior Owner have been delivered to the New Owner. Please send all future payments pursuant to your lease to New Owner in accordance with the payment instructions set forth below, unless otherwise directed by the New Owner.

If remitting via check:

PR Springfield Town Center LLC
PO Box 932831
Cleveland, OH 44193

If remitting via check using overnight courier:

PR Springfield Town Center LLC
c/o PNC Bank
ATTN: LOCKBOX # 932831
Mail LOC 01-6141
4100 West 150th Street
Cleveland, OH 44135

If remitting via electronic payment (ACH in CCD+ or CTX format only or Fedwire transfer):

PNC Bank, ABA 041000124
Account name: PR Springfield Town Center LLC

RSPM/0316A
County of Fairfax Park & Ride

Account Type: Business Checking
Account number: 4007809409

New Owner is a disregarded entity for tax reporting purposes and uses the tax identification number of its sole member, PREIT Associates, L.P. The federal tax identification number for PREIT Associates, L.P. is 23-2925032.

Please also note that, in the future, all legal notices to and other communications with the New Owner should be sent in writing and addressed as follows, unless otherwise directed by the New Owner:

PR Springfield Town Center LLC
c/o PREIT Services LLC
200 South Broad Street, 3rd Floor
Philadelphia, PA 19102
Attention: General Counsel

With copy to:

Springfield Town Center Management Office
Attn: General Manager
6500 Springfield Mall
Springfield, VA 22150
Phone: (703) 971-3738, ext. 214.

Please note that you should contact your insurance broker and notify them to send a revised certificate of insurance replacing the former owner as the additional named insured with that of the New Owner, PREIT Associates L.P., PREIT Services LLC and Pennsylvania Real Estate Investment Trust as the additional named insureds. The revised certificate of insurance should be sent to the attention of the Risk Management Department at the address listed above.

If your lease requires submission of sales data, all such reports should include the mall name and store number and be sent to:

If by e-mail: SpringfieldTownCentersales@preit.com

If by mail: Springfield Town Center Management Office
Attn: Office Manager
6500 Springfield Mall
Springfield, VA 22150

If by fax: (703) 313-6170.

[Signature on following page.]

RSPM/0316A
County of Fairfax Park & Ride

Very truly yours,

Franconia Two, L.P., a Virginia limited partnership

By: Franconia GP LLC, a Delaware limited liability company

By: _____
Jill Rothschild,
Vice President, Accounts Receivable

[Signature continued on following page.]

RSPM/0316A
County of Fairfax Park & Ride

PR Springfield Town Center LLC, a Delaware limited liability company

By: PREIT Associates, L.P., its Sole Member

By: Pennsylvania Real Estate Trust, its General Partner

By: _____

Name: Mario C. Ventresca, Jr.
Title: Executive Vice President

Board Agenda Item
June 23, 2015

ACTION - 10

Approval of Changes to the Fairfax County Purchasing Resolution

ISSUE:
Board of Supervisors' approval of changes to the Fairfax County Purchasing Resolution.

RECOMMENDATION:
The County Executive recommends that the Board of Supervisors approve the changes outlined below to the Fairfax County Purchasing Resolution, to become effective on July 1, 2015.

TIMING:
Routine.

BACKGROUND:
The Board of Supervisors adopted the current version of the Fairfax County Purchasing Resolution on July 1, 2014. During the 2015 session of the General Assembly, twelve bills were approved relating to procurement and/or contracts; and three bills modified a mandatory section of the Virginia Public Procurement Act (VPPA). Most bills introduced this session were related to the VPPA study conducted by the House Committee on General Laws and the Senate Committee on General Laws and Technology. The purpose of this study was to identify weaknesses and other problems in the VPPA and recommend improvements. The resulting changes are listed below under the heading "Code Change."

Staff also recommends three administrative amendments to the Purchasing Resolution, which can be found under the heading "Administrative Changes." These amendments are technical corrections to the Resolution.

Code Change

1. Senate bill 1378, Code of Virginia §2.2-4304; cooperative procurement. Authorizes use of contracts solicited and established by the Metropolitan Washington Council of Governments. This is a non-mandatory change that is recommended by staff. *See* Attachment I at page 5.
2. House bill 1637, Code of Virginia §2.2-4302.2; construction design professional contracts. Increases aggregate limits for projects performed in a one-year contract term from $5 million to $6 million. This is a non-mandatory change that

is recommended by staff. *See* Attachment I at page 41.

3. Senate bill 1226, Code of Virginia §2.2-4302.2; requirements for Request for Proposal. County must include specifics of any numerial scoring system used and indicate the weight that will be given to individual components of a proposal. Bill also requires that the point values must be included in the Request for Proposal or publicly posted prior to the due date and time for receipt of proposals. This is a non-mandatory change that is recommended by staff. *See* Attachment I at page 14.
4. House bill 1835, Code of Virginia §2.2-4301, 2.2-4302.2, 2.2-4303; omnibus procurement bill. This bill changes mandatory sections of the Virginia Public Procurement Act, as discussed below.
    a. Code of Virginia §4303: Eliminates the requirement to create a written justification in the file prior to using competitive negotiations. This changes a mandatory provision of the Virginia Public Procurement Act. *See* Attachment I at page 12.
    b. Code of Virginia Code of Virginia §4303.2; changes to job order construction contracting (JOC), which include: (1) increases JOC limits for individual job orders from $400,000 to $500,000; (2) increases the limit for the sum of all JOC jobs performed in a one-year contract term from $2 million to $5 million; (3) permits the use of ancillary architectural and engineering services up to $25,000 per job and $75,000 per contract term in a JOC contract; (4) reduces the number of one-year renewals from four to two. This is a mandatory provision of the Virginia Public Procurement Act. *See* Attachment I at pages 8, 44.

<u>Administrative Changes</u>

1. Purchasing Agent Duties: Text change to clarify nature of exceptions for purchase or architectural, engineering and related consultant services for construction projects and the contracting for construction projects; also, goods and services using school activity funds. *See* Attachment I at pages 2, 4.
2. Exceptions to Requirement for Competitive Procurement: Text change to correct citation to Code of Virginia related to procurement of services for retirement board investments, actuarial services, and disability determination services. *See* Attachment I at page 24.
3. Prequalification (page 33, 34): Technical corrections to make consistent with other provisions governing prequalification within the Purchasing Resolution. *See* Attachment I at pages 33, 34.
4. Construction Contracting Authority: Authorizes Director, Department of Public Works, or his designee, to enter into alternative dispute resolution pursuant to Code of Virginia § 2.2-4366 (2014). *See* Attachment I at page 37.
5. Construction Contracting Authority: Authorizes Director, Fairfax County Park

Authority, or his designee, to enter into alternative dispute resolution pursuant to Code of Virginia § 2.2-4366 (2014). See Attachment I at page 38.

6. Approval of rules and regulations: Delegates authority to approve construction-related rules and regulations to the Purchasing Agent. *See* Attachment I at page 39.
7. Methods of Procurement, Construction Management/Design Build Services: Text change to be more consistent with Code of Virginia § 4308, which is a mandatory provision. *See* Attachment I at pages 42.
8. Prequalification of Contractor: Removes non-compliance with the Fairfax County Construction Safety Resolution as a basis for denial of prequalification for consistency with the VPPA. *See* Attachment I at pages 48.

The text changes proposed in the Resolution are presented in "track changes" format and legislative references are provided in the right margin in Attachment I. These changes have been coordinated with the Department of Public Works and Environmental Services, the Department of Housing and Community Development, the Fairfax County Park Authority, the Department of Transportation, Fairfax County Public Schools, and the Office of the County Attorney.

Other Legislative Changes Regarding Procurement

The 2015 Legislative Session resulted in several bills that implicate the County's procurement practices, but did not require amendment of the County's Purchasing Resolution. Specifically:

1. Code of Virginia §33.2-283: Requires local public bodies to submit a written report to the Department of General Services for any construction project exceeding $2 million which uses a procurement method other than competitive sealed bidding, showing the justification for the use of such alternative procedures. Sunsets July 1, 2017.
2. House bill 1917, Code of Virginia §2.2-614.4 Commercial Activities List: Requires local public bodies to post a notice before entering into a contract with another governmental agency for services above $25,000 that are on the "commercial activities list" prepared by the State Department of Planning and Budget (purchases from public institutions of higher education are exempted).
3. House bill 2148, Code of Virginia §2.2-4310, prohibits discrimination against a bidder or offeror that is historically black college or university as defined in §2.2-1604. The County's Supplier Diversity definition will be updated to reflect this change.

FISCAL IMPACT:
None.

Board Agenda Item
June 23, 2015

ENCLOSED DOCUMENTS:
Attachment I - Revised Fairfax County Purchasing Resolution

STAFF:
Joseph Mondoro, Acting Chief Financial Officer
Cathy A. Muse, Director, Department of Purchasing and Supply Management

ATTACHMENT 1

FAIRFAX COUNTY

PURCHASING RESOLUTION

July 1, 2015

FAIRFAX COUNTY PURCHASING RESOLUTION

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FAIRFAX COUNTY PURCHASING RESOLUTION

WHEREAS, a central purchasing system is authorized by §15.2-1543 of the Code of Virginia, and is thus a part of the Urban County Executive Form of Government adopted by Fairfax County in 1951; and

WHEREAS, the Board of County Supervisors is dedicated to securing high quality goods and services at reasonable cost while ensuring that all purchasing actions be conducted in a fair and impartial manner with no impropriety or appearance thereof, that all qualified vendors have access to County business and that no offeror be arbitrarily or capriciously excluded, that procurement procedures involve openness and administrative efficiency, and that the maximum feasible degree of competition is achieved; and

WHEREAS, the Code of Virginia, §2.2-4300 through §2.2-4377 (as amended), enunciate the public policies pertaining to governmental procurement from nongovernmental sources by public bodies which may or may not result in monetary consideration for either party, which sections shall be known as the Virginia Public Procurement Act; and

WHEREAS, the Code of Virginia, §15.2-1236 (as amended) requires all purchases of and contracts for supplies, materials, equipment and contractual services shall be in accordance with Chapter 43 of Title 2.2 of the Code of Virginia; and

WHEREAS, the Code of Virginia, §2.2-4343 (as amended) allows implementation of the Virginia Public Procurement Act by ordinance, resolutions, or regulations consistent with this Act by a public body empowered by law to undertake the activities described by the Act: and

WHEREAS, the Code of Virginia, §15.2-1543, empowers the Board of Supervisors to employ a County Purchasing Agent and set his duties as prescribed by the Code of Virginia, §15.2-831, §15.2-1233 through §15.2-1240, and §15.2-1543;

THEREFORE BE IT RESOLVED that this resolution prescribes the basic policies for the conduct of all purchasing in Fairfax County (except as otherwise stipulated herein) to take effect immediately upon passage, as follows:

Article 1

GENERAL PROVISIONS

Section 1. Title.

This resolution shall be known as the Fairfax County Purchasing Resolution.

Section 2. Organization.

A. **The Department of Purchasing and Supply Management is a staff activity of the Fairfax County government, operating under the direction and supervision of the County Executive.**

B. **The Director of the Department of Purchasing and Supply Management shall be the County Purchasing Agent who shall have general supervision of the Department. The Purchasing Agent shall be appointed by the Board of County Supervisors upon recommendation of the County Executive.**

C. **The primary duty of the County Purchasing Agent is to carry out the principles of modern central purchasing and supply management in accordance with applicable laws and regulations and with generally accepted professional standards in such a manner as to insure the maximum efficiency of governmental operation, and to give to County taxpayers the benefit in savings that such accepted business procedures are known to produce.**

Section 3. ~~Exceptions.~~Exclusions from Duties

Comment [PMM1]: Administrative Change

A. **The procurement of architectural, engineering and related consultant services for construction projects and the contracting for construction projects are excluded from the duties of the County Purchasing Agent for the organizations as specified below:**

1. **The Department of Public Works and Environmental Services, pursuant to §15.2-834 of the Code of Virginia, the Board of Supervisors' Resolution dated September 18, 1968, and this Resolution, shall be responsible for Fairfax County construction projects and related architectural, engineering and consultant services. The Director, Department of Public Works and Environmental Services or his designee, shall have the same authority as the County Purchasing Agent to execute and administer contracts and to make findings and address remedies as outlined in Article 4 of this Resolution regarding contracts assigned under this section in accordance with the mandatory sections of the Code of Virginia and the applicable sections of this Resolution.**

2. **The Fairfax County Public School Board shall be responsible for construction, related architectural and engineering services, related consulting services, maintenance, repair and related services in connection with building, furnishing equipping, renovating, maintaining, and operating the buildings and property of the school division in accordance with §22.1-79 of the Code of Virginia. The school division's Superintendent or his designee shall have the same authority as the County Purchasing Agent to execute and administer contracts. Execution of contracts under this section shall be conducted under the rules and regulations established by the Fairfax County School Board in accordance with the mandatory sections of the Code of Virginia.**

3. **The Fairfax County Park Authority shall be responsible for Fairfax County Park Authority capital construction and related architectural and engineering services per §15.2-5704 of the Code of Virginia and Board of Supervisors' Resolution dated April 6, 1981, governing the relationship of the Fairfax County Park Authority and Fairfax County. The Director of the Park Authority or his designee shall have the same authority of as the County Purchasing Agent to execute and administer contracts and to make findings and address remedies as outlined in Article 4 of this Resolution. Execution of contracts under this section shall be conducted under the rules and regulations established by the Fairfax County Park Authority in accordance with the mandatory sections of the Code of Virginia and applicable sections of this Resolution.**

4. **The Department of Housing and Community Development shall be responsible for capital construction and related architectural and engineering services for all programs and projects administered by the Department on behalf of either the Redevelopment and Housing Authority per §36-19 of the Code of Virginia or the Fairfax County Board of Supervisors, including contracts per §36-49.1:1 to carry out blight abatement. The Director of the Department of Housing and Community Development or his designee shall have the same authority as the County**

Purchasing Agent to execute and administer contracts and to make findings and address remedies as outlined in Article 4 of this Resolution. Execution of contracts under this section shall be conducted under the rules and regulations established by the Department of Housing and Community Development in accordance with the mandatory sections of the Code of Virginia and applicable sections of this Resolution.

5. **The Department of Transportation, pursuant to §33.1-75.3 of the Code of Virginia, and this Resolution, may be responsible for the purpose of constructing or improving highways, including curbs, gutters, drainageways, sound barriers, sidewalks, and all other features or appurtenances conducive to the public safety and convenience, which either have been or may be taken into the primary or secondary system of state highways. The Director, Department of Transportation or his designee, shall have the same authority as the County Purchasing Agent to execute and administer contracts and to make findings and address remedies as outlined in Article 4 of this Resolution regarding contracts assigned under this section in accordance with the mandatory sections of the Code of Virginia and the applicable sections of this Resolution.**

6. **The Fairfax County Park Authority, the Department of Housing and Community Development, and the Department of Transportation, may by a Memorandum of Understanding (MOU) delegate construction authority as detailed in sections 3 – 5 above to the Department of Public Works and Environmental Services.**

B. **The procurement of goods and services for individual schools using funds generated from school activities for the~~The~~ Fairfax County Public Schools ~~shall be responsible for~~is excluded from the duties of the County Purchasing Agent.~~ the procurement of goods and services for individual schools using funds generated from school activities~~. Execution of contracts under this section shall be conducted under the rules and regulations established by the Fairfax County School Board in accordance with the mandatory sections of the Code of Virginia.**

Comment [PMM2]: Administrative Change

C. **The Fairfax County Sheriff shall be the purchasing agent in all matters involving the commissary and nonappropriated funds received from inmates, in accordance with §53.1-127.1, Code of Virginia.**

D. **The Department of Administration for Human Services shall be responsible for procurement of goods and services for direct use by a recipient of County administered public assistance programs as defined by Code of Virginia §63.2-100, or the fuel assistance program, or community services board as defined in Code of Virginia §37.2-100 or any public body purchasing services under the Comprehensive Services Act for At-Risk Youth and Families (Code of Virginia §2.2-5200 et seq.) or the Virginia**

Juvenile Community Crime Control Act (Code of Virginia §16.1-309.2 et seq.) provided such good or service is delivered by a vendor upon specific instructions from the appropriate employee of the County.

Section 4. Rules and Regulations.

A. The County Purchasing Agent shall prepare and maintain the Fairfax County Purchasing Resolution and other rules and regulations consistent with the laws of the Commonwealth of Virginia governing the operations of the County purchasing and supply management system.

B. The Agencies designated in Section 3 A – D shall prepare and maintain detailed rules and regulations on the conduct of these contracting actions. Such rules and regulations shall be consistent with this Resolution and the laws of the Commonwealth of Virginia. Such rules and regulations shall be approved by the County Executive for County staff agencies or the administrative head of the respective public body involved.

Section 5. Cooperative Procurement.

The County or any entity identified in Section 3 may participate in, sponsor, conduct or administer a cooperative procurement agreement on behalf of or in conjunction with one or more other public bodies, or public agencies or institutions or localities of the several states, of the United States or its territories, ~~or~~ the District of Columbia, or the Metropolitan Washington Council of Governments for the purpose of combining requirements to increase efficiency or reduce administrative expenses in any acquisition of goods and services. Except for contracts for architectural and engineering services, a public body may purchase from another public body's contract even if it did not participate in the request for proposal or invitation to bid, if the request for proposal or invitation to bid specified that the procurement was being conducted on behalf of other public bodies. Nothing herein shall prohibit the assessment or payment by direct or indirect means of any administrative fee that will allow for participation in any such arrangement.

Except for contracts for architectural and engineering services, as authorized by the United States Congress and consistent with applicable federal regulations, and provided the terms of the contract permit such purchases, any county, city, town, or school board may purchase from a U.S. General Services Administration contract or a contract awarded by any other agency of the U.S. government.

Comment [IP3]: Code Change (SB 1378)

Section 6. Definitions.

a. **Acquisition Function Closely Associated with Inherently Governmental Functions means supporting or providing advice or recommendations with regard to the following activities:**

1) **Planning acquisitions.**
2) **Determining what supplies or services are to be acquired by the County, including developing statements of work.**
3) **Developing or approving any contractual documents, to include documents defining requirements, incentive plans, and evaluation criteria.**
4) **Evaluating bids or proposals.**
5) **Awarding County contracts.**
6) **Administering contracts (including ordering changes or giving technical direction in contract performance or contract quantities, evaluating contractor performance, and accepting or rejecting contractor products or services).**
7) **Terminating contracts.**
8) **Determining whether contract costs are reasonable, allocable, and allowable.**

b. **Best Value, as predetermined in the solicitation, means the overall combination of quality, price, and various elements of required services that in total are optimal relative to a public body's needs.**

c. **Competitive Sealed Bidding is a formal method of selecting the lowest responsive and responsible bidder. It includes the issuance of a written Invitation to Bid, public notice, a public bid opening and evaluation based on the requirements set forth in the invitation (See Article 2, Section 2 A).**

d. **Competitive Negotiation is a formal method of selecting the top rated offeror. It includes the issuance of a written Request for Proposals, public notice, evaluation based on the criteria set forth in the Request for Proposals, and allows negotiation with the top rated offeror or offerors (See Article 2, Section 2 B).**

e. **Construction shall mean building, altering, repairing, improving or demolishing any structure, building, road, drainage, or sanitary facility, and any draining, dredging, excavation, grading or similar work upon real property.**

f. **Construction Management Contract shall mean a contract in which a party is retained by the owner to coordinate and administer contracts for construction services for the benefit of the owner, and may also include, if provided in the contract, the furnishing of construction services to the owner.**

g. **Consultant Services shall mean any type of services required by the County, but not furnished by its own employees, which is in its nature so unique that it should be obtained by negotiation on the basis of demonstrated competence and qualification for the type of service required and at fair and reasonable compensation, rather than by competitive sealed bidding.**

h. **Covered Employee means an individual who**

1) **Is an employee of the contractor or subcontractor, a consultant, partner, or a sole proprietor; and**
2) **Performs an acquisition function closely associated with inherently governmental functions.**

i. **Design-build contract shall mean a contract between a public body and another party in which the party contracting with the public body agrees to both design and build the structure, roadway or other item specified in the contract.**

j. **DPSM shall mean the Department of Purchasing and Supply Management**

k. **Emergency shall be deemed to exist when a breakdown in machinery and/or a threatened termination of essential services or a dangerous condition develops, or when any unforeseen circumstances arise causing curtailment or diminution of essential service.**

l. **Excess Property shall mean that property which exceeds the requirement of the department to which the property is assigned.**

m. **FCPS shall mean Fairfax County Public Schools.**

n. **Faith–Based Organization shall mean a religious organization that is or applies to be a contractor to provide goods or services for programs funded by the block grant provided pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P. L. 104-193.**

o. **Firm shall mean any individual, partnership, corporation, association, or other legal entity permitted by law to conduct business in the Commonwealth of Virginia; or any other individual, firm, partnership, corporation, association or other legal entity qualified to perform professional services, non-professional or consultant services.**

p. **Fixed Asset shall mean a tangible item (not a component) which has an expected useful life of at least one year and a dollar value in excess of $5,000.**

q. **Goods shall mean all material, equipment, supplies, printing, and information technology hardware and software.**

r. **Immediate Family shall mean a spouse, child, parent, brother, sister, and any other person living in the same household as the employee.**

s. **Independent Contractor shall mean a worker over whom the employer has the right to control or direct the result of the work done, but not the means and methods of accomplishing the result.**

t. **Ineligibility shall mean an action taken to suspend or debar an individual or firm from consideration for award of contracts. The suspension shall not be for a period exceeding three (3) months and the debarment shall not be for a period exceeding three (3) years.**

u. **Informality shall mean a minor defect or variation of a bid or proposal from the exact requirements of the Invitation to Bid or the Request for Proposal which does not affect the price, quality, quantity or delivery schedule for the goods, services or construction being procured.**

v. Job Order Contracting is a method of procuring construction by establishing a book of unit prices and then obtaining a contractor to perform work as needed using the prices, quantities, and specifications in the book as the basis of its pricing.

Comment [PMM4]: Code Change (HB 1835)

~~v.~~w. Non-public Government Information means any information that a covered employee gains by reason of work under a County contract and that the covered employee knows, or reasonably should know, has not been made public. It includes information that--

1) **Is exempt from disclosure under the Virginia Freedom of Information Act; or**
2) **Has not been disseminated to the general public and is not authorized by the agency to be made available to the public.**

~~w.~~x. Nonprofessional Services shall mean any service not specifically identified as a professional or consultant service.

~~x.~~y. Official Responsibility shall mean administrative or operating authority, whether intermediate or final, to initiate, approve, disapprove or otherwise affect a procurement transaction or any resulting claim.

~~y.~~z. **Other Authorized Agency is an Agency as designated by the Code of Virginia and the Board of Supervisors authorized to procure architectural, engineering and related consultant services for construction projects and the contracting for construction projects to include public announcement, receipt of bids, recommending selection and award, negotiation, contract preparation and contract administration as more fully defined in Article 1, Section 3 of this Resolution.**

~~z.~~aa. **Pecuniary Interest Arising From the Procurement shall mean a personal interest in a contract, as defined in the State and Local Government Conflict of Interests Act.**

~~aa.~~bb. **Personal Conflict of Interest means a situation in which a covered employee has a financial interest, personal activity, or relationship that could impair the employee's ability to act impartially and in the best interest of the County when performing under the contract.**

Among the sources of personal conflicts of interest are--

1. **Financial interests of the covered employee, of close family members, or of other members of the household;**
2. **Other employment or financial relationships (including seeking or negotiating for prospective employment or business); and**
3. **Gifts, including travel.**

Financial interests may arise from--

a. **Compensation, including wages, salaries, commissions, professional fees, or fees for business referrals;**
b. **Consulting relationships (including commercial and professional consulting and service arrangements, or serving as an expert witness in litigation);**
c. **Services provided in exchange for honorariums or travel expense reimbursements;**
d. **Investment in the form of stock or bond ownership or partnership interest (excluding diversified mutual fund investments);**
e. **Real estate investments;**
f. **Patents, copyrights, and other intellectual property interests; or**
g. **Business ownership and investment interests.**

~~bb.~~cc. **Potential Bidder or Offeror shall mean a person who, at the time the County negotiates and awards or proposes to award a contract, is engaged in the sale or lease of goods, or the sale of services, insurance or construction, of the type to be procured under such contract, and who at such time is eligible and qualified in all respects to perform that contract, and who would have been eligible and qualified to submit a bid or proposal had the contract been procured through competitive sealed bidding or competitive negotiation.**

~~cc.~~dd. **Procurement Transaction shall mean all functions that pertain to obtaining of any goods, services or construction, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.**

~~dd.~~ee. **Professional services shall mean any type of service performed by an independent contractor within the practice of accounting, actuarial services, architecture, dentistry, land surveying, landscape architecture, law, medicine, optometry, pharmacy, or professional engineering (which shall be procured as set forth in the Code of Virginia §2.2-4301 in the definition of competitive negotiation at paragraph 3 (a), and in conformance with this Resolution).**

~~ee.~~ff. **Public Body shall mean any legislative, executive or judicial body, agency, office, department, authority, post, commission, committee, institution, board or political subdivision created by law to exercise some sovereign power or to perform some governmental duty, and empowered by law to undertake the activities described in this resolution. Public body shall include any metropolitan planning organization or planning district commission which operates exclusively within the Commonwealth of Virginia.**

~~ff.~~gg. **Public Contract shall mean an agreement between a public body and a nongovernmental source that is enforceable in a court of law.**

~~gg.~~hh. **Public or County Employee shall mean any person employed by the County of Fairfax, including elected officials or appointed members of governing bodies.**

~~hh.~~ii. **Responsible Bidder or Offeror shall mean an individual, company, firm, corporation, partnership or other organization who has the capability in all respects, to perform fully the contract requirements and the moral and business integrity and reliability which will assure good faith performance, and who has been prequalified, if required.**

~~ii.~~jj. **Responsive Bidder or Offeror shall mean an individual, company, firm, corporation, partnership or other organization who has submitted a bid which conforms in all material respects to the Invitation to Bid or Request for Proposal.**

~~jj.~~kk. **Reverse Auctioning shall mean a procurement method wherein bidders are invited to bid on specified goods or nonprofessional services, but not construction or professional services, through real-time electronic bidding, with the award being made to the lowest responsive and responsible bidder. During the bidding process, bidder's prices are revealed and bidders shall have the opportunity to modify their bid prices for the duration of the time period established for bid opening.**

~~kk.~~ll. **SAC shall mean Selection Advisory Committee.**

~~ll.~~mm. **Services shall mean any work performed by an independent contractor wherein the service rendered does not consist primarily of acquisition of equipment or materials, or the rental of equipment, materials and supplies.**

~~mm.~~nn. **Employment Services Organization shall mean a work-oriented rehabilitative facility with a controlled working environment and individual goals which utilizes work experience and related services to assist individuals with disabilities to progress toward normal living and a productive vocational status.**

~~nn.~~oo. **Surplus Property shall mean that property which exceeds the requirement of the entire County.**

Article 2

PURCHASING POLICIES

Section 1. General

A. **Unless otherwise authorized by law, all Fairfax County contracts with nongovernmental contractors for the purchase or lease of goods, or for the purchase of services, insurance, construction, or construction management, shall be awarded after competitive sealed bidding or competitive negotiation, except as otherwise provided for in this Resolution or law.**

B. **Professional services shall be procured using competitive negotiation, except as otherwise provided for in this Article.**

C. **Consultant services may be procured using competitive negotiation, except as otherwise provided for in the Article.**

~~**D. Upon written determination made in advance that competitive sealed bidding is either not practical or not fiscally advantageous to the public, goods, services, or insurance may be procured by competitive negotiation. The writing shall document the basis for the determination and shall be included in the appropriate contract file.**~~

Comment [IP5]: Code Change (HB 1835 2.2-4303)

~~**E.**~~**D.** **Certification of sufficient funds; orders and contracts in violation of Code of Virginia, §15.2-1238: - Except in emergency, no order for delivery on a contract or open market order for supplies, materials, equipment, professional and consultant services or contractual services for any County department or agency shall be awarded until the Director of Finance shall have certified that the unencumbered balance in the appropriation concerned, in excess of all unpaid obligations, is sufficient to defray the cost of such order. Whenever any department or agency of the County government shall purchase or contract for any supplies, materials, equipment or contractual services contrary to the provisions of §15.2-1238 of the Code of Virginia or the rules and regulations made thereunder, such order or contract shall be void and of no effect. The head of such department or agency shall be personally liable for the costs of such orders and contracts.**

~~**F.**~~**E.** **Not withstanding any other provision of law, the County may, as provided in the Code of Virginia, §2.2-4327, provide by resolution that in determining the award of any contract for time deposits or investment of its funds, the Director of Finance may consider, in addition to the typical criteria, the investment activities of qualifying institutions that enhance the supply of, or accessibility to, affordable housing within the jurisdiction. No more than fifty percent of the funds of the county, calculated on the basis of the average daily balance of the general fund during the previous fiscal year, may be deposited or invested by considering such investment activities as a factor in the award of a contract. A qualifying institution shall meet the provisions of the Virginia Security for Public Deposits Act (§2.2-4400 et seq.) and all local terms and conditions for security, liquidity and rate of return.**

~~**G.**~~**F.** **Best value concepts may be considered when procuring goods, nonprofessional and consultant services, but**

not construction or professional services. The criteria, factors, and basis for consideration of best value and the process for the consideration of best value shall be as stated in the procurement solicitation.

~~H.~~G. The County may enter into contracts with faith-based organizations on the same basis as any other nongovernmental source subject to the requirements of the Virginia Public Procurement Act (VPPA) §2.2-4343.1.

Section 2. Methods of Procurement.

A. Competitive Sealed Bidding.- is a method of contractor selection which includes the following elements:

1. Issuance of a written Invitation to Bid containing or incorporating by reference the specifications and contractual terms and conditions applicable to the purchase. Unless the County has provided for prequalification of bidders, the Invitation to Bid shall include a statement of any requisite qualifications of potential contractors. When it is impractical to prepare initially a purchase description to support an award based on prices, a solicitation may be issued requesting the submission of unpriced offers to be followed by an Invitation to Bid limited to those bidders whose offers have been qualified under the criteria set forth in the first solicitation.

2. Public notice of the Invitation to Bid at least five days prior to the date set for receipt of bids by posting in a designated public area, or publication in a newspaper of county wide circulation, or both. Public notice may also be published on a Fairfax County government web site and other appropriate web sites. In addition, bids may be solicited directly from potential vendors.

3. Public opening and posting of all bids received.

4. Evaluation of bids based upon the requirements set forth in the invitation, which may include special qualifications of potential vendors, life cycle costing, value analysis, and any other criteria such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose, which are helpful in determining acceptability.

5. Award to the lowest responsive and responsible bidder. Multiple awards may be made when so specified in the Invitation to Bid.

B. Competitive Negotiation.- is a method of contractor selection which includes the following elements:

1. Issuance of a written Request for Proposal indicating in general terms that which is sought to be procured, specifying the factors which will be used in evaluating the proposal indicating whether a numerical scoring system will be used in evaluation of the proposal, and containing or incorporating by reference the other applicable contractual terms and conditions, including any unique capabilities or qualifications which will be required of the contractor. In the event that a numerical scoring system will be used in the evaluation of proposals, the point values assigned to each of the evaluation criteria shall be included in the Request for Proposal or posted at the location designated for public posting of procurement notices prior to the due date and time for receiving proposals.

Comment [IP6]: Code Change (SB 1226)

2. Public notice of the Request for Proposal at least five days prior to the date set for receipt of proposals by posting in a designated public area or by publication in a newspaper of county wide circulation or both. Public notice may also be published on a Fairfax County government web site and other appropriate web sites. In addition, proposals may be solicited directly from potential vendors.

3. Competitive Negotiation – Consultant Services

a. Selection Advisory Committee

1. When selecting a firm for consultant services where the compensation for such services is estimated to exceed $100,000, the Director of DPSM or other Authorized Agency, or the FCPS Division Superintendent, or designee shall appoint a Selection Advisory Committee to recommend to the Director of DPSM or other Authorized Agency, those consultant services firms that are to be retained by the County. The SAC will be composed of three or more principal staff personnel and other such individuals as determined by the Purchasing Agent and a member of the DPSM or other authorized agency.

2. **When selecting a firm for consultant services, where the compensation for such consultant services is estimated to be less than $100,000, the Director of the funded Agency or FCPS Department Head shall appoint a Selection Advisory Committee composed of three or more principal staff personnel to recommend to the Director of the funded Agency or FCPS Department Head those consultant services firms that are to be retained by the County or an agency of the County.**

3. Minutes of Selection Advisory Committee deliberations and records or votes taken shall be maintained for at least three years. Minutes shall detail pertinent reasons for committee recommendations and be available for review by the general public upon request.

b. Public Announcement

1. When consultant services are requested to be purchased, the requirement will be announced in a uniform and consistent manner. Requirements where the compensation for consultant services is estimated to be less than $100,000 may be accomplished without public announcement, but will, whenever possible, utilize available lists and other known sources to make a selection from at least four candidates.

c. Selection, Negotiation and Approval Process.

1. Selection shall be made of two or more offerors deemed to be fully qualified and best suited among those submitting proposals, on the basis of the factors involved in the Request for Proposal, including price if so stated in the Request for Proposal. Negotiations shall then be conducted with each of the offerors so selected. After negotiations have been conducted with each offeror so selected, the County shall select the offeror which, in its opinion, has made the best proposal, and shall award the contract to that offeror. When the terms and conditions of multiple awards are so stated in the RFP, awards may be made to more than one offeror. Should the County determine in

writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that offeror.

2. All proposed contracts for consultant services, where the compensation to be paid exceeds $100,000, the Director of DPSM or other Authorized Agency, after review of the SAC recommendation will recommend to the County Executive, or the FCPS Division Superintendent those consultant services to be retained by the County or an agency of the County. The proposed contracts shall be submitted to the Board of Supervisors and/or the School Board as an Information Item prior to final execution. Full and adequate explanation of the selection criteria and fee determination shall be presented with the contract in such form as required by the County Executive or the Division Superintendent, FCPS.

3. All proposed contracts for consultant services, where the compensation to be paid is less than $100,000, shall be approved by the Director of DPSM or Other Authorized Agency. Full and detailed explanation of the selection criteria and fee determination shall be presented with the contract by the using agency.

4. For all cost-plus-a-fixed-fee consultant services contracts, the County shall require the firm receiving the award to execute a truth-in-negotiation certification stating that wage rates and other factual unit costs supporting the compensation are accurate, complete, and current at the time of contracting. Any consultant services contract under which such a certificate is required shall contain a provision that the original contract price and any additions shall be adjusted to exclude any significant sums where the County determines the contract price was increased due to inaccurate, incomplete or noncurrent wage rates and other factual unit costs. All such contract adjustments shall be made within three years following the end of the contract.

4. Competitive Negotiation – Professional Services

a. Selection Advisory Committee.

1. When selecting a firm for professional services where the compensation for such professional services is estimated to exceed $60,000, the Director of DPSM or other Authorized Agency, or the FCPS Division Superintendent, or designee shall appoint a Selection Advisory Committee to recommend to the Director of DPSM or other Authorized Agency, those professional services firms that are to be retained by the County. The SAC will be composed of three or more principal staff personnel and other such individuals as determined by the Purchasing Agent and a member of the DPSM or other authorized agency.

2. When selecting a firm for professional services, where the compensation for such professional services is estimated to be less than $60,000, the Director of the funded Agency or FCPS Department Head shall appoint a Selection Advisory Committee composed of three or more principal staff personnel to recommend to the Director of the funded Agency or FCPS Department Head those professional services firms that are to be retained by the County or an agency of the County.

3. Minutes of Selection Advisory Committee deliberations and records or votes taken shall be maintained for at least three years. Minutes shall detail pertinent reasons for committee recommendations and be available for review by the general public upon request.

b. Public Announcement and Qualifications for Professional Services.

1. When professional services are requested to be purchased, the requirement will be announced in a uniform and consistent manner. Requirements where the compensation for such professional services is estimated to be less than $60,000 may be accomplished without public announcement, but will, whenever possible, utilize available lists and other known sources to make a selection from at least four candidates.

2. For architectural or engineering services estimated to cost less than $60,000, an annual advertisement requesting qualifications from interested architectural or engineering firms will meet the requirements of paragraph (1) above. The County shall make a finding that the firm to be employed is fully qualified to render the required service. Among the factors to be considered in making this finding are the capabilities, adequacy of personnel, past record of performance, and experience of the firm.

c. Selection, Negotiation, and Approval Process

1. Selection of Professional Services: Where the cost is expected to exceed $60,000, the County shall engage in individual discussions with two or more offerors deemed fully qualified, responsible and suitable on the basis of initial responses and with emphasis on professional competence, to provide the required services. Repetitive informal interviews shall be permissible. The offerors shall be encouraged to elaborate on their qualifications and performance data or staff expertise pertinent to the proposed project, as well as alternative concepts. In addition, offerors shall be informed of any ranking criteria that will be used by the County in addition to the review of the professional competence of the offeror. The Request for Proposal shall not, however, request that offerors furnish estimates of man-hours or cost for services. At the discussion stage, the County may discuss nonbinding estimates of total project costs, including, but not limited to, life-cycle costing, and where appropriate, nonbinding estimates of price for services. Proprietary information from competing offerors shall not be disclosed to the public or to competitors. At the conclusion of discussion, outlined in this subdivision, on the basis of evaluation factors published in the Request for Proposal and all information developed in the selection process to this point, the County shall select in the order of preference two or more offerors whose professional qualifications and proposed services are deemed most meritorious. DPSM or other Authorized Agency, with the aid of the Selection Advisory Committee, shall negotiate a proposed contract with the highest qualified firm for the professional services required. The firm deemed to be the most qualified will be required to disclose its fee structure during negotiation. If a contract satisfactory and advantageous to the County can be negotiated at a price considered fair and reasonable, the award shall be made to that offeror. Otherwise, negotiations with the offeror ranked first shall be formally terminated and negotiations conducted with the offeror ranked second, and so on until such a contract can be negotiated at a fair and reasonable price. Should the County determine in writing

and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified and suitable than the others under consideration, a contract may be negotiated and awarded to that offeror. Notwithstanding the foregoing, if the terms and conditions for multiple awards are included in the Request for Proposal, the County may award contracts to more than one offeror.

2. Except for construction projects and related architectural, engineering, and consultant services, all proposed contracts for professional services, where the compensation to be paid exceeds $100,000, the Director of DPSM or other Authorized Agency, after review of the SAC recommendation will recommend to the County Executive, or the FCPS Division Superintendent those professional services to be retained by the County or an agency of the County. The proposed contracts shall be submitted to the Board of Supervisors and/or the School Board as an Information Item prior to final execution. Full and adequate explanation of the selection criteria and fee determination shall be presented with the contract in such form as required by the County Executive or the Division Superintendent, FCPS.

3. All proposed contracts for professional services, where the compensation to be paid is less than $100,000, shall be approved by the Director of DPSM or Other Authorized Agency. Full and detailed explanation of the selection criteria and fee determination shall be presented with the contract by the using agency.

4. For all cost-plus-a-fixed-fee professional services contracts, the County shall require the firm receiving the award to execute a truth-in-negotiation certification stating that wage rates and other factual unit costs supporting the compensation are accurate, complete, and current at the time of contracting. Any professional services contract under which such a certificate is required shall contain a provision that the original contract price and any addition thereto shall be adjusted to exclude any significant sums where the County determines the contract price was increased due to inaccurate, incomplete or noncurrent wage rates and other factual unit costs. All such contract adjustments shall be made within three years following the end of the contract.

5. Multiphase professional services contracts satisfactory and advantageous to the County for environmental, location, design and inspection work regarding construction of infrastructure projects may be negotiated and awarded based on qualifications at a fair and reasonable price for the first phase only, when completion of the earlier phases is necessary to provide information critical to the negotiation of a fair and reasonable price for succeeding phases. Prior to the procurement of any such contract, the County shall state the anticipated intended total scope of the project and determine in writing that the nature of the work is such that the best interests of the County require awarding the contract.

6. A contract for architectural or professional engineering services relating to construction projects may be negotiated by the County for multiple projects in accordance with the Virginia Public Procurement Act (VPPA),§2.2-4302.2.4.

5. Competitive Negotiation – Non-Professional Services

a. Selection Advisory Committee

1. When selecting a firm for non-professional services where the compensation is estimated to exceed $100,000, the Director of DPSM or other Authorized Agency, or the FCPS Division Superintendent, or designee shall appoint a Selection Advisory Committee to recommend to the Director of DPSM or other Authorized Agency, those non-professional services firms that are to be retained by the County. The SAC will be composed of three or more principal staff personnel and other such individuals as determined by the Purchasing Agent and a member of the DPSM or other authorized agency.

2. **When selecting a firm for non-professional services, where the compensation is estimated to be less than $100,000, the Director of the funded Agency or FCPS Department Head shall appoint a Selection Advisory Committee composed of three or more principal staff personnel to recommend to the Director of the funded Agency or FCPS Department Head those non-professional services firms that are to be retained by the County or an agency of the County.**

b. Public Announcement

1. When non-professional services are requested to be purchased, the requirement will be announced in a uniform and consistent manner. Requirements where the compensation for non-professional services is estimated to be less than $100,000 may be accomplished without public announcement, but will, whenever possible, utilize available lists and other known sources to make a selection from at least four candidates.

c. Selection, Negotiation and Approval Process.

1. Selection shall be made of two or more offerors deemed to be fully qualified and best suited among those submitting proposals, on the basis of the factors involved in the Request for Proposal, including price if so stated in the Request for Proposal. Negotiations shall then be conducted with each of the offerors so selected. After negotiations have been conducted with each offeror so selected, the County shall select the offeror which, in its opinion, has made the best proposal, and shall award the contract to that offeror. When the terms and conditions of multiple awards are so stated in the RFP, awards may be made to more than one offeror. Should the County determine in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that offeror.

2. All proposed contracts for non-professional services shall be approved by the Director of DPSM or Other Authorized Agency. Full and detailed explanation of the selection criteria and fee determination shall be presented with the contract by the using agency.

C. Emergency.- In case of an emergency, a contract may be awarded without competitive sealed bidding or competitive negotiation; however, such procurement shall be made with such competition as is practical under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the appropriate contract or purchase order file. In addition, a

notice shall be posted on the Department of Purchasing and Supply Management web site or other appropriate web sites on the day the County awards or announces its decision to award the contract in excess of $100,000, whichever occurs first.

1. **If an emergency occurs during regular County business hours, the head of the using agency shall immediately notify the County Purchasing Agent who shall either purchase the required goods or services or authorize the agency head to do so.**

2. **If an emergency occurs at times other than regular County business hours, the using agency head may purchase the required goods or services directly. The agency head shall, however, when practical, secure competitive oral or written bids and order delivery to be made by the lowest responsive and responsible bidder. The agency head shall also, not later than the next regular County business day, submit to the County Purchasing Agent a requisition, a tabulation of the bids received, if any, a copy of the delivery record and a brief explanation of the circumstances of the emergency.**

3. **The County Purchasing Agent shall maintain a record of all emergency purchases supporting the particular basis upon which the emergency purchase was made. Such records shall be available for public inspection during regular County business hours in the office of the County Purchasing Agent.**

D. **Informal Procurement.- Any Fairfax County contract when the estimated cost is less than $100,000 in value, shall be deemed an informal procurement and shall not be subject to the rules governing competitive sealed bidding or competitive negotiation. However, the County Purchasing Agent shall, wherever possible, solicit at least four written competitive bids on all informal procurements estimated to exceed $10,000 in value; and solicit at least three oral or written quotes for purchase transactions estimated between $5,000 - $10,000. The rules and regulations adopted pursuant to Section 4 of Article 2 of this Resolution shall prescribe in detail the procedures to be observed in giving notice to prospective bidders, in tabulating and recording bids, in opening bids, in making purchases from the lowest responsive and responsible bidder, and in maintaining records of all informal procurements for public inspection.**

E. **Public Private Education Facilities and Infrastructure.- The "Public-Private Education Facilities and Infrastructure Act of 2002 (PPEA)" provides public entities an option for either approving an unsolicited proposal from a private entity or soliciting request for proposals or invitation for bids from private entities. Such projects are exempt from the Virginia Public Procurement Act. The County has developed procedures that are consistent with the principles of the PPEA and adopted by the Board of Supervisors.**

F. **Reverse Auctioning.- The purchase of goods, consultant or nonprofessional services, but not construction or professional services, may be made by reverse auctioning. However, bulk purchases of commodities used in road and highway construction and maintenance, and aggregates shall not be made by reverse auctioning.**

G. **Small Purchase.- Any purchase or lease of goods, professional, consultant, or nonprofessional services, or for the purchase of insurance, construction, or construction management, when the estimated cost is less than $5,000, shall be deemed a small purchase and shall not be subject to the rules governing the formal competitive bidding process.**

H. **Sole Source.- Upon a determination in writing that there is only one source practicably available for that**

which is to be procured, a contract may be negotiated and awarded to that source without competitive sealed bidding or competitive negotiation. A written record documenting the basis for this determination shall be included in the appropriate contract file or other records of the procurement. In addition, a notice shall be posted on the Department of Purchasing and Supply Management web site or other appropriate web sites on the day the County awards or announces its decision to award the contract in excess of $100,000, whichever occurs first.

Section 3. Exceptions to the Requirement for Competitive Procurement.

A. Auction: Upon a determination in writing by the County Purchasing Agent that the purchase of goods, products or commodities from a public auction sale is in the best interests of the County, such items may be purchased at the auction, including online public auctions. The writing shall document the basis for this determination. However, bulk purchases of commodities used in road and highway construction and maintenance, and aggregates shall not be made by online public auctions.

B. Instructional Materials and Office Supplies: Instructional materials and office supplies which are not stocked or purchased by the Fairfax County School Board pursuant to an existing County contract may be purchased by school principals designated by the School Board. Such purchases shall be conducted in accordance with rules and regulations adopted by the School Board pursuant to §22.1-122.1 of the Code of Virginia. With the exception of textbooks and instructional computer software that have been approved by the State Board of Education and the Fairfax County School Board, no single purchase may exceed the small purchase dollar level (as set forth in Article 2, Section 2. G.). The rules and regulations adopted by the School Board shall prescribe in detail the procedures to be observed in making purchases of instructional materials, establishing accounts for purchases, accounting for the receipt and disbursement of funds, and maintaining records of all transactions. The purchases authorized herein shall be made using funds from accounts established by the School Board solely for such purchases.

C. Insurance / Electric Utility Services: As provided in the Code of Virginia, subdivision 13 of §2.2-4345, the County may enter into contracts without competitive sealed bidding or competitive negotiation for insurance or electric utility services if purchased through an association of which it is a member if the association was formed and is maintained for the purpose of promoting the interest and welfare of and developing close relationships with similar public bodies, provided such association has procured the insurance or electric utility services by use of competitive principles.

D. Insurance: Upon a written determination made in advance by the County Purchasing Agent that competitive negotiation is either not practicable or not fiscally advantageous, insurance may be procured through a licensed agent or broker selected in the manner provided for the procurement of things other than professional services in §2.2-4302.2.3 of the Virginia Public Procurement Act.

E. Litigation / Regulatory Proceedings: The County (or any public body that has adopted this Resolution) may enter into contracts without competition for (1) legal services; (2) expert witnesses: and (3) other services associated with litigation or regulatory proceedings.

F. Public Assistance Programs: The County may procure goods or services without competition for direct use by a recipient of County administered public assistance programs as defined by §63.2-100 of the Code of

Virginia, or the fuel assistance program, or community services board as defined in §37.2-100, or any public body purchasing services under the Comprehensive Services Act for At-Risk Youth and Families (§2.2-5200 et seq.) or the Virginia Juvenile Community Crime Control Act (§16.1-309.2 et seq.) provided such good or service is delivered by a vendor upon specific instructions from the appropriate employee of the County. Contracts for the bulk procurement of goods and services for use of recipients shall not be exempted from the requirements of competitive procurement.

G. Remedial Plan: The purchase of goods and services when such purchases are made under a remedial plan established by the County Executive pursuant to Code of Virginia §15.2-965.1.

H. Workshops: The County Purchasing Agent may enter into contracts without competition for the purchase of goods or services which are produced or performed by persons or in schools or workshops under the supervision of the Virginia Department for the Visually Handicapped; or which are produced or performed by employment services organizations which offer transitional or supported employment services serving individuals with disabilities, provided that the goods or services can be purchased within ten percent of their fair market value, will be of acceptable quality and can be produced in sufficient quantities and within the time required.

I. Retirement Board Investments, Actuarial Services, Disability Determination Services: The selection of services related to the management, purchase, or sale of authorized investments, actuarial services, and disability determination services shall be governed by the standard of care in Code of Virginia §51.1-124.~~30~~32 and shall not be subject to the provisions of the Virginia Public Procurement Act.

Comment [PMM7]: Administrative Change

J. Ballots and Elections Materials: Chapter 43, Virginia Public Procurement Act, of Title 2.2 shall not apply to contracts for equipment, software, services, the printing of ballots or statements of results, or other materials essential to the conduct of the election, except as stated in §24.2-602. The provisions of Code of Virginia §24.2-602 shall apply to such contracts.

K. Other Special Exemptions: Procurement for single or term contracts for goods and services not expected to exceed $100,000 as identified by the Purchasing Agent.

Section 4. General Purchasing Provisions.

A. Competitive Solicitation Process.-

1. The County Purchasing Agent shall solicit bids from all responsible prospective vendors who have registered their firm to be included on the County's vendor database and/or the Commonwealth of Virginia's "eVA" central vendor registration system for all solicitations using the competitive sealed bidding and competitive negotiation methods of procurement. Other potential vendors may be solicited at the discretion of the County Purchasing Agent.

2. The County Purchasing Agent shall encourage open and competitive bidding by all possible means and shall endeavor to obtain the maximum degree of open competition on all purchase transactions using the competitive sealed bidding, competitive negotiation, or informal procurement methods of procurement. In submitting a bid or proposal each bidder shall, by virtue of submitting a bid, guarantee that the

bidder has not been a party with other bidders to an agreement to bid a fixed or uniform price. Violation of this implied guarantee shall render void the bid of such bidders. Any disclosure to or acquisition by a competitive bidder, in advance of the opening of the bids, of the terms or conditions of the bid submitted by another competitor shall render the entire proceedings void and shall require readvertising for bids.

3. All solicitations shall include the following provisions:

a. Each bidder or offeror shall certify, upon signing a bid or proposal, that to the best of his or her knowledge no Fairfax County official or employee having official responsibility for the procurement transaction, or member of his or her immediate family, has received or will receive any financial benefit of more than nominal or minimal value relating to the award of this contract. If such a benefit has been received or will be received, this fact shall be disclosed with the bid or proposal or as soon thereafter as it appears that such a benefit will be received. Failure to disclose the information prescribed above may result in suspension or debarment, or rescission of the contract made, or could affect payment pursuant to the terms of the contract.

b. Whenever there is reason to believe that a financial benefit of the sort described in paragraph a. has been or will be received in connection with a bid, proposal or contract, and that the contractor has failed to disclose such benefit or has inadequately disclosed it, the County Executive, as a prerequisite to payment pursuant to the contract, or at any other time, may require the contractor to furnish, under oath, answers to any interrogatories related to such possible benefit.

4. Unless otherwise provided in the Invitation to Bid, the name of a certain brand, make or manufacturer does not restrict bidders to the specific brand, make or manufacturer named: it conveys the general style, type, character, and quality of the article desired, and any article which the County in its sole discretion determines to be the equal of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted.

5. Prospective contractors may be prequalified for particular types of supplies, services, insurance, or construction, and consideration of bids or proposals limited to prequalified contractors. Any prequalification procedures shall be established in writing and sufficiently in advance of their implementation to allow potential contractors a fair opportunity to complete the process.

6. Prospective contractors may be debarred from contracting for particular types of goods, services, insurance, or construction, for specified periods of time. The debarment procedures are set forth under Article 4, Section 1.

7. The County shall establish procedures whereby comments concerning specifications or other provisions in Invitations to Bid or Requests for Proposal can be received and considered prior to the time set for receipt of bids or proposals or award of the contract.

8. Withdrawal of bids by a bidder.

a. A bidder for a contract other than for public construction may request withdrawal of their bid

under the following circumstances:

1. **Requests for withdrawal of bids prior to opening of such bids shall be transmitted to the County Purchasing Agent in writing.**

2. **Requests for withdrawal of bids after opening of such bids but prior to award shall be transmitted to the County Purchasing Agent, in writing, accompanied by full documentation supporting the request. If the request is based on a claim of error, documentation must show the basis of the error. Such documentation may take the form of supplier quotations, vendor work sheets, etc. If bid bonds were tendered with the bid, the County may exercise its right of collection.**

3. **No bid may be withdrawn under this paragraph when the result would be the awarding of the contract on another bid of the same bidder or of another bidder in which the ownership of the withdrawing bidder is more than five percent.**

4. **If a bid is withdrawn under the authority of this paragraph, the lowest remaining bid shall be deemed to be the low bid.**

5. **No bidder who is permitted to withdraw a bid shall, for compensation, supply any material or labor to or perform any subcontract or other work agreement for the person or firm to whom the contract is awarded or otherwise benefit, directly or indirectly, from the performance of the project for which the withdrawn bid was submitted.**

6. **If the County denies the withdrawal of a bid under the provisions of this paragraph, it shall notify the bidder in writing stating the reasons for its decision and award the contract to such bidder at the bid price, provided such bidder is a responsible and responsive bidder.**

7. **Work papers, documents, and materials submitted in support of a withdrawal of bids may be considered as trade secrets or proprietary information subject to the conditions of Article 2, Section 4, Paragraph D.**

B. Contract Award Process.-

1. **The County Purchasing Agent shall have the authority to waive informalities in bids, reject all bids, parts of all bids, or all bids for any one or more good or service included in a solicitation when in his judgment the public interest is best served. If all bids are for the same total amount or unit price (including authorized discounts and delivery times) and if the public interest will not permit the delay of readvertisement for bids, the County Purchasing Agent is authorized to award the contract to the resident Fairfax County tie bidder whose firm has its principal place of business in the County, or if none, to the resident Virginia tie bidder, or if none, to one of the tie bidders by drawing lots in public; or the County Purchasing Agent may purchase the goods or services in the open market except that the price paid shall not exceed the lowest contract bid price submitted for the same goods or services.**

2. **The County Purchasing Agent shall be responsible for determining the responsibility of a bidder. In**

determining responsibility, the following criteria will be considered:

a. The ability, capacity and skill of the bidder to perform the contract or provide the service required;

b. Whether the bidder can perform the contract or provide the service promptly, or within the time specified, without delay or interference;

c. The character, integrity, reputation, judgment, experience and efficiency of the bidder;

d. The quality of performance of previous contracts or services;

e. The previous and existing compliance by the bidder with laws and ordinances relating to the contract or services;

f. The sufficiency of the financial resources and ability of the bidder to perform the contract or provide the service;

g. The quality, availability and adaptability of the goods or services to the particular use required;

h. The ability of the bidder to provide future maintenance and service for the use of the subject of the contract;

i. Whether the bidder is in arrears to the County on debt or contract or is a defaulter on surety to the County or whether the bidder's County taxes or assessments are delinquent; and

j. Such other information as may be secured by the County Purchasing Agent having a bearing on the decision to award the contract. If an apparent low bidder is not awarded a contract for reasons of nonresponsibility, the County Purchasing Agent shall so notify that bidder and shall have recorded the reasons in the contract file.

3. All contracts shall be approved as to form by the County Attorney or other qualified attorney and a copy of each long-term contract shall be filed with the Chief Financial Officer of the County.

4. Unless canceled or rejected, a responsive bid from the lowest responsible bidder shall be accepted as submitted, except that if the responsive bid from the lowest responsible bidder exceeds available funds, the County may negotiate with the apparent low bidder to obtain a contract price within available funds; however, such negotiations may be undertaken only under conditions and procedures described in writing and approved by the County prior to issuance of the Invitation to Bid.

5. A public contract may include provisions for modification of the contract during performance, but no fixed-price contract may be increased by more than twenty-five percent of the amount of the contract or $50,000, whichever is greater, without the advance written approval of the Purchasing Agent. In no event may the amount of any contract, without adequate consideration, be increased for any purpose, including, but not limited to, relief of an offeror from the consequences of an error in its bid or offer.

6. **Every contract in excess of $100,000 shall contain the following: During the performance of a contract, the contractor agrees to (i) provide a drug-free workplace for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract of over $10,000, so that the provisions will be binding upon each subcontractor or vendor. For the purposes of this section, "drug-free workplace" means a site for the performance of work done in conjunction with a specific contract awarded to a contractor in accordance with this Resolution, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.**

C. **Non Discrimination.-**

The County will not discriminate against a bidder or offeror because of race, color, religion, sex, national origin, age, disability, status as a service-disabled veteran or any other basis prohibited by state law relating to discrimination in employment in the performance of its procurement activity. In accordance with the policy of the County's Small and Minority Business Enterprise Program, every effort shall be made to actively and diligently promote the procurement of goods and services from small businesses and minority-owned and woman-owned businesses and service-disabled veteran businesses in all aspects of procurement to the maximum extent feasible. Every contract shall include the following provisions:

1. **During the performance of this contract, the contractor agrees as follows:**

   a. **The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.**

   b. **The contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state that such contractor is an equal opportunity employer.**

   c. **Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this provision.**

   d. **The contractor will include the provisions of paragraphs a, b, and c above in every subcontract or purchase order of over $10,000, so that the provisions will be binding upon each subcontractor or vendor.**

D. Disclosure of Information.-

Except as provided herein, all proceedings, records, contracts and other public records relating to procurement transactions shall be open to the inspection of any citizen, or any interested person, firm or corporation, in accordance with the Virginia Freedom of Information Act.

1. Cost estimates relating to a proposed procurement transaction prepared by or for a public body shall not be open to public inspection.

2. Any competitive sealed bidding bidder, upon request, shall be afforded the opportunity to inspect bid records within a reasonable time after the opening of all bids but prior to award, except in the event that the County decides not to accept any of the bids and to reopen the contract. Otherwise, bid records shall be open to public inspection only after award of the contract. Any competitive negotiation offeror, upon request, shall be afforded the opportunity to inspect proposal records within a reasonable time after the evaluation and negotiations of proposals are completed but prior to award except in the event that the County decides not to accept any of the proposals and to reopen the contract. Otherwise, proposal records shall be open to the public inspection only after award of the contract except as provided in 3. Any inspection of procurement transaction records under this section shall be subject to reasonable restrictions to ensure the security and integrity of the records.

3. Trade secrets or proprietary information submitted by a bidder, offeror or contractor in connection with a procurement transaction or prequalification application submitted pursuant to Article 2, Section 4 D.3 shall not be subject to the Virginia Freedom of Information Act; however, the bidder, offeror or contractor shall (i) invoke the protections of this section prior to or upon submission of the data or other materials, (ii) identify the data or other materials to be protected, and (iii) state the reasons why protection is necessary.

4. Nothing contained in this section shall be construed to require the County, when procuring by competitive negotiation, to furnish a statement of the reasons why a particular proposal was not deemed to be the most advantageous to the County.

E. Bonds.-

1. **The County may, at the discretion of the County Purchasing Agent, require bid, payment or performance bonds for contracts for goods or services if provided in the Invitation to Bid or Request for Proposal.**

   No forfeiture under a bid bond shall exceed the lesser of:

   a. **the difference between the bid for which the bond was written and the next low bid, or**

   b. **the face amount of the bid bond.**

2. **Action on performance bond - No action against the surety on a performance bond shall be brought unless within one year after (1) completion of the contract, including the expiration of all warranties and guarantees or (2) discovery of the defect or breach of warranty, if the action be for such, in all other cases.**

3. **Actions on payment bonds:**

   a. **Subject to the provisions of subsection (b) hereof, any claimant who has performed labor or furnished material in accordance with the contract documents in the prosecution of the work provided in any contract for which a payment bond has been given, and who has not been paid in full therefore before the expiration of ninety days after the day on which such claimant performed the last of such labor or furnished the last of such materials for which he claims payment, may bring an action on such payment bond to recover any amount due him for such labor or material, and may prosecute such action to final judgment and have execution on the judgment. The obligee named in the bond need not be named a party to such action.**

   b. **Any claimant who has a direct contractual relationship with any subcontractor but who has no contractual relationship, express or implied, with the contractor, may bring an action on the contractor's payment bond only if he has given written notice to the contractor within 180 days from the day on which the claimant performed the last of the labor or furnished the last of the materials for which he claims payment, stating with substantial accuracy the amount claimed and the name of the person for whom the work was performed or to whom the material was furnished. Notice to the contractor shall be served by registered or certified mail, postage prepaid, in an envelope addressed to such contractor at any place where his office is regularly maintained for the transaction of business. Claims for sums withheld as retainages with respect to labor performed or materials furnished, shall not be subject to the time limitations stated in this subsection.**

   c. **Any action on a payment bond must be brought within one year after the day on which the person bringing such action last performed labor or last furnished or supplied materials.**

   d. **Any waiver of the right to sue on the payment bond required by this section shall be void unless it is in writing, signed by the person whose right is waived, and executed after such person has performed labor or furnished material in accordance with the contract documents.**

4. **Alternative forms of security:**

A. **In lieu of a bid, payment or performance bond a bidder may furnish a certified check, cashier's check or cash escrow in the face amount required for the bond.**

B. **If approved by the County Attorney, a bidder may furnish a personal bond, property bond, or bank or savings institution's letter of credit on certain designated funds in the face amount required for the bid, payment or performance bond. Approval shall be granted only upon a determination that the alternative form of security proffered affords protection to the County equivalent to a corporate surety's bond.**

F. Prequalification –

1. Any prequalification of prospective contractor by the County shall be pursuant to a prequalification process.

a. **At least thirty days prior to the date established for submission of bids or proposals under the procurement of the contract for which the prequalification applies, the County shall advise in writing, each contractor who submitted an application whether that contractor has been prequalified. In the event that a contractor is denied prequalification, the written notification to the contractor shall state the reasons for the denial of prequalification and the factual basis of such reasons.**

b. **A decision by the County denying prequalification under the provisions of this subsection shall be final and conclusive unless the prospective contractor appeals the decision in writing within ten (10) days after receipt of the notice by instituting legal action as provided in the Code of Virginia. The prospective contractor may not institute legal action until all statutory requirements have been met. If, upon appeal, it is determined that the action taken was arbitrary or capricious, or not in accordance with the Fairfax County Purchasing Resolution, the sole relief shall be restoration of eligibility.**

Comment [IP8]: Administrative Change

2. The County may deny prequalification to any contractor only if the County finds one of the following:

a. **The contractor does not have sufficient financial ability to perform the contract that would result from such procurement. If a bond is required to ensure performance of a contract, evidence that the contractor can acquire a surety bond from a corporation included on the United States Treasury list of acceptable surety corporations in the amount and type required by the County shall be sufficient to establish the financial ability of the contractor to perform the contract resulting from such procurement;**

b. **The contractor does not have appropriate experience to perform the project in question;**

c. **The contractor or any officer, director or owner thereof has had judgments entered against him within the past ten years for the breach of contracts;**

d. **The contractor has been in substantial noncompliance with the terms and conditions of prior**

contracts with the County without good cause. If the County has not contracted with a contractor in any prior contracts, the County may deny prequalification if the contractor has been in substantial noncompliance with the terms and conditions of comparable contracts with another public body without good cause. The County may not utilize this provision to deny prequalification unless the facts underlying such substantial noncompliance were documented in writing in the prior file and such information relating thereto given to the contractor at that time, with the opportunity to respond;

e. The contractor or any officer, director, owner, project manager, procurement manager or chief financial official thereof has been convicted within the past ten years of a crime related to governmental or nongovernmental contracting, including, but not limited to, violation of Article 6 of the Virginia Public Procurement Act (§2.2-4367 et seq.), the Virginia Governmental Frauds Act (§18.2-498.1 et seq.), Chapter 42 (§59.1-68.6 et seq.) of Title 59, or any substantially similar law of the United States or another state;

f. The contractor or any officer, director or owner thereof is currently debarred pursuant to an established debarment procedure from bidding or contracting by any public body, agency of another state or agency of the federal government; and

g. The contractor failed to provide to the County in a timely manner any information requested by the County relevant to subdivisions (~~1~~a) through (~~7~~f) of this subsection.

Comment [PMM9]: Administrative Change

Section 5. Compliance with Conditions on Federal Grants or Contract.

Where a procurement transaction involves the expenditure of federal assistance or contract funds, the receipt of which is conditioned upon compliance with mandatory requirements in federal laws or regulations not in conformance with the policy of full and open competition, the County Purchasing Agent may comply with the federal requirements only upon written determination by the County Executive and/or Board of Supervisors that acceptance of the grant or contract funds under the applicable conditions is in the public interest. Such determination shall state the specific provisions of this section in conflict with the conditions of the grant or contract.

Section 6. Audit by the County.

All contracts and amendments entered into by negotiation, shall include a provision permitting the County or its agent to have access to and the right to examine any books, documents, papers, and records of the contractor involving transactions related to the contract or compliance with any clauses thereunder, for a period of three (3) years after final payment. The contractor shall include these same provisions in all related subcontracts.

Section 7. HIPAA Compliance.

Fairfax County Government has designated certain health care components as covered by the Health Insurance Portability and Accountability Act of 1996. The successful vendor may be designated a business associate pursuant to 45 CFR part 164.504(e) and 164.308 (b) of those agencies identified as health care components of the County, including the Fairfax-Falls Church Community Services Board, upon award of contract. The successful vendor must adhere to all relevant federal, state, and local confidentiality and privacy laws, regulations, and contractual

provisions of the Fairfax County Business Associate agreement. These laws and regulations include, but are not limited to: (1) HIPAA – 42 USC 201, et seq., and 45 CFR Parts 160 and 164; and (2) Code of Virginia – Title 32.1, Health, § 32.1-1 et seq. The vendor shall have in place appropriate administrative, technical, and physical safeguards to ensure the privacy and confidentiality of protected health information. Additional information may be obtained by going to the Fairfax County Web site at: http://www.fairfaxcounty.gov/hipaa.

Section 8. Immigration Reform and Control Act Compliance:

The County shall provide in every written contract that the contractor does not, and shall not during the performance of the contract for goods and services in the Commonwealth, knowingly employ an unauthorized alien as defined in the Immigration Reform and Control Act of 1986.

Section 9. Compliance with State Law; Foreign and Domestic Businesses Authorized to Transact Business in the Commonwealth:

A. **The County shall include in every contract exceeding $100,000 a provision that a contractor organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 or as otherwise required by law.**

B. **Pursuant to competitive sealed bidding or competitive negotiation, the County shall include in the solicitation a provision that requires a bidder or offeror organized or authorized to transact business in the Commonwealth pursuant to Title 13.1 or Title 50 to include in its bid or proposal the identification number issued to it by the State Corporation Commission. Any bidder or offeror that is not required to be authorized to transact business in the Commonwealth as a foreign business entity under Title 13.1 or Title 50 or as otherwise required by law shall include in its bid or proposal a statement describing why the bidder or offeror is not required to be so authorized.**

C. **Any bidder or offeror described in subsection B that fails to provide the required information may not receive an award unless a waiver of this requirement and the administrative policies and procedures established to implement this section is granted by the County Purchasing Agent.**

D. **Any business entity described in subsection A that enters into a contract with the County pursuant to this section shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required under Title 13.1 or Title 50, to be revoked or cancelled at any time during the term of the contract.**

E. **The County may void any contract with a business entity if the business entity fails to remain in compliance with the provisions of this section.** ◙

Article 3

CONSTRUCTION CONTRACTING

Section 1. Authority

The procurement of architectural, engineering and related consultant services for construction projects and the contracting for construction projects are excluded from the duties of the County Purchasing Agent for the organizations as specified below:

1. **The Department of Public Works and Environmental Services, pursuant to §15.2-834 of the Code of Virginia, the Board of Supervisors' Resolution dated September 18, 1968, and this Resolution, shall be responsible for Fairfax County construction projects and related architectural, engineering and consultant services. The Director, Department of Public Works and Environmental Services or his designee, shall have the same authority as the County Purchasing Agent to execute and administer contracts and to make findings and address remedies as outlined in Article 4 of this Resolution regarding contracts assigned under this section in accordance with the mandatory sections of the Code of Virginia and the applicable sections of this Resolution. The Director, Department of Public Works and Environmental Services or his designee shall have the authority to enter into agreements pursuant to Virginia Code Ann. § 2.2-4366 (2014). Any such agreements shall be approved by the County Attorney**

Comment [PMM10]: Administrative Change

2. **The Fairfax County Public School Board shall be responsible for construction, related architectural and engineering services, related consulting services, maintenance, repair and related services in connection with building, furnishing equipping, renovating, maintaining, and operating the buildings and property of the school division in accordance with §22.1-79 of the Code of Virginia. The school division's Superintendent or his designee shall have the same authority as the County Purchasing Agent to execute and administer contracts. Execution of contracts under this section shall be conducted under the rules and regulations established by the Fairfax County School Board in accordance with the mandatory sections of the Code of Virginia.**

3. **The Fairfax County Park Authority shall be responsible for Fairfax County Park Authority capital construction and related architectural and engineering services per §15.2-5704 of the Code of Virginia and Board of Supervisors' Resolution dated April 6, 1981, governing the relationship of the Fairfax County Park Authority and Fairfax County. The Director of the Park Authority or his designee shall have the same authority of as the County Purchasing Agent to execute and administer contracts and to make findings and address remedies as outlined in Article 4 of this Resolution. Execution of contracts under this section shall be conducted under the rules and regulations established by the Fairfax County Park Authority in accordance with the mandatory sections of the Code of Virginia and applicable sections of this Resolution. The Director, Department of the Park Authority or his designee shall have the authority to enter into agreements pursuant to Virginia Code Ann. § 2.2-4366 (2014). Any such agreements shall be approved by the County Attorney.**

4. **The Department of Housing and Community Development shall be responsible for capital construction and**

related architectural and engineering services for all programs and projects administered by the Department on behalf of either the Redevelopment and Housing Authority per §36-19 of the Code of Virginia or the Fairfax County Board of Supervisors, including contracts per §36-49.1:1 to carry out blight abatement. The Director of the Department of Housing and Community Development or his designee shall have the same authority as the County Purchasing Agent to execute and administer contracts and to make findings and address remedies as outlined in Article 4 of this Resolution. Execution of contracts under this section shall be conducted under the rules and regulations established by the Department of Housing and Community Development in accordance with the mandatory sections of the Code of Virginia and applicable sections of this Resolution.

5. **The Department of Transportation, pursuant to §33.1-75.3 of the Code of Virginia, and this Resolution, may be responsible for the purpose of constructing or improving highways, including curbs, gutters, drainageways, sound barriers, sidewalks, and all other features or appurtenances conducive to the public safety and convenience which either have been or may be taken into the primary or secondary system of state highways. The Director, Department of Transportation or his designee, shall have the same authority as the County Purchasing Agent to execute and administer contracts and to make findings and address remedies as outlined in Article 4 of this Resolution regarding contracts assigned under this section in accordance with the mandatory sections of the Code of Virginia and the applicable sections of this Resolution.**

6. **The Fairfax County Park Authority, the Department of Housing and Community Development, and the Department of Transportation, may by a Memorandum of Understanding (MOU) delegate construction authority as detailed in sections 3 – 5 above to the Department of Public Works and Environmental Services.**

Section 2. Rules and Regulations

The Agencies designated in Section 1 above shall prepare and maintain detailed rules and regulations on the conduct of these contracting actions. Such rules and regulations shall be consistent with this Resolution and the laws of the Commonwealth of Virginia. Such rules and regulations shall be approved by the ~~County Executive~~ Purchasing Agent for County staff agencies or the administrative head of the respective public body involved.

Comment [IP11]: Administrative Change

Section 3. Definitions

a. Construction shall mean building, altering, repairing, improving or demolishing any structure, building, road, drainage, or sanitary facility, and any draining, dredging, excavation, grading or similar work upon real property.

b. Construction Management Contract shall mean a contract in which a party is retained by the owner to coordinate and administer contracts for construction services for the benefit of the owner, and may also include, if provided in the contract, the furnishing of construction services to the owner.

c. Design-build contract shall mean a contract between a public body and another party in which the party contracting with the public body agrees to both design and build the structure, roadway or other item specified in the contract.

d. Other Authorized Agency is an Agency as designated by the Code of Virginia and the Board of Supervisors authorized to procure architectural and engineering design services to include public announcement, receipt of bids, recommending selection and award, negotiation, contract preparation and contract administration as more fully defined in Article 1, Section 3 of this Resolution.

Section 4. Purchasing Policies

A. Construction may be procured by competitive negotiation as set forth in the Code of Virginia, subsection D of §2.2-4303 for the construction of highways and any draining, dredging, excavation, grading or similar work upon real property.

B. No contract for the construction of any building or for an addition to or improvement of an existing building for which state funds of $50,000 or more in the aggregate or for the sum of all phases of a contract or project, either by appropriation, grant-in-aid or loan, are used or are to be used for all or part of the cost of construction shall be let except after competitive bidding or competitive negotiation as provided in this Resolution and law. The procedure for the advertising for bids and letting of the contract shall conform, mutatis mutandis, to the Virginia Public Procurement Act.

C. A contract for architectural or professional engineering services relating to construction projects may be negotiated for multiple projects provided (i) the projects require similar experience and expertise, (ii) the nature of the projects is clearly identified in the Request for Proposal, and (iii) the contract term is limited to one year and may be renewable for four additional one-year terms at the option of the County. Under such contract, (a) the fair and reasonable prices, as negotiated, shall be used in determining the cost of each project performed, (b) the sum of all projects performed in one contract term shall not exceed $56 million, (c) the project fee of any single project shall not exceed $~~1~~ 2million. Any unused amounts from the first contract term shall not be carried forward to the additional term(s). Competitive negotiations for such contracts may result in awards to more than one offeror provided (1) the Request for Proposal so states and (2) the County has established procedures for distributing multiple projects among the selected contractors during the contract term.

Comment [IP12]: Code Change (HB 1637)

D. No County construction contract shall waive, release, or extinguish the rights of a contractor to recover

costs or damages for unreasonable delay, in performing such contract, either on his behalf or on behalf of his subcontractor if and to the extent such delay is caused by acts or omissions of the County, its agents or employees and due to causes within their control.

a. Subsection D shall not be construed to render void any provision of a County construction contract that:

i. Allows the County to recover that portion of delay costs caused by the acts or omissions of the contractor, or its subcontractor, agents or employees;

ii. Requires notice of any delay by the party claiming the delay;

iii. Provides for liquidated damages for delay; or

iv. Provides for arbitration or any other procedure designed to settle contract disputes.

b. A contractor making a claim against the County for costs or damages due to the alleged delaying of the contractor in the performance of its work under any County construction contract shall be liable to the County and shall pay the County for a percentage of all costs incurred by the County in investigating, analyzing, negotiating, litigating and arbitrating the claim, which percentage shall be equal to the percentage of the contractor's total delay claim which is determined through litigation or arbitration to be false or to have no basis in law or in fact.

c. A public body denying a contractor's claim for costs or damages due to the alleged delaying of the contractor in the performance of work under any public construction contract shall be liable to and shall pay such contractor a percentage of all costs incurred by the contractor to investigate, analyze, negotiate, litigate and arbitrate the claim. The percentage paid by the County shall be equal to the percentage of the contractor's total delay claim for which the County's denial is determined through litigation or arbitration to have been made in bad faith.

Section 5. Methods of Procurement

A. In addition to competitive bidding and competitive negotiations, the County may enter into a contract for construction on a fixed price or not-to-exceed price design-build or construction management basis consistent with this Resolution and law.

B. Competitive Negotiation – Construction Management / Design Build Services

1. Prior to making a determination as to the use of design-build or construction management for a specific construction project, the County shall have in its employ or under contract a licensed architect or engineer with professional competence appropriate to the project who shall advise the public body regarding the use of design-

Comment [PMM13]: Administrative Change

build or construction management for that project and who shall assist the public body with the preparation of the Request for Proposal and the evaluation of such proposals.

2. Prior to issuing a Request for Proposal for any design-build or construction management contract for a specific construction project, the County shall:

a. Have adopted, by ordinance or resolution, written procedures governing the selection, evaluation and award of design-build and construction management contracts. Such procedures shall be consistent with those described in this chapter for the procurement of nonprofessional services through competitive negotiation. Such procedures shall also require Requests for Proposals to include and define the criteria of such construction project in areas such as site plans; floor plans; exterior elevations; basic building envelope materials; fire protection information plans; structural, mechanical (HVAC), and electrical systems; and special telecommunications; and may define such other requirements as the public body determines appropriate for that particular construction project. Such procedures for:

i. Design-build construction projects shall include a two-step competitive negotiation process consistent with the standards established by the Division of Engineering and Buildings of the Department of General Services for state agencies.

ii. Construction management projects shall include selection procedures and required construction management contract terms consistent with the procedures as adopted by the Secretary of Administration.

~~1.~~3. Have documented in writing that for a specific construction project (i) a design-build or construction management contract is more advantageous than a competitive sealed bid construction contract; (ii) there is a benefit to the public body by using a design-build or construction management contract; and (iii) competitive sealed bidding is not practical or fiscally advantageous.

The contract shall be awarded to the fully qualified offeror who submits an acceptable proposal determined to be the best value in response to the Request for Proposal.

~~**1. Determination**~~

~~**a. The County may enter into a contract for construction on a fixed price or not-to-exceed price design-build or construction management basis in accordance with the Virginia Public Procurement Act (VPPA) §2.2-4308. Prior to issuing a Request for Proposal for any design-build or construction management project, the Purchasing Agent or Other Authorized Agency will document that a) the design-build or construction management contract is more advantageous than a competitive sealed bid construction contract, b) there is a benefit to the County by using a design-build or construction management contract, and c) competitive sealed bidding is not practical or fiscally advantageous. The County may proceed with design-build or construction management contracts in accordance with procedures approved by the County ExecutivePurchasing Agent in accordance with this Resolution and the laws of the**~~

~~Commonwealth of Virginia.~~

~~2. Selection Advisory Committee~~

~~a. The Purchasing Agent or Other Authorized Agency shall appoint a Selection Advisory Committee which will include a licensed professional engineer or architect with professional competence appropriate to the proposed project. The licensed professional engineer or architect shall advise the County regarding the use of design-build or construction management project and will assist with the preparation of the Request for Proposal consistent with this Resolution for competitive negotiation of non-professional services, and will assist in the evaluation of proposals. The licensed professional engineer or architect services may be provided under a professional services contract by a qualified person or firm.~~

~~b. Selection, Evaluation and Award of Construction Management or Design – Build Contracts.~~

~~1. Design Requirements. The Request for Proposal shall include and define the criteria of the construction project in the areas such as site plans; floor plans; exterior elevations; basic building envelope materials; fire protection information plans; structural, mechanical (HVAC), and electrical systems; special telecommunications; and may define such other requirements as the County determines appropriate for the particular construction project.~~

~~2. Selection, Evaluation and Award Factors. Proposal evaluation factors and other source selection criteria shall be included in the Request for Proposal for the specific design-build or construction management project.~~

~~3. Selection shall be made of two or more offerors deemed to be fully qualified and best suited among those submitting proposals, on the basis of the factors involved in the Request for Proposal, including price if so stated in the Request for Proposal. Negotiations shall then be conducted with each of the offerors so selected. After negotiations have been conducted with each offeror so selected, the County shall select the offeror which, in its opinion, has made the best proposal, and shall award the contract to that offeror. When the terms and conditions of multiple awards are so stated in the RFP, awards may be made to more than one offeror. Should the County determine in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that offeror.~~

~~4. All proposed contracts for construction management or design-build services shall be approved by the Director of DPSM or Other Authorized Agency. Full and detailed explanation of the selection criteria and fee determination shall be presented with the contract by the using agency.~~

E. Job order contracting; limitations. Where the method for procurement of job order construction is professional services through competitive negotiation is used, the following shall apply:

Comment [IP14]: Code Change (HB 1835)

1. A job order contract may be awarded by the County for multiple jobs, provided (i) the jobs require similar experience and expertise, (ii) the nature of the jobs is clearly identified in the solicitation, and (iii) the contract is limited to a term of one year or when the cumulative total project fees reach the maximum authorized in this section, whichever occurs first.

2. Such contracts may be renewable for two additional one-year terms at the option of the County. The fair and reasonable prices as negotiated shall be used in determining the cost of each job performed, and the sum of all jobs performed in a one-year contract term shall not exceed $5 million. Individual job orders shall not exceed $500,000.

3. For the purposes of this section, any unused amounts from one contract term shall not be carried forward to any additional term.

4. Order splitting with the intent of keeping a job order under the maximum dollar amounts prescribed in subsection 2 is prohibited.

5. No job order contract shall be issued solely for the purpose of receiving professional architectural or engineering services that constitute the practice of architecture or the practice of engineering as those terms are defined in Article 1, Section 6. However, professional architectural or engineering services may be included on a job order where such professional services (i) are incidental and directly related to the job, (ii) do not exceed $25,000 per job order, and (iii) do not exceed $75,000 per contract term.

~~6.~~ Job order contracting shall not be used for construction, maintenance, or asset management services for a highway, bridge, tunnel, or overpass.

Section 6. Prequalification, Bonds, Escrow Accounts

Prospective contractors may be prequalified for particular types of supplies, services, insurance, or construction, and consideration of bids or proposals limited to prequalified contractors. Any prequalification procedures shall be established in writing and sufficiently in advance of their implementation to allow potential contractors a fair opportunity to complete the process.

A. Any prequalification of prospective contractors for construction by the County shall be pursuant to a prequalification process for construction projects as outlined below.

1. **The application form used in such process shall set forth the criteria upon which the qualifications of prospective contractors will be evaluated. The application form shall request of prospective contractors only such information as is appropriate for an objective evaluation of all prospective contractors pursuant to such criteria. The form shall allow the prospective contractor seeking prequalification to request, by checking the appropriate box, that all information voluntarily submitted by the contractor pursuant to this subsection shall be considered a trade secret or proprietary information pursuant to Article 2, Section 4, Paragraph D.**

2. **In all instances in which the County requires prequalification of potential contractors for construction projects, advance notice shall be given of the deadline for the submission of prequalification applications. The deadline for submission shall be sufficiently in advance of the date set for the submission of bids for such construction so as to allow the procedures set forth in this subsection to be accomplished.**

3. **At least thirty days prior to the date established for submission of bids or proposals under the procurement of the contract for which the prequalification applies, the County shall advise in writing, each contractor who submitted an application whether that contractor has been prequalified. In the event that a contractor is denied prequalification, the written notification to the contractor shall state the reasons for the denial of prequalification and the factual basis of such reasons.**

4. **A decision by the County denying prequalification under the provisions of this subsection shall be final and conclusive unless the prospective contractor appeals the decision in writing within ten (10) days after receipt of the notice by instituting legal action as provided in the Code of Virginia. If upon appeal, it is determined that the action taken was arbitrary or capricious, or not in accordance with the Fairfax County Purchasing Resolution, the sole relief shall be restoration of eligibility.**

B. The County may deny prequalification to any contractor only if the County finds one of the following:

1. **The contractor does not have sufficient financial ability to perform the contract that would result from such procurement. If a bond is required to ensure performance of a contract, evidence that the contractor can acquire a surety bond from a corporation included on the United States Treasury list of acceptable surety corporations in the amount and type required by the County shall be sufficient to establish the financial ability of the contractor to perform the contract resulting from such procurement;**

2. **The contractor does not have appropriate experience to perform the construction project in question;**

3. **The contractor or any officer, director or owner thereof has had judgments entered against him within the past ten years for the breach of contracts for governmental or nongovernmental construction, including, but not limited to, design-build or construction management;**

4. **The contractor has been in substantial noncompliance with the terms and conditions of prior construction contracts with the County without good cause. If the County has not contracted with a contractor in any prior construction contracts, the County may deny prequalification if the contractor has been in substantial noncompliance with the terms and conditions of comparable construction contracts with another public body without good cause. The County may not utilize this provision to deny prequalification unless the facts underlying such substantial noncompliance were documented in writing in the prior construction file and such information relating thereto given to the contractor at that time, with the opportunity to respond;**

5. **The contractor or any officer, director, owner, project manager, procurement manager or chief financial official thereof has been convicted within the past ten years of a crime related to governmental or nongovernmental construction or contracting, including, but not limited to, violation of Article 6 of the Virginia Public Procurement Act (§2.2-4367 et seq.), the Virginia Governmental Frauds Act (§18.2-498.1 et seq.), Chapter 42 (§59.1-68.6 et seq.) of Title 59, or any substantially similar law of the United States or another state;**

6. **The contractor or any officer, director or owner thereof is currently debarred pursuant to an established debarment procedure from bidding or contracting by any public body, agency of another state or agency of the federal government; and**

7. **The contractor failed to provide to the County in a timely manner any information requested by the County relevant to subdivisions (1) through (7) of this subsection.**

8. ~~**The contractor fails to meet the eligibility criteria of the most recently adopted version of the Fairfax County Construction Safety Resolution.**~~

Comment [PMM15]: Administrative Change

   a. **If the County has a prequalification ordinance that provides for minority participation in municipal construction contracts, that public body may also deny prequalification based on minority participation criteria, provided, however, that nothing herein shall authorize the adoption or enforcement of minority participation criteria except to the extent that such criteria, and the adoption and enforcement thereof, are in accordance with the Constitution and laws of the United States and the Commonwealth.**

C. **Withdrawal of bids by a bidder.**

1. **A bidder for a public construction contract, other than a contract for construction or maintenance of public highways, may withdraw his bid from consideration if the price bid was substantially lower than the other bids due solely to a mistake therein, provided the bid was submitted in good faith, and the mistake was a clerical mistake as opposed to a judgment mistake, and was actually due to an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the**

compilation of a bid, which unintentional arithmetic error or unintentional omission can be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the bid sought to be withdrawn. If a bid contains both clerical and judgment mistakes, a bidder may withdraw his bid from consideration if the price bid would have been substantially lower than the other bids due solely to the clerical mistake, that was an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of a bid which shall be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the bid sought to be withdrawn.

2. **The bidder shall give notice in writing of his claim of right to withdraw his bid within two business days after the conclusion of the bid opening procedure and shall submit original work papers with such notice. No bid shall be withdrawn when the result would be the awarding of the contract on another bid of the same bidder or of another bidder in which the ownership of the withdrawing bidder is more than five percent. The lowest remaining bid shall be deemed to be the low bid. No bidder who is permitted to withdraw a bid shall, for compensation, supply any material or labor to or perform any subcontract or other work agreement for the person or firm to whom the contract is awarded or otherwise benefit, directly or indirectly, from the performance of the project for which the withdrawn bid was submitted.**

3. **The County shall notify the bidder in writing within five business days of its decision regarding the bidder's request to withdraw its bid. If the County denies the withdrawal of a bid, it shall state in such notice the reasons for its decision and award the contract to such bidder at the bid price, provided such bidder is a responsible and responsive bidder. At the same time that the notice is provided, the County shall return all work papers and copies thereof that have been submitted by the bidder.**

D. **Progress Payments**.

1. **In any public contract for construction which provides for progress payments in installments based upon an estimated percentage of completion, the contractor shall be paid at least ninety-five percent of the earned sum when payment is due, with not more than five percent being retained to be included in the final payment. Any subcontract for a public project which provides for similar progress payments shall be subject to the same limitations.**

E. Bonds.-

1. **Except in cases of emergency, all bids or proposals for nontransportation-related construction contracts in excess of $500,000 or transportation-related projects authorized under §33.1-12 that are in excess of $ 350,000 and partially or wholly funded by the Commonwealth shall be accompanied by a bid bond from a surety company selected by the bidder which is legally authorized to do business in Virginia, as a guarantee that if the contract is awarded to such bidder, that bidder will enter into the contract for the work mentioned in the bid. The amount of the bid bond shall not exceed five percent of the amount bid.**

   For nontransportation-related construction contracts in excess of $100,000 but less than $500,000, where the bid bond requirements are waived, prospective contractors shall be prequalified for each individual project in accordance with §2.2-4317 of the Code of Virginia.

   No forfeiture under a bid bond shall exceed the lesser of:

   a. the difference between the bid for which the bond was written and the next low bid, or

   b. the face amount of the bid bond.

   Nothing in this section shall preclude the County from requiring bid bonds to accompany bids or proposals for construction contracts anticipated to be less than $500,000 for nontransportation-related projects or $350,000 for transportation-related projects authorized under §33.1-12 and partially or

wholly funded by the Commonwealth.

The performance and payment bond requirements in E.1 above for transportation-related projects that are valued in excess of $250,000 but less than $350,000 may only be waived by the County if the bidder provides evidence, satisfactory to the County, that a surety company has declined an application from the contractor for a performance or payment bond.

2. Performance and payment bonds:

a. Upon the award of any (i) public construction contract exceeding $500,000 awarded to any prime contractor, (ii) construction contract exceeding $500,000 awarded to any prime contractor requiring the performance of labor or the furnishing of materials for buildings, structures or other improvements to real property owned or leased by a public body, or (iii) transportation-related projects exceeding $350,000 that are partially or wholly funded by the Commonwealth, or (iv) construction contract exceeding $500,000 in which the performance of labor of the furnishing of materials will be paid with public funds, the contractor shall furnish to the County the following bonds:

1. A performance bond in the sum of the contract amount conditioned upon the faithful performance of the contract in strict conformity with the plans, specifications and conditions of the contract. For transportation-related projects authorized under §33.1-12, such bond shall be in a form and amount satisfactory to the public body.

2. A payment bond in the sum of the contract amount. The bond shall be for the protection of claimants who have and fulfill contracts to supply labor or materials to the prime contractor to whom the contract was awarded, or to any subcontractors in the prosecution of the work provided for in such contract, and shall be conditioned upon the prompt payment for all such material furnished or labor supplied or performed in the prosecution of the work. For transportation-related projects authorized under §33.1-12 and partially or wholly funded by the Commonwealth, such bond shall be in a form and amount satisfactory to the public body. "Labor or materials" shall include public utility services and reasonable rentals of equipment, but only for periods when the equipment rented is actually used at the site.

b. Each of such bonds shall be executed by one or more surety companies selected by the contractor which are legally authorized to do business in Virginia.

c. Such bonds shall be payable to the County of Fairfax and filed with the County or a designated office or official.

d. Nothing in this section shall preclude the County from requiring payment or performance bonds for construction contracts below $500,000 for nontransportation-related projects or $350,000 for transportation-related projects authorized under §33.1-12 and partially or wholly funded by the Commonwealth.

e. Nothing in this section shall preclude such contractor from requiring each subcontractor to furnish a

payment bond with surety in the sum of the full amount of the contract with such subcontractor conditioned upon the payment to all persons who have and fulfill contracts which are directly with the subcontractor for performing labor and furnishing materials in the prosecution of the work provided for in the subcontract.

3. **Action on performance bond - No action against the surety on a performance bond shall be brought unless within one year after (1) completion of the contract, including the expiration of all warranties and guarantees or (2) discovery of the defect or breach of warranty, if the action be for such, in all other cases.**

4. **Actions on payment bonds:**

   a. **Subject to the provisions of subsection (b) hereof, any claimant who has performed labor or furnished material in accordance with the contract documents in the prosecution of the work provided in any contract for which a payment bond has been given, and who has not been paid in full therefore before the expiration of ninety days after the day on which such claimant performed the last of such labor or furnished the last of such materials for which he claims payment, may bring an action on such payment bond to recover any amount due him for such labor or material, and may prosecute such action to final judgment and have execution on the judgment. The obligee named in the bond need not be named a party to such action.**

   b. **Any claimant who has a direct contractual relationship with any subcontractor but who has no contractual relationship, express or implied, with the contractor, may bring an action on the contractor's payment bond only if he has given written notice to the contractor within 180 days from the day on which the claimant performed the last of the labor or furnished the last of the materials for which he claims payment, stating with substantial accuracy the amount claimed and the name of the person for whom the work was performed or to whom the material was furnished. Notice to the contractor shall be served by registered or certified mail, postage prepaid, in an envelope addressed to such contractor at any place where his office is regularly maintained for the transaction of business. Claims for sums withheld as retainages with respect to labor performed or materials furnished, shall not be subject to the time limitations stated in this subsection.**

   c. **Any action on a payment bond must be brought within one year after the day on which the person bringing such action last performed labor or last furnished or supplied materials.**

   d. **Any waiver of the right to sue on the payment bond required by this section shall be void unless it is in writing, signed by the person whose right is waived, and executed after such person has performed labor or furnished material in accordance with the contract documents.**

5. **Alternative forms of security:**

   a. **In lieu of a bid, payment or performance bond a bidder may furnish a certified check, cashier's check or cash escrow in the face amount required for the bond.**

   b. **If approved by the County Attorney, a bidder may furnish a personal bond, property bond, or bank or savings institution's letter of credit on certain designated funds in the face amount required for the**

bid, payment or performance bond. Approval shall be granted only upon a determination that the alternative form of security proffered affords protection to the County equivalent to a corporate surety's bond.

F. Escrow Accounts.-

1. The County, when contracting directly with contractors for public contracts of $200,000 or more for construction of highways, roads, streets, bridges, parking lots, demolition, clearing, grading, excavating, paving, pile driving, miscellaneous drainage structures, and the installation of water, gas, sewer lines and pumping stations, where portions of the contract price are to be retained, shall include an option in the bid or proposal for the contractor to use an Escrow account procedure for utilization of the County's retainage funds by so indicating in the space provided in the bid or proposal documents and executing the Escrow Agreement form provided by the County. In the event the contractor elects to use the Escrow account procedure, the Escrow Agreement form shall be executed and submitted to the County within fifteen days after receipt of notification of contract award by the contractor.

2. The executed Escrow Agreement Form shall be submitted to the Office designated in the bid or proposal documents. If the Escrow Agreement Form is not submitted to the designated office within the fifteen day period, the contractor shall forfeit his rights to the use of the Escrow account procedure.

3. The Purchasing Agent shall promulgate escrow regulations. In order to have retained funds paid to an escrow agent, the contractor, the escrow agent and the surety shall execute the Escrow Agreement form. The contractor's escrow agent shall be a trust company, bank or savings institution with its principal office located in the Commonwealth and shall satisfy escrow agent qualifications promulgated by the Purchasing Agent.

4. This subsection E. shall not apply to public contracts for construction for railroads, public transit systems, runways, dams, foundations, installation or maintenance of power systems for the generation and primary and secondary distribution of electric current ahead of the customer's meter, the installation or maintenance of telephone, telegraph or signal systems for public utilities and the construction or maintenance of solid waste or recycling facilities and treatment plants.

5. Any such public contract for construction with the County which includes payment of interest on retained funds, may include a provision whereby the contractor, exclusive of reasonable circumstances beyond the control of the contractor stated in the contract, shall pay a specified penalty for each day exceeding the completion date stated in the contract.

6. **Any subcontract for such public project that provides for similar progress payments shall be subject to the provisions of this section.**

This subsection E. shall apply to contracts as provided in the Code of Virginia, §2.2-4334.

Article 4

BIDDER/CONTRACTOR REMEDIES

Section 1. Ineligibility.

A. **Any person or firm suspended or debarred from participation in County procurement shall be notified in writing by the County Purchasing Agent.**

1. **The Notice of Suspension shall state the reasons for the actions taken and such decision shall be final unless the person or firm appeals within thirty (30) days of receipt of the Notice by instituting legal action as provided in the Code of Virginia.**

2. **The Notice of Debarment shall state the reasons for the actions taken and the decision shall be final unless the person or firm appeals within thirty (30) days of receipt of the notice by instituting legal action as provided in the Code of Virginia.**

B. **The County Purchasing Agent shall have the authority to suspend or debar a person or firm from bidding on any contract for the causes stated below:**

1. **Conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;**

2. **Conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a County contractor;**

3. **Conviction under the state or federal antitrust statutes arising out of the submission of bids or proposals;**

4. **Violation of contract provisions, as set forth below, of a character which is regarded by the County Purchasing Agent to be so serious as to justify suspension or debarment action:**

    a. **failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or**

b. a recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts, provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for suspension or debarment;

5. Any other cause the County Purchasing Agent determines to be so serious and compelling as to affect responsibility as a contractor, such as debarment by another governmental entity for any cause listed herein, or because of prior reprimands;

6. The contractor has abandoned performance, been terminated for default on a Fairfax County project, or has taken any actions that inure to the detriment of Fairfax County or a Fairfax County project.;

7. The contractor is in default on any surety bond or written guarantee on which Fairfax County is an obligee.

C. If, upon appeal, it is determined that the action taken by the County Purchasing Agent was arbitrary or capricious, or not in accordance with the Constitution of Virginia, statutes or regulations, the sole relief available to the person or firm shall be restoration of eligibility. The person or firm may not institute legal action until all statutory requirements have been met.

Section 2. Appeal of Denial of Withdrawal of Bid.

A. A decision denying withdrawal of a bid submitted by a bidder or offeror shall be final and conclusive unless the bidder appeals the decision within ten (10) days after receipt of the decision by instituting legal action as provided in the Code of Virginia. The bidder or offeror may not institute legal action until all statutory requirements have been met.

B. If no bid bond was posted, a bidder refused withdrawal of bid under the provisions of Article 2, Section 4A, paragraph 8, prior to appealing, shall deliver to the County a certified check or cash bond in the amount of the difference between the bid sought to be withdrawn and the next low bid. Such security shall be released only upon a final determination that the bidder was entitled to withdraw the bid.

C. **If, upon appeal, it is determined that the decision refusing withdrawal of the bid was not an honest exercise of discretion, but rather was arbitrary or capricious or not in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid, the sole relief shall be withdrawal of the bid.**

Section 3. Appeal of Determination of Nonresponsibility.

A. **Any bidder who, despite being the apparent low bidder, is determined not to be a responsible bidder for a particular County contract shall be notified in writing by the County Purchasing Agent. Such notice shall state the basis for the determination, which shall be final unless the bidder appeals the decision within ten (10) days of receipt of the notice by instituting legal action as provided in the Code of Virginia. The bidder may not institute legal action until all statutory requirements have been met.**

B. **If, upon appeal, it is determined that the decision of the County Purchasing Agent was arbitrary or capricious and the award for the particular County contract in question has not been made, the sole relief available to the bidder shall be a finding that the bidder is a responsible bidder for the County contract in question. Where the award has been made, the County may declare the contract void upon a finding that this action is in the best interest of the public. Where a contract is declared void, the performing contractor shall be compensated for the cost of performance up to the time of such declaration. In no event shall the performing contractor be entitled to lost profits.**

Section 4. Protest of Award or Decision to Award.

A. **Any bidder or offeror may protest the award or decision to award a contract by submitting a protest in writing to the County Purchasing Agent, or an official designated by the County of Fairfax, no later than ten (10) days after the award or the announcement of the decision to award, whichever occurs first. Any potential bidder or offeror on a contract negotiated on a sole source or emergency basis who desires to protest the award or decision to award such contract shall submit such protest in the same manner no later than ten days after posting or publication of the notice of such contract as provided in Article 2, Section 2. However, if the protest of any actual or potential bidder or offeror depends in whole or in part upon information contained in public records pertaining to the procurement transaction which are subject to inspection under Article 2, Section 4.D, then the time within which the protest must be submitted shall expire ten days after those records are available for inspection by such bidder or offeror under Article 2, Section 4.D, or at such later time as provided herein. No protest shall lie for a claim that the selected bidder or offeror is not a responsible bidder or offeror. The written protest shall include the basis for the protest and the relief sought. The County Purchasing Agent shall issue a decision in writing within ten (10) days of the receipt of the protest stating the reasons for the action taken. This decision shall be final unless the bidder or offeror appeals within ten (10) days of receipt of the written decision by instituting legal action as provided in the Code of Virginia.**

B. **If, prior to award, it is determined that the decision to award is arbitrary or capricious, then the sole relief shall be a finding to that effect. The County Purchasing Agent shall cancel the proposed award or revise it to comply with the law. If, after an award, it is determined that an award of a contract was arbitrary or capricious, then the sole relief shall be as hereinafter provided. Where the award has been made but performance has not begun, the performance of the contract may be declared void by the County. Where the award has been made and performance has begun, the County Purchasing Agent may declare the contract**

void upon a finding that this action is in the best interest of the County. Where a contract is declared void, the performing contractor shall be compensated for the cost of performance at the rate specified in the contract up to the time of such declaration. In no event shall the performing contractor be entitled to lost profits.

C. Pending final determination of a protest or appeal, the validity of a contract awarded and accepted in good faith in accordance with this article shall not be affected by the fact that a protest or appeal has been filed.

D. An award need not be delayed for the period allowed a bidder or offeror to protest, but in the event of a timely protest, no further action to award the contract will be taken unless there is a written determination that proceeding without delay is necessary to protect the public interest or unless the bid or offer would expire.

Section 5. Contractual Disputes.

A. Any dispute concerning a question of fact as a result of a contract with the County which is not disposed of by agreement shall be decided by the County Purchasing Agent, who shall reduce his decision to writing and mail or otherwise forward a copy to the contractor within ninety (90) days. The decision of the County Purchasing Agent shall be final and conclusive unless the contractor appeals within six (6) months of the date of the final written decision by instituting legal action as provided in the Code of Virginia. A contractor may not institute legal action, prior to receipt of the County Purchasing Agent's decision on the claim, unless the County Purchasing Agent fails to render such decision within the time specified.

B. Contractual claims, whether for money or other relief, shall be submitted in writing no later than sixty days after final payment; however, written notice of the contractor's intention to file such claim shall have been given at the time of the occurrence or beginning of the work upon which the claim is based. Nothing herein shall preclude a contract from requiring submission of an invoice for final payment within a certain time after completion and acceptance of the work or acceptance of the goods. Pendency of claims shall not delay payment of amounts agreed due in the final payment.

Section 6. Legal Action.

A. No bidder, offeror, potential bidder or offeror, or contractor shall institute any legal action until all statutory requirements have been met.

Article 5

ETHICS IN COUNTY CONTRACTING

Section 1. General.

A. **The provisions of this article supplement, but do not supersede, other provisions of law including, but not limited to, the State and Local Government Conflict of Interests Act (§2.2-3100 et seq.), the Virginia Governmental Frauds Act (§18.2-498.1 et seq.), and Articles 2 (§18.2-438 et seq.) and 3 (§18.2-446 et seq.) of Chapter 10 of Title 18.2. The provisions of this article apply notwithstanding the fact that the conduct described may not constitute a violation of the State and Local Government Conflict of Interests Act.**

B. **No County employee having official responsibility for a procurement transaction (except as may be specifically allowed by subdivisions of A2, A3 and A4 of §2.2-3112) shall participate in that transaction on behalf of the County when the employee knows that:**

1. **The employee is contemporaneously employed by a bidder, offeror or contractor involved in the procurement transaction; or,**

2. **The employee, the employee's partner, or any member of the employee's immediate family holds a position with a bidder, offeror, or contractor such as an officer, director, trustee, partner or the like, or is employed in a capacity involving personal and substantial participation in the procurement transaction, or owns or controls an interest of more than five percent; or,**

3. **The employee, the employee's partner, or any member of the employee's immediate family has a pecuniary interest arising from the procurement transaction; or,**

4. **The employee, the employee's partner, or any member of the employee's immediate family is negotiating or has an arrangement concerning prospective employment with a bidder, offeror or contractor.**

Section 2. Solicitation or Acceptance of Gifts.

No County employee having official responsibility for a procurement transaction shall solicit, demand, accept or agree to accept from a bidder, offeror, contractor or subcontractor any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal or minimal value, present or promised, unless consideration of substantially equal or greater value is exchanged. The County may recover the value of anything conveyed in violation of this section.

Section 3. Disclosure of Subsequent Employment.

No County employee or former County employee having official responsibility for procurement transactions shall accept employment with any bidder, offeror or contractor with whom the County employee or former County

employee dealt in an official capacity concerning procurement transactions for a period of one year from the cessation of employment by the County unless the County employee, or former County employee, provides written notification to the County prior to commencement of employment by that bidder, offeror or contractor.

Section 4. Gifts.

No bidder, offeror, contractor or subcontractor shall confer upon any County employee having official responsibility for a procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is exchanged.

Section 5. Kickbacks.

A. **No contractor or subcontractor shall demand or receive from any of his suppliers or his subcontractors, as an inducement for the award of a subcontract or order, any payment, loan, subscription, advance, deposit of money, services or anything present or promised, unless consideration of substantially equal or greater value is exchanged.**

B. **No subcontractor or supplier shall make, or offer to make, kickbacks as described in this section.**

C. **No person shall demand or receive any payment, loan, subscription, advance, deposit of money, services or anything of value in return for an agreement not to compete on a County contract.**

D. **If a subcontractor or supplier makes a kickback or other prohibited payment as described in this section, the amount thereof shall be conclusively presumed to have been included in the price of the subcontract or order and ultimately borne by the public body and will be recoverable from both the maker and recipient. Recovery from one offending party shall not preclude recovery from other offending parties.**

E. **No person who, for compensation, prepares an invitation to bid or request for proposal for or on behalf of the County shall (i) submit a bid or proposal for that procurement or any portion thereof or (ii) disclose to any bidder or offeror information concerning the procurement which is not available to the public. However, the County may permit such person to submit a bid or proposal for that procurement or any portion thereof if the County determines that the exclusion of such person would limit the number of potential qualified bidders or offerors in a manner contrary to the best interests of the County.**

Section 6. Purchase of Building Materials, etc., from Architect or Engineer Prohibited.

A. **No building materials, supplies or equipment for any building or structure constructed by or for the County shall be sold by or purchased from any person employed as an independent contractor by the County to furnish architectural or engineering services, but not construction, for such building or structure; or from any partnership, association or corporation in which such architect or engineer has a personal interest as defined in §2.2-3101 of the Code of Virginia.**

B. **No building materials, supplies, or equipment for any building or structure constructed by or for the County shall be sold by or purchased from any person who has provided or is currently providing design services**

specifying a sole source for such materials, supplies, or equipment to be used in such building or structure to the independent contractor employed by the County to furnish architectural or engineering services in which such person has a personal interest as defined in §2.2-3101 of the Code of Virginia.

C. The provisions of this Section shall not apply in the case of emergency.

Section 7. Certification of Compliance; Penalty for False Statements.

A. The County may require County employees having official responsibility for procurement transactions in which they participated to annually submit for such transactions a written certification that they complied with the provisions of this section.

B. Any County employee required to submit a certification as provided in subsection a. of this section who knowingly makes a false statement in such certification shall be punished as provided in §2.2-4377 of the Code of Virginia.

Section 8. Misrepresentations.

No County employee having official responsibility for a procurement transaction shall knowingly falsify, conceal, or misrepresent a material fact; knowingly make any false, fictitious or fraudulent statements or representations; or make or use any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry.

Section 9. Penalty for Violation.

The penalty for violations of any of the provisions under Article 5 of this Resolution is provided in the Code of Virginia, §2.2-4377.

Section 10. Personal Conflicts of Interest

It is County policy to require contractors to:

1) **Identify and prevent personal conflicts of interest of their employees who perform an acquisition function closely associated with inherently governmental functions; and**
2) **Prohibit employees who have access to non-public County information from using such information for personal gain.**

Failure to comply may result in suspension or debarment or termination for cause. The Purchasing Agent may waive, in exceptional circumstances, a personal conflict of interest or waive the requirement to prevent conflict of interest for a particular employee, if he determines in writing that such mitigation is in the best interest of the County.

Article 6

SUPPLY MANAGEMENT

The Director of the Department of Purchasing and Supply Management is responsible for the management of all Fairfax County and Fairfax County Public Schools (FCPS) supplies and equipment except as excluded by formal agreement between the County and other public bodies. This includes physical accountability of consumable supplies and accountable equipment, as well as, validation of the inventory and accountable equipment values reported in Fairfax County's Comprehensive Annual Financial Report. DPSM shall prescribe the procedures to be used by departments in the acquisition, receipt, storage and management, and issuance of consumable supplies and accountable equipment inventory, and disposition of excess and surplus County property.

Section 1. County Consolidated Warehouse

A. The Director of the Department of Purchasing and Supply Management is responsible for operation of the County Consolidated Warehouse which provides temporary storage and distribution of the supplies and equipment to all County departments. The Warehouse may be used as the storage point for goods on consignment from other departments. The Director of the Department of Purchasing and Supply Management is responsible for space management at the County Consolidated Warehouse.

Section 2. Inventory Accountability

Departments and Fairfax County Public Schools are required to establish and maintain accountability of consumable inventories and accountable equipment in their custody, and to conduct periodic physical inventories in accordance with schedules published by the Director of the Department of Purchasing and Supply Management.

Section 3. Consumable Inventory Management

A. **The Director of the Department of Purchasing and Supply Management shall exercise oversight responsibility over all consumable inventory warehouses and stockrooms.**

B. **The Director of the Department of Purchasing and Supply Management shall administer Fairfax County's perpetual inventory management system through FOCUS, and shall approve the management of perpetual inventories through any system other than FOCUS.**

Section 4. Accountable Equipment Inventory Management

A. **The Director of the Department of Purchasing and Supply Management shall exercise oversight responsibility over all accountable equipment.**

B. **The Director of the Department of Purchasing and Supply management is responsible for defining items to be capitalized as accountable equipment, and administering the Accountable Equipment Program in accordance with State and County codes, as well as industry standards and best practices.**

Section 6. Excess and Surplus Property and Inventory.

A. **The Director of the Department of Purchasing and Supply Management is responsible for redistribution of serviceable excess property and inventory, to include furniture, office equipment, repair parts, etc.**

B. **The Director of the Department of Purchasing and Supply Management is responsible for the disposal of surplus property and inventory as applicable by law. Disposals will be evaluated in an effort to maximize financial returns to the County and / or minimize environmental impact.**

C. **Confiscated or abandoned property in the hands of the police shall be disposed in accordance with Chapter 2, Article 2, Sections 2-2-1 through 2-2-3 of the County Code.**

D. **Employees and members of their immediate family are not eligible to acquire property for personal use before such property has been declared surplus and has been made available to the general public. The County may, however, sell any dog specially trained for police work to the handler who was last in control of such dog, at a price deemed by the locality to be appropriate.**

Section 7. Donations

A. **Accepting Donations:**

1. **Items $5,000 or more:**
   The Director of the Department of Purchasing and Supply Management or Assistant Superintendent of Financial Services is responsible for approving the acceptance donated items or services with a fair market value of $5,000 or more, and ensuring accepted items are properly accounted for.

2. **Items under $5,000:**
   Department Heads, Principals, or their equivalents may accept donated items or services with a fair market value under $5,000.

B. Making Donations:

1. **Items $5,000 or more:**
   When the fair market value of an item exceeds $5,000, the Board of County Supervisors or FCPS School Board, as appropriate and allowed by law, may offer surplus County or School property to charitable or non-profit organizations or public bodies for sale or donation, where appropriate. The Director of the Department of Purchasing and Supply Management or Assistant Superintendent of Financial Services shall coordinate all requests to donate items with their respective Board.

2. **Items under $5,000:**
   When the fair market value of a surplus item is less than $5,000, the Director of the Department of Purchasing and Supply Management or ~~Assistant Superintendent of~~ FCPS Chief Financial Services may donate the item directly to charitable or nonprofit organizations as appropriate and allowed by law.

Comment [IP16]: Administrative Change

It is further resolved that this resolution shall be effective July 1, 2015.

A Copy Teste:

Catherine A. Chianese
Clerk to the Board of Supervisors

Board Agenda Item
June 23, 2015

ACTION – 11

Approval of the Consolidated Community Funding Advisory Committee Recommendations for the FY 2017 and FY 2018 Funding Priorities for the Consolidated Community Funding Pool

ISSUE:
Board of Supervisors' approval of the FY 2017 and FY 2018 Funding Priorities for the Consolidated Community Funding Pool, as recommended by the Consolidated Community Funding Advisory Committee (CCFAC).

RECOMMENDATION:
The County Executive recommends that the Board of Supervisors approve the FY 2017 and FY 2018 Funding Priorities for the Consolidated Community Funding Pool (CCFP) as recommended by the CCFAC.

TIMING:
The decision on the funding priorities for CCFP funding is requested in June to allow staff time to prepare the next Request for Proposals for the CCFP for release in October 2015.

BACKGROUND:
The Board of Supervisors has charged the CCFAC with the responsibility for overseeing the Consolidated Community Funding Pool. As part of that responsibility, the CCFAC recommends funding priorities for the funding pool for each two-year cycle. On July 9, 2013, the Board concurred in the recommendation of staff and approved the FY 2015 and FY 2016 funding priorities for the CCFP, as recommended by the CCFAC. Recognizing the need for the critical services provided by CCFP contractors to the community, families, and individuals, particularly in the current economic climate, the Board approved an increase in the FY 2015 General Fund transfer of $743,388, or 7.5 percent over FY 2014, for a total of $10,611,143. Funding for FY 2016 was approved at a constant level. All awards, assuming successful performance, are through June 30, 2016.

The CCFAC maintains a regular process for receiving community input and reviewing data throughout the year to inform decisions on which funding and priority recommendations are based. The data that the CCFAC considers includes information

given for the preparation of the County's Five-Year Consolidated Plan for FY 2016-2020 and Consolidated Plan One-Year Action Plan for FY 2016, which were recently submitted to the U.S. Department of Housing and Urban Development. The FY 2016 Action Plan covers the first year of the County's Five-Year Consolidated Plan for Fiscal Years 2016-2020. Additionally, staff-prepared studies and analyses are provided and information is reported from advocacy groups and the nonprofit and community-based providers to assist in establishing the recommendations.

Several specific activities factored into the needs assessment and development of the priority recommendations this cycle. These included the following:

- Data on Trends and Emerging Needs: In December 2014, the Department of Neighborhood and Community Services developed a report that compiles the trends and emerging needs affecting the human services system in its delivery of services. The *Trends and Emerging Needs Impacting the Fairfax County Human Services System* report was provided to the CCFAC in January 2015, and staff also provided a briefing of the key findings.
- Interviews with Board Members: In conjunction with an effort to collect Board Member feedback regarding the Human Services Needs Assessment, staff interviewed Board Members in April 2015 to hear about human services needs in their respective districts, as well as to review the draft CCFP funding priorities. Results from the interviews were summarized and provided to the CCFAC at their May 12, 2015 meeting, for consideration prior to approving the draft CCFP priorities.
- Outreach to Community Members: Staff conducted outreach to the community, including posting a notice of the draft priorities on the Fairfax County website and in local newspapers (including minority newspapers); distribution of an informational flyer; and using social media tools to direct residents to the priorities document.
- Discussion of *Draft* Priorities at the CCFAC meeting on May 12, 2015: Input provided at the public comment meeting on these *Draft* Priorities was considered in making the final recommendation to the Board of Supervisors.

The CCFAC recommends that the Funding Pool continue its historic focus on the provision of direct human services. Some institutional activities to support direct services such as organizational development, professional development, case management, public education, outreach, and networking will be appropriate components of a CCFP proposal as in the previous cycles. The CCFAC also explicitly recognizes the value of human services that emphasize neighborhoods (geographically defined) and communities (shared interests, not bound to one location), as well as those for individuals and families. The CCFP will not provide general support for organizations.

The CCFP will focus on measurable outcomes for individuals, families, neighborhoods, and communities. The CCFAC is recommending outcome-focused priorities which reflect an important and necessary continuum of stability and self-sufficiency opportunities based on the need, condition, and potential among those to be served. The CCFAC believes that these outcome-focused priorities will support a number of Board and county initiatives and will enhance efforts to *prevent* conditions or behaviors that undermine health, stability, growth and development, or independent living in the community.

The table below and the attached document provide the specific outcome and action statements for each priority, as well as a new component in the priority framework – targeted focus areas within each priority. In previous funding cycles the CCFAC has included target percentage allocation ranges for each priority, but received information from staff that identification of specific human services needs may be a more effective way of targeting CCFP funding. As a result, the CCFAC has removed the allocation ranges from the draft CCFP priorities and replaced them with targeted focus areas. These focus areas are based on human services needs presented to the CCFAC during the course of the priority-setting process, and represent key areas of need for CCFP funding.

Priority	**Outcome Statement**	**Targeted Focus Areas**
I. PREVENTION	Families and individuals remain independent and have the tools and resources to prevent future dependence. Communities increase their ability to support their members in preventing dependence.	Behavioral health services for youth and older adults, including suicide prevention Early childhood development services

II. CRISIS INTERVENTION	Individuals, families, or communities in crisis overcome short-term problems (generally not more than three months) and quickly move back to independence.	Domestic violence services, particularly those that provide housing opportunities for families affected by domestic violence Food assistance for families with children Emergency rental and utility assistance
III. SELF-SUFFICIENCY	Families, individuals, neighborhoods, and communities attain self-sufficiency over a period of three months to three years.	Healthcare affordability and accessibility services, particularly behavioral health services Housing needs identified in the Fairfax County Housing Blueprint English proficiency services
IV. LONG-TERM SUPPORTIVE SERVICES	Individuals who have continuing long-term needs and who therefore may not become self-sufficient, achieve and/or maintain healthy, safe, and independent lives to the maximum extent possible.	Affordable and accessible housing with supportive social services for very low-income individuals with disabilities and very low-income older adults

CCFAC Recommendation
Based on the review of available data and information on community needs, and in consideration of comments and input received, the CCFAC recommends that the Board of Supervisors approve the four priorities and the targeted focus areas as shown above and in the attachment for FY 2017 and FY 2018.

FISCAL IMPACT:
None

Board Agenda Item
June 23, 2015

ENCLOSED DOCUMENTS:
Attachment A: Recommended Priorities for the Consolidated Community Funding Pool for Fiscal Years 2017-2018

STAFF:
Patricia D. Harrison, Deputy County Executive
Christopher A. Leonard, Director, Neighborhood and Community Services
Kurt Creager, Director, Housing and Community Development
Nannette M. Bowler, Director, Department of Family Services
M. Gail Ledford, Director, Department of Administration for Human Services
Vincent Rogers, Community Capacity Builder, Neighborhood and Community Services

Draft PRIORITIES FOR THE CONSOLIDATED COMMUNITY FUNDING POOL (CCFP)

for Fiscal Years 2017-2018

Draft **PRIORITIES FOR THE CONSOLIDATED COMMUNITY FUNDING POOL (CCFP)**
for Fiscal Years 2017-2018

This document presents the Consolidated Community Funding Advisory Committee's (CCFAC) recommendations on priorities for the Consolidated Community Funding Pool (CCFP) for the two-year funding cycle beginning in Fiscal Year (FY) 2017 (July 1, 2016). The recommendations were developed by the CCFAC, the citizen group established by the Fairfax County Board of Supervisors and charged with the responsibility to recommend CCFP priorities based on community and staff assessments of the human services and community development needs within the county. Members of the CCFAC are appointed by the County Executive and represent various public and private citizen advisory or administrative boards, councils, and committees within the county.

During the course of the CCFP priority-setting process for FY 2017-2018, the CCFAC received information from Fairfax County staff on the trends and emerging needs affecting the human services system in its delivery of services. Based on the data provided to them by staff, the CCFAC has designed a new element in its CCFP priorities framework that identifies targeted focus areas within each priority. These focus areas represent growing needs within the human services system. The CCFAC, therefore, recommends that applicants give full and careful consideration to these targeted focus areas.

Described below are the four recommended priorities, the outcomes to be achieved, service examples, and targeted focus areas:

I. PREVENTION

Outcome: Families and individuals remain independent and have the tools and resources to prevent future dependence. Communities increase their ability to support their members in preventing dependence.

Services in this category are intended to help those who are at risk of falling into, but are not yet in situations which would require significant, multiple, or ongoing interventions or services. Those who are repeatedly falling into difficulties generally need more extensive and complex services than "prevention." This category also includes community and neighborhood development programs that provide early and positive public engagement to identify emerging problems and solutions and develop community-based prevention activities.

Service Examples (may include some of the following examples, but are not limited to):

- Mentoring programs for youth, adults, and families
- Conflict resolution and anger management training and counseling
- After-school or other programs that provide positive alternatives to risky behavior
- Courses that teach language or culture to help groups interact positively
- Life-skills and healthy choices programs
- Financial literacy/management training and counseling to foresee and prevent financial crises
- Health fairs and health screening clinics, dental clinics, inoculations, nutrition education

Targeted Focus Area(s) for <u>Prevention Priority</u>: In Fiscal Years 2017-2018, Fairfax County has seen a growing need in the focus areas below and is specifically seeking projects that address the following:

- Behavioral health services for youth and older adults, including suicide prevention
- Early childhood development services

II. CRISIS INTERVENTION

Outcome: Individuals, families, or communities in crisis overcome short-term problems (generally not more than three months) and quickly move back to independence.

Services in this category assist individuals and families that need short-term or one-time assistance with basic needs (food, shelter, transportation, counseling) to avoid falling more deeply into dependency on public support. In addition, providers of these programs should conduct initial assessments or referrals to identify longer-term or chronic issues and steer recipients toward resources to address these more complex problems. This category would not cover ongoing services to address more chronic conditions such as illiteracy, substance abuse, long-term poverty, ongoing illness, or permanent disability.

Service Examples:

- Food pantry
- Utility payments
- Rental assistance
- Financial counseling
- Furniture collection and distribution
- Disaster response
- Services to victims of domestic violence and their families
- Emergency medical assistance, including emergency counseling and pharmaceutical assistance
- Provision of temporary or emergency shelter to the homeless

Targeted Focus Area(s) for Crisis Intervention Priority: In Fiscal Years 2017-2018, Fairfax County has seen a growing need in the focus areas below and is specifically seeking projects that address the following:

- Domestic violence services, particularly those that provide housing opportunities for families affected by domestic violence
- Food assistance for families with children
- Emergency rental and utility assistance

III. SELF-SUFFICIENCY

Outcome: Families, individuals, neighborhoods, and communities attain self-sufficiency over a period of three months to three years.

Services in this category recognize that many social problems are complex in origin and require complex intervention. Sophisticated assessment, coordination, collaboration, and case management are generally required to provide these services effectively. Individuals, families, neighborhoods, and communities served have long-term, but not permanent, problems. Services in this category may link to prevention services but should not be confused with them. This category should not include emergency short-term (category II) or ongoing-needs (category IV) services for individuals or families.

Service Examples:

- Development of a comprehensive plan to achieve self-sufficiency, which may include phased services, referrals, and/or evaluation of long-term needs
- Acquiring/preserving/rehabilitating/constructing affordable, accessible, and stable housing with accessible supportive social services
- Transition assistance requiring involvement with individuals or families over a period of more than three months
- Employment training/job skills/awareness of economic opportunities
- Primary medical/dental services
- Counseling services
- Services to assist with trauma recovery
- Adult education
- Language and cross-cultural assistance
- Childcare to help parents stay employed
- Legal services
- Transportation to provide access to existing programs or services
- Financial asset formation
- Services for homeless families and individuals, including homeless youth

Targeted Focus Area(s) for Self-Sufficiency Priority: In Fiscal Years 2017-2018, Fairfax County has seen a growing need in the focus areas below and is specifically seeking projects that address the following:

- Healthcare affordability and accessibility services, particularly behavioral health services
- Housing needs identified in the Fairfax County Housing Blueprint
- English proficiency services

IV. LONG-TERM SUPPORTIVE SERVICES

Outcome: Individuals who have continuing long-term needs, and who therefore may not become self-sufficient, achieve and/or maintain healthy, safe, and independent lives to the maximum extent possible.

Services in this category meet the needs of individuals who, because of age or other permanent conditions, will need ongoing help and likely will never achieve self-sufficiency. It may be difficult to initially assess whether an individual or family needs services from this category, as compared to another category. Indeed, those receiving ongoing services may also benefit from preventive programs, require emergency services, or move from dependence to self-sufficiency in some areas of their lives while needing ongoing assistance in others. Programs to help neighborhoods or communities address growing ongoing supportive service needs within the community would also fall into this category.

Service Examples:

- Affordable, accessible, and stable long-term housing with supportive social services
- Services to assist individuals transitioning from institutional to home or community-based care
- Personal assistance with routine tasks
- Transportation to medical appointments
- Social environments for isolated individuals
- Home health visits
- Individual and family counseling
- Respite services to help caregivers
- Nutrition assistance
- Supportive employment

Targeted Focus Area(s) for Long-Term Supportive Services Priority: In Fiscal Years 2017-2018, Fairfax County has seen a growing need in the focus areas below and is specifically seeking projects that address the following:

- Affordable and accessible housing with supportive social services for very low-income individuals with disabilities and very low-income older adults

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Capital Projects from the Community Development Block Grant may be awarded in multiple categories (generally self-sufficiency and long-term supportive services).

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CONSIDERATION – 1

Election Year Policies

ISSUE:
Adoption of Election Year Policies for the 2015 Board of Supervisors Elections.

BACKGROUND:
The Board has adopted election year policies since at least 1975. The election year policies remained basically unchanged until election year 1995 when policy provisions were added to address the distribution of County documents, moratoriums regarding land use cases and appointments, and the use of County print shop and mail services to distribute district-wide mailings. In 1998 and 2011, election year policies reaffirmed a Board policy that disallowed links from County web pages and social media sites, to an incumbent's personal or campaign web site at any time, including during an election year.

A review of 2011 Election Policies, suggests two policies are no longer relevant due to current practices of posting materials on-line (such as the Board Package, Clerk's Summary, and Public Meetings Calendar) and the fact that some newsletters are distributed electronically without use of the County Print Shop or Mail Services. Regarding social media, the Board in 2011 adopted Election Year policies consistent with County guidelines and practices that are in place related to the use of social media. Currently, those guidelines are as follows:

- The current prohibition on links from a magisterial district's web page on fairfaxcounty.gov to Board incumbent's personal and campaign websites or social media sites (i.e., Facebook, YouTube) at any time, continues in effect.

- Board incumbent's official government social media sites (such as Facebook) must not include campaign-related information/updates, nor should any questions or comments the public may ask about the campaign be answered on a government social media site. Board incumbents may refer campaign questions on their government social media sites to their campaign social media sites by using this language (but do not include a direct link to the campaign web site): "This is my official Fairfax County government social media site; please visit my campaign social media site to leave this comment/question."

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A prior election year policy that has not been addressed by current County practice, is the moratorium on land-use public hearings and the appointment of citizens to Boards, Authorities, and Commissions (BACs). Therefore, to address these matters:

- From November 3, 2015, until the new Board takes office on January 1, 2016, a moratorium will be observed on the scheduling of land-use cases.
- Appointments of citizens to BACs will not be scheduled during the November and December 2015 Board Meetings.

FISCAL IMPACT:
None

ENCLOSED DOCUMENTS:
None

STAFF:
Edward L. Long Jr., County Executive
Catherine A. Chianese, Assistant County Executive and Clerk to the Board of Supervisors

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CONSIDERATION – 2

Appeal by WM/Olayan Holdings LLC of the October 2, 2014, Proffer Interpretation for RZ 2006-PR-027 Proffer 16.B. Related to Parking, and an Appeal of the May 11, 2015, Notice of Violation Citing the Appellant for Violating Proffer 16.B.

ISSUE:
Board consideration of two appeals. The first is an appeal of a proffer interpretation that determined that the Appellant's provision of one hundred (100) shared parking spaces within a garage under construction on Fairfax Ridge Land Bay B was not in substantial conformance with Proffer 16.B. The second is an appeal of a Notice of Violation issued for failure to provide the one hundred (100) unrestricted parking spaces required by Proffer 16.B.

TIMING:
Board consideration on June 23, 2015, is necessary for timely enforcement of the proffer at issue.

BACKGROUND:
On November 1, 2011, the Board of Supervisors approved RZ 2006-PR-027, subject to proffers, and SEA 00-P-050, subject to development conditions. The subject property consisted of 15.51 acres and was identified as Fairfax Ridge Land Bays A and B. (See Locator Maps in Attachments 1 and 2 and Land Bay Exhibit Map in Attachment 3.) Land Bay A consisted of a 420 unit multi-family residential community. Land Bay B consisted of an existing surface parking lot. The applications were submitted and processed jointly by the Fairfax Ridge Condominium Unit Owners Association, the governing Homeowners Association for Fairfax Ridge Land Bay A (the "HOA"), and TCR Mid Atlantic Properties, Inc. The Appellant, WM/Olayan Holdings, LLC, is the successor-in-interest to TCR Mid Atlantic Properties, Inc. The HOA was required by covenant to participate as co-applicant in any rezoning applicable to Land Bay B and is a signatory on the executed proffers.

RZ 2006-PR-027 rezoned 3.19 acres constituting Land Bay B from the PDH-20 zoning district to the PDH-30 zoning district to permit the construction of a 4-story, 150 unit multifamily residential structure and associated parking garage on the existing surface parking lot identified as Land Bay B. SEA 00-P-050 permitted commercial parking within a residential district and facilitated the relocation of the surface parking spaces into the proposed garage. The surface parking spaces were for the benefit of an adjoining office user located on Tax Map 46-4 ((1)) 15B and 56-2 ((1)) 15C and 15 D (the "Office User"), which was not a party to the rezoning or the SEA. (See RZ 2006-PR-027 Clerk to the Board's letter and approved proffers in Attachment 4; see also SEA 00-P-050 Clerk to the

Board's letter and approved development conditions in Attachment 5.)

The proffers accepted by the Board in conjunction with RZ 2006-PR-027 included Proffer 16.B., which is the subject of this appeal. Proffer 16.B. states the following:

> The Applicant shall pursue an agreement with the owner of the property identified as Tax Map 46-4 ((1)) 15B and 56-2 ((1)) 15C and 15D to allow parking on these properties by the residents of Land Bay A on weekends and during the week after typical working hours. The agreement shall also allow residents of Land Bay B to park in designated commercial parking spaces on Land Bay B on weekends and during the week after typical working hours. In the alternative, the Applicant shall construct one hundred (100) generally contiguous additional parking spaces within the parking garage located on Land Bay B that will be available for use by the residents of Land Bay A on an unrestricted basis at no cost, including no cost for maintenance. The parking spaces shall be located in proximity to one of the entrances into the parking garage located on Land Bay B. Said parking shall be clearly delineated and parking management shall include the issuance of a distinguishable parking decal to residents of Land Bay A so that their vehicle may be readily identified. The location of parking for the residents of Land Bay A, either by an agreement on property identified as Tax Map 46-4 ((1)) 15B and 56-2 ((1)) 15C and 15D or within the parking garage located on Land Bay B, shall be determined by the Applicant at time of site plan or within one year of the approval of this application, whichever is earlier. Whether located on property identified as Tax Map 46-4 ((1)) 15B and 56-2 ((1)) 15C and 15D or within the parking garage located on Land Bay B, the parking spaces shall be subject to a recorded access easement.

Proffer 16.B. stipulates that additional parking for use by the residents of the HOA would be provided through one of two alternatives: 1) a shared parking agreement was to be pursued and executed with the adjoining Office User by which an unspecified number of spaces on the adjacent Office User's property (Tax Map 46-4 ((1)) 15B and 56-2 ((1)) 15C and 15 D) would be available for use by residents of the HOA on weekends and during the week after typical working hours; or 2) the Applicant would construct one hundred (100) generally contiguous additional parking spaces for use by the HOA within the garage to be constructed on Land Bay B. Under the second option, the proffer stipulates these parking spaces were to be provided on an "unrestricted basis and at no cost" to the HOA. These spaces were to be in addition to required parking to serve the 150 new residential units on Land Bay B and in addition to parking intended to replace the parking servicing

the adjoining Officer User, subject to the SEA.

The approved CDP/FDP depicts 634 parking spaces to be located within an eight level parking garage, six levels above grade and two levels below grade. (See approved CDP/FDP and SEA Plat in Attachment 6.) The 634 parking spaces were disaggregated into the following assemblages: 1) 259 spaces noted as "residential parking" intended to satisfy the parking requirements of the 150 multifamily units; 2) 275 spaces noted as "office parking" intended to replace those surface spaces lost and subject to SEA 00-P-050; and 3) 100 spaces noted as "additional residential parking" intended for use by the residents of the HOA. The parking tabulations recognized the unrestricted nature of the spaces to be provided to the residents of Land Bay A as stipulated by the second alternative of Proffer 16.B.

The 100 "additional residential parking" spaces noted on the CDP/FDP would not apply should a shared parking agreement be obtained to allow for parking on the adjoining Office User's property. The Appellant failed to reach such an agreement. Therefore, the Appellant was required to comply with the second alternative of Proffer 16.B., in which the parking was to be constructed within the garage on Land Bay B in accordance with the parking tabulations noted on the CDP/FDP on an unrestricted basis.

On December 20, 2013, an Amended and Restated Reciprocal Easement and Parking Agreement ("REA") between the Appellant and the Office User, but not the County or the HOA, was recorded in the land records of Fairfax County. The REA included a parking management plan that provided for shared parking between the Office User and the HOA of 100 of the 275 office spaces in the garage. Language was included within the REA that purported to restrict parking by the residents of the HOA between the hours of 7:30 a.m. and 6:30 p.m. on weekdays, during which time the resident vehicles will be subject to towing. The shared arrangement, limitations on hours, and the provision for resident towing were inconsistent with the unrestricted nature of the additional 100 parking spaces to be provided as part of the second option under Proffer 16.B. Again, the County and the HOA were not signatories to the REA.

On February 10, 2014, Site Plan 3993-SP-008-2 was approved by the Department of Public Works and Environmental Services (DPWES) depicting the multifamily residential building and associated parking garage to be constructed on Land Bay B. The approved site plan notes 521 spaces parking spaces to be provided, 246 spaces noted as "residential parking spaces required for Land Bay 'B'" and 275 spaces noted as "office parking required." Cross sections included as part of the site plan depict a seven level garage, six levels above grade and one level below grade. The site plan included a parking management plan, required by Proffer 1.D., which depicted the spatial allocation of parking within the garage. The parking management plan included discrepancies regarding the number and location of parking spaces to be provided for use by HOA. The proffer compliance statement submitted as part of the site plan indicated approval was contingent upon a shared parking agreement being obtained with the adjoining Office User. Although the Appellant did not obtain an agreement with the adjoining Office User

for shared parking on the Office User's property, the site plan was approved, as further discussed below.

A Land Disturbance Permit (#17834) and a Building Permit (#123320205) were issued by DPWES on February 14, 2014, and March 6, 2014, respectively, in accordance with the approved site plan. Construction on the site then commenced and is currently ongoing.

On July 31, 2014, a letter was submitted by Mark Moorstein, acting as authorized counsel for the HOA, to Leslie Johnson, Zoning Administrator (see Attachment 7), requesting clarification of the intent of Proffer 16.B. In his letter, Mr. Moorstein asked for a substantial conformance determination that the Appellant's failure to secure an agreement for shared parking on the Office User's property required the Appellant to construct an additional 100 parking spaces that would be available to the HOA on an unrestricted basis.

A memorandum dated August 22, 2014, was submitted by Lynne Strobel, authorized legal counsel for the Appellant, in response to the request for determination submitted by the HOA. In that letter, Ms. Strobel states the intent of the proffers during the rezoning process was for the HOA to share parking spaces in the Garage with the adjoining Office User. (See Attachment 8.)

On October 2, 2014, the following determinations were made by Barbara Berlin, acting in her capacity as the duly authorized agent of the Zoning Administrator (see Attachment 9):

> *It is my determination that the 100 parking spaces, noted by Proffer 16.B. as one of two alternatives to providing additional parking for the benefit of Land Bay A residents, shall be provided for use by the residents of Land Bay A with no limitations regarding time of day, day of the week, or duration;*
>
> *It is also my determination that the site plan approved on February 10, 2014, which depicts 100 of the 275 office parking spaces to be shared with the residents of Land Bay A, is not in substantial conformance with the proffers, CDP/FDP, and development conditions;*
>
> *It is my determination that the restrictions prohibiting parking by Land Bay A residents during certain times of the day, and during certain days of the week, as noted in the recorded REA, and as indicated in the recorded Access Easement, intended to administer Proffer 16.B., are not in substantial conformance with the proffers, CDP/FDP, and development conditions.*

The October 2, 2014, letter further stated:

> *In order to comply with Proffer 16.B., the Applicant shall provide the 100 additional garage parking spaces without limitations, or alternatively, shall diligently pursue and execute a shared parking agreement with the owner of Tax Map 46-4 ((1)) 15B and 56-2 ((1)) 15C and 15D (i.e. the Office User).*
>
> *Lack of full compliance with Proffer 16.B. may lead to enforcement action and cause for cessation of construction activities on the site until full compliance is achieved.*

This determination was based upon the following findings of fact: 1) a shared parking agreement with the Office User was never obtained: 2) the CDP/FDP demonstrates the Applicant's decision to provide 100 additional parking spaces within the garage for use by the residents of Land Bay A; 3) the disaggregation of parking within the tabulations on the CDP/FDP does not support the assertion of shared parking in the garage as the intent; 4) the approved site plan contained errors regarding the number and location of parking spaces to be provided for use by the HOA; and 5) a below grade level of parking depicted on the CDP/FDP was eliminated in the approved site plan.

On October 2, 2014, the proffer interpretation letter was also transmitted by Barbara Berlin to Lynne Strobel, counsel for the Appellant, with a cover letter requesting a response within 15 days as to how compliance with Proffer 16.B. would be provided. (See Attachment 10.)

On October 16, 2014, a meeting was held with the Appellant and Ms. Strobel. On the following day, Ms. Strobel sent a letter to Barbara Berlin, Director, Zoning Evaluation Division, Department of Planning and Zoning, indicating that future actions to be taken by the Appellant would include the submission of an appeal of the October 2, 2014, determination, corrective actions to the approved site plan, and the submission of a proffered condition amendment application (PCA) to modify Proffer 16.B. In addition, Ms. Strobel further indicated the Appellant would continue dialogue with the HOA in an effort to address the issue and would continue to pursue a shared parking agreement with the adjoining Office User. (See Attachment 11.)

On October 31, 2014, the Appellant submitted an appeal of the October 2, 2014, proffer interpretation. This is the first appeal that is the subject of this consideration item. (See Attachment 12.)

On February 25, 2015, a Proffered Condition Amendment (PCA) application filed by the Appellant was accepted for processing. The application proposes to modify Proffer 16.B. and is tentatively scheduled for Public Hearing before the Planning Commission on September 16, 2015. With the filing of the PCA application, the October 31, 2014, appeal was put on hold to allow the Appellant an opportunity to resolve the proffer compliance issue.

However, the Appellant failed to make any progress towards resolving the proffer compliance issue. Therefore, on May 11, 2015, the Zoning Administrator issued a Notice of Violation (the "NOV") for failure to comply with Proffer 16.B. (See Attachment 13.) The NOV was issued based upon the Appellant's failure to comply with the stipulations of the October 2, 2014 determination. The NOV revoked Non-Residential Use Permit No. 151100195, previously issued for the parking garage, and stated that no further permits would be issued for the property until such time as full proffer compliance is achieved.

On May 21, 2015, the Appellant submitted an appeal of the May 11, 2015, Notice of Violation. This is the second appeal that is the subject of this consideration item. (See Attachment 14).

ZONING ADMINISTRATOR'S POSITION:

Proffer Interpretation Appeal—The Plain Language Of the Proffer.

In preparing a response to the July 31, 2014, proffer interpretation request submitted by the HOA, Staff reviewed the zoning application background, staff report, public hearing record, and the proffered conditions. Proffer 16.B. clearly identifies two alternative means of satisfying the commitment to provide parking for residents of Land Bay A:

1) Obtain an agreement with the Office User to allow parking by the HOA *on the Office User's property*, located at Tax Map 46-4 ((1)) 15B and 56-2 ((1)) 15C and 15 D, *on weekends and during the week after typical working hours*; *or*

2) Construct one hundred (100) generally contiguous *additional* parking spaces *in the parking garage* available to the HOA *on an unrestricted basis*.

(Emphasis added.) The plain language of the proffer requires the Appellant to provide shared parking on the Office User's property, which it has failed to do. Failing that, the Appellant must provide, in accordance with the second alternative, one hundred (100) additional, unrestricted parking spaces in the garage for the unrestricted use of the HOA. Thus, it is the Zoning Administrator's position that the distinction between the alternatives is deliberate and clear, and, as such, one hundred (100) additional parking spaces must be provided for the HOA with no limitations regarding time of day, day of week, or duration.

The HOA has provided staff with a copy of a letter from Lynne Strobel dated April 18, 2011, which preceded the approval of the rezoning. (See Attachment 15.) Ms. Strobel explained in the letter that the Appellant had been unable to obtain a shared parking agreement with the Office User, but it wished to move forward with the then pending applications. She further stated the following:

> Therefore, in the alternative, Mr. Caldwell [a representative of the Appellant] proposes to construct fifty (50) additional parking spaces within the parking garage of the new residential building that will be available on an **unrestricted** basis for use by Fairfax Ridge residents. **The greatest advantage to these parking spaces is that they will be available at *any* time of day, seven (7) days a week.**

(Emphasis added.) As of April 2011, the Appellant had not yet committed to providing more than 50 additional spaces because, as Ms. Strobel put it, "the cost of structured parking is considerable, and Mr. Caldwell is uncertain if he can provide more than fifty spaces." Later, the Appellant ultimately agreed, prior to the public hearing on the rezoning, to increase the number of structured parking spaces to be provided for the benefit of the HOA to one hundred (100) spaces.

At the public hearing, Ms. Strobel reiterated the Appellant's commitment to provide 100 additional parking spaces. In her presentation to the Board, Ms. Strobel acknowledged that her client still had been unable to reach an agreement with the Office User to allow parking on its property – the first alternative under Proffer 16.B. Therefore, she declared that her client had made a "*significant commitment*" to provide "100 parking spaces for the use of the Land Bay A residents within the parking garage" at the cost of "$15,000 a space." Ms. Strobel further indicated that this would cost her client $750,000 more than if it had only provided 50 spaces. (See Transcript of November 1, 2011 Board of Supervisors Public Hearing in Attachment 16.)

Throughout her presentation to the Board, Ms. Strobel repeatedly emphasized the cost of structured parking to her client. Yet, in this appeal of the proffer interpretation, Ms. Strobel incongruously asserts instead that:

> It is wholly counterintuitive to conclude that similarly limited sharing of available parking was not the contemplated use of the Land Bay B garage parking . . . it simply does not make sense to conclude that parking in the garage was to be of a fundamentally different character from the sharing of surface parking spaces in the Office Park, given the high cost of constructing structured garage parking. <u>At no point during the Rezoning can anyone have thought that the Appellant was simply agreeing to build one hundred additional parking [spaces] for residents of Land Bay A to have and to hold exclusively.</u>

To the contrary, not only was it reasonable for the HOA, the Board, and the public to have thought that the Appellant was agreeing to build one hundred additional unrestricted parking spaces for the HOA, but that was exactly what the Appellant had led them to believe through its letters and the statements of its attorney. Indeed, the proffer, drafted

by Ms. Strobel, called for the Appellant to provide one hundred "*additional* parking spaces within the parking garage on an *unrestricted* basis" because that was precisely what the Appellant had proffered to do for the residents of Land Bay A. As Ms. Strobel further explained in her letter to the HOA, "unrestricted" meant parking "at any time of day."

Nevertheless, the Appellant now claims that a distinction should be made between the word "unrestricted," as used within the text of Proffer 16.B., and the word "exclusive," which could have been used. Ms. Strobel states the word "unrestricted" was referring to access into the garage such that no gates or other obstruction would preclude ingress/egress. Ms. Strobel further states "unrestricted" implied the HOA was free to regulate the parking at its discretion within the prescribed time limitations. If the intent was for no limitations on time of day or day of week, she argues that the word "exclusive" would have been used as an alternative.

However, there is no precedent within the context of the rezoning that would differentiate the word "unrestricted" from the word "exclusive." To the contrary, Ms. Strobel's April 18, 2011, letter and her November 1, 2011, presentation to the Board undermine her current interpretation of the word "unrestricted." Indeed, if the Appellant intended to place restrictions on the second option, it clearly knew how to do so because it used restrictive language in describing the first option under Proffer 16.B. A zoning applicant should not be permitted to offer one definition of the word "unrestricted," and state that this means *any time of day, seven days a week*, in order to obtain rezoning approval, and then after such approval argue that the word referred only to precluding physical barriers to access to the garage.

<u>Proffer Interpretation Appeal—The Site Plan.</u>

When the Appellant subsequently submitted its site plan to the County, it included a Plan Sheet entitled, "Parking Garage Layout," that allocated zero (0) parking spaces for the HOA. The Parking Garage Layout also omitted an entire underground level – transforming from the 8-level garage shown on the CDP/FDP to a 7-level garage on the site plan. According to the site plan, the Appellant was purportedly pursuing compliance with the first alternative of Proffer 16.B. as the site plan's "Parking Management Plan" stated that, "100 surface spaces on the Office land shall be made available for the residents of Land Bay A, Fairfax Ridge Condominiums." Plan Sheet 59, the "Proffer Compliance Narrative," further explained that the Appellant would comply with Proffer 16.B. by pursuing an agreement with the Office User to allow shared parking *on the Office User's property* by residents of Land Bay A.

Notwithstanding these repeated representations on its site plan, the Appellant has never obtained an agreement for parking on the Office User's property. Instead, the Appellant submitted to County staff the REA - an agreement with the Office User to provide shared parking in the garage - to obtain site plan approval. The Appellant submitted the REA as proof of compliance with Proffer 16.B. despite the fact that the agreement did not comply with either alternative in Proffer 16.B and was wholly at odds with the statements in the

Appellant's own site plan. Moreover, the Appellant never indicated in its communications with DPWES that the Appellant had decided to proceed with the second option. As a result, the site plan was approved.

The Appellant suggests that the RZ 2006-PR-027 Staff Report refers to shared parking, and therefore the REA satisfies Proffer 16.B. In fact, the Staff Report refers to a shared parking agreement in the context that such shared parking would be located on the adjoining Office User's property, and not in the Land Bay B garage. Otherwise, the Staff Report disaggregates parking between the various users with the one hundred (100) spaces intended for use by the HOA noted as "additional." A notation states, "If shared parking is achieved with the adjacent office, the 100 'additional' spaces would be deleted." This is consistent with the disaggregation of parking as noted on the CDP/FDP. Clearly, then, the Appellant was not entitled to utilize a shared parking agreement to satisfy the obligation to provide the HOA with unrestricted parking in the garage.

Proffer Interpretation Appeal—The Appellant's Legal Arguments.

The Appellant argues that the email from DPWES staff, notifying the Appellant that the site plan was approved based on the submission of the REA, is a determination which became binding under Virginia Code Ann. § 15.2-2311(C) ("Section 2311(C)"), and the County cannot now issue any subsequent determination to the contrary. Section 2311(C) provides that after 60 days have elapsed from the time the Zoning Administrator or other administrative officer has issued *a written order, requirement, decision, or determination*, the Zoning Administrator or other administrative officer cannot change, modify, or reverse such order, requirement, decision, or determination if the person aggrieved has materially changed his position *in good faith* reliance on that order, requirement, decision, or determination, except in limited circumstances. However, for at least three independent reasons, any one of which defeats the Appellant's argument in this regard, this statute does not apply to this appeal.

First, a *specific determination* was never made that if the Appellant exercised the second option in Proffer 16.B., it could restrict the hours in which the HOA could park in the garage over the HOA's objection and in violation of the proffers. *See Norfolk 102, LLC v. City of Norfolk*, 285 Va. 340, 738 S.E.2d 895 (2013) (holding that the apparent acquiescence of certain city officials in a land use that was otherwise unlawful under the Zoning Ordinance was not a specific determination within the purview of Section 2311(C)); *James v. City of Falls Church*, 280 Va. 31, 44, 694 S.E.2d 568, 575 (2010) (ruling that even a zoning administrator's interpretation lacks the finality of an order, requirement, decision, or determination under this statute). In this situation, the Appellant presented the REA to County staff to obtain site plan approval, whereupon a DPWES employee checked off a proffer compliance box on a list and notified the Appellant of that action by email. The Appellant did not submit a proffer interpretation request with the REA or even give any indication that the Appellant was attempting to

exercise the second option in Proffer 16.B. To the contrary, the Appellant represented in the site plan that it was exercising the first option in Proffer 16.B. Moreover, the email from DPWES staff and the site plan approval was at all times subject to an explicit caveat on the cover sheet of the site plan, which states:

> The approval of these plans s*hall in no way relieve the developer or his agent of any legal responsibilities* which may be required by the Code of Virginia *or any ordinance enacted by the County of Fairfax*.

(Emphasis added.) Proffers, of course, are considered part of the Zoning Ordinance, and thus the site plan approval explicitly stated that the Appellant was not relieved of its obligation to comply with the proffers. At most, DPWES staff's actions could be construed as mere acquiescence in the Appellant's arrangement with the Office User, which falls far short of the "specific determination" required by Section 2311(C).

Second, Section 2311(C) does not apply because any conclusions that were drawn by DPWES in its review of the site plan were not made by "the Zoning Administrator or other administrative officer" as that phrase is used in the statute. Indeed, the Supreme Court of Virginia has never applied this statute to proffer or other zoning determinations made by anyone other than a zoning administrator and/or an authorized agent, and the Court has in general narrowly construed this provision. Clearly, neither the Zoning Administrator nor any staff members from the Department of Planning and Zoning reviewed or approved the site plan or the DPWES email. Further, the Zoning Administrator and her agents never approved any proffer interpretation that would allow the Appellant to restrict what were otherwise to be unrestricted parking spaces in the garage. Indeed, pursuant to Zoning Ordinance §§ 18-103 and 18-204(5), only the Zoning Administrator and her authorized agent Barbara Berlin may make substantial conformance determinations regarding proffers. Likewise, only the Board may amend a proffer because only the Board has the requisite legislative authority. Plainly, such authority is not delegated to County staff in DPWES, nor was DPWES staff purporting to exercise any such authority when the email was sent to the Appellant, as evidenced by the statement which appears on the cover of the site plan cited above.

To be sure, the Appellant knows how to seek an interpretation or amendment of proffers and, in fact, has undertaken both with respect to this very rezoning. For example, on August 1, 2012, and September 11, 2012, Ms. Strobel submitted an interpretation request relating to the CDP/FDP and Proffer 6.A., to which Ms. Berlin, the authorized representative of the Zoning Administrator for such determinations, responded on September 27, 2012. Further, on January 9, 2015, Ms. Strobel submitted a PCA application asking for the Board's approval of an amendment of Proffer 16.B. Clearly, then, the Appellant fully understands who has the authority to interpret and amend proffers in the County and is cognizant that the process is not effected through an informal email from a DPWES staff member.

Third, Section 2311(C) does not apply in these circumstances because any reliance by the Appellant on the DPWES email was not in good faith. As noted above, the Appellant knew that only the Zoning Administrator and Ms. Berlin could issue proffer interpretations, yet such an interpretation was not requested before the Appellant attempted to place restrictions on the HOA's parking in the garage. The Appellant did not make the HOA a party to the REA, and the HOA was not even aware that the Appellant was attempting to restrict its members' right to park in the garage at the time the Appellant presented the REA to DPWES. Further, the site plan indicated in numerous places that the first option was being pursued, and the Appellant did not advise DPWES, as it presented the REA, that it was instead pursuing the second option. Moreover, the Appellant plainly knew, based on its statements about the cost of the spaces and the fact that they would be available at any time of day, that placing restrictions on the HOA's parking in the garage was completely at odds with its commitment to provide unrestricted spaces. Based on all of the events outlined in this Consideration Item, there simply was no "good faith" reliance in accordance with the terms of Section 2311(C).

Moreover, even if it is assumed, for the sake of argument, that the DPWES email and associated site plan approval amounted to an "order, requirement, decision or determination" that allowed the Appellant to restrict what the proffer required to be unrestricted parking, which it did not, that statute only limits the subsequent actions of a "zoning administrator or other administrative officer." DPWES's email and approval of the site plan therefore does not preclude the Board of Supervisors from taking action to require compliance with Proffer 16.B. *See James*, 280 Va. at 44-45, 694 S.E.2d at 575-76 (holding that a planning commission was not bound by a zoning administrator's interpretation). If a planning commission is not bound by a zoning administrator's determination, then surely it is consistent with the Virginia Supreme Court's ruling to conclude that the Board of Supervisors is similarly not constrained by any actions by DPWES in deciding whether the Appellant is in violation of an ordinance adopted by the Board, and specifically in this case, in violation of the terms of Proffer 16.B. For all of these reasons, the Appellant's arguments based on Section 2311(C) fail.

Notice of Violation Appeal. In the May 21, 2015, Appeal of the Notice of Violation, the Appellant references its proffer interpretation appeal, which is addressed above, and those arguments are reiterated in response to the Notice of Violation appeal. The Appellant also references the Proffered Condition Amendment application which has been submitted and is in process. In light of both, the Appellant argues that the Notice of Violation was premature.

The Zoning Administrator issued the Notice of Violation on May 11, 2015, based upon the October 2, 2014, proffer interpretation and out of serious concern that no demonstrated progress toward resolution of the proffer compliance issue had been made. At the same time, the Appellant was approaching the stage when it would be seeking occupancy permits for the residential project. Pursuant to the Zoning Ordinance, the County cannot issue such occupancy permits if there is an outstanding proffer compliance issue. Recent efforts to resolve the issue have again been fruitless. As a result, the Appellant was

informed on June 3, 2015, that the proffer interpretation appeal and the notice of violation appeal would be brought to the Board of Supervisors on June 23, 2015, for consideration.

Summary. The Appellant's argument that the proffer commitment made in Proffer 16.B. to provide 100 unrestricted parking spaces for the benefit of the residents of Land Bay A may be satisfied by a shared parking arrangement with restrictions is without merit. The Zoning Administrator, through her authorized agent, has already made a determination that the proposed shared parking with restrictions is not in substantial conformance with the proffers, the CDP/FDP, and development conditions. This determination is based upon the explicit language contained in Proffer 16.B. and the deliberate distinction made between the alternative ways of satisfying the proffer parking commitment to the residents of Fairfax Ridge Land Bay A, including the use of the term "unrestricted" in connection with the second alternative. It is supported by correspondence to the HOA before the rezoning approval and the representations by Ms. Strobel on behalf of the applicant at the public hearing before the Board of Supervisors. This determination is reasonable, the Zoning Administrator was legally authorized to make it, and there is no evidence that it is plainly wrong. Therefore, for the reasons set forth above, the Zoning Administrator respectfully requests that the Board of Supervisors uphold the Zoning Administrator's determination as set forth in the October 2, 2014, letter issued by Barbara C. Berlin, and that the Board uphold the Zoning Administrator's issuance of a notice of violation based upon that proffer interpretation.

FISCAL IMPACT:
None

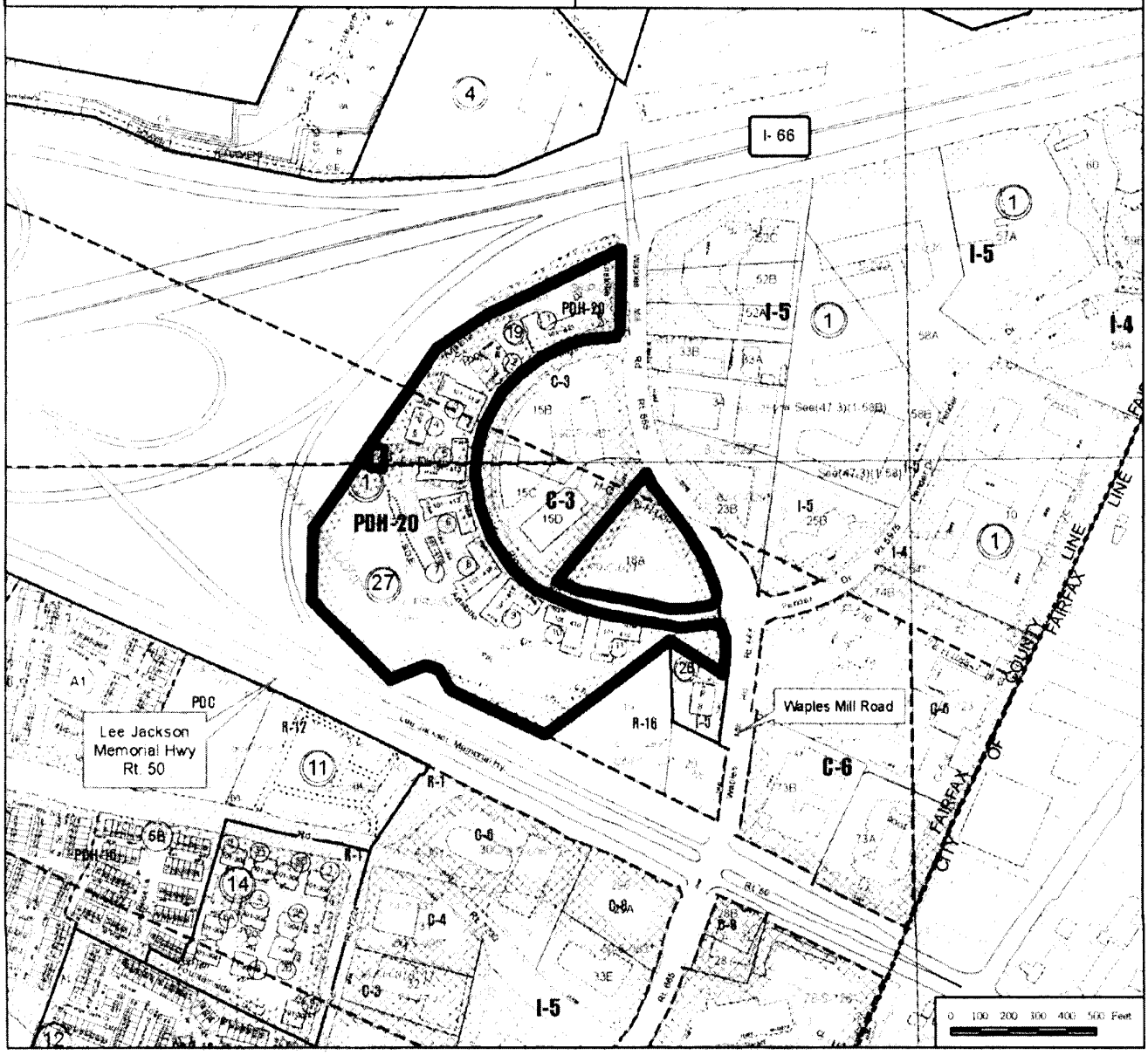
ENCLOSED DOCUMENTS:
Attachment 1: RZ 2006-PR-027/FDP 2006-PR-027 Locator Map
Attachment 2: SEA 00-P-050 Locator Map
Attachment 3: Land Bay Exhibit Map
Attachment 4: RZ 2006-PR-027 Clerk's Letter and Approved Proffers
Attachment 5: SEA 00-P-050 Clerk's Letter and Approved Development Conditions
Attachment 6: Approved CDP/FDP/SEA Plat
Attachment 7: Letter dated July 31, 2014, to Leslie Johnson; Land Bay A Request for Interpretation of RZ 2006-PR-027
Attachment 8: Letter dated August 22, 2014, to Barbara Berlin; TCR Mid Atlantic Properties, Inc. response to Interpretation request
Attachment 9: Letter dated October 2, 2014, to Mark Moorstein; Proffer Interpretation Response Letter
Attachment 10: Letter dated October 2, 2014, to Lynne Strobel; Transmitting Proffer Interpretation Response

Attachment 11: Letter dated October 17, 2014, to Barbara Berlin; Responding to October 2, 2015, Conditions
Attachment 12: Letter dated October 31, 2014, to Leslie Johnson; WM/Olayan Holdings LLC Appeal of Interpretation
Attachment 13: Notice of Violation dated May 11, 2015, to WM/Olayan Holdings, LLC
Attachment 14: Letter dated May 21, 2015, to Leslie Johnson; WM/Olayan Holdings, LLC Appeal of Notice of Violation
Attachment 15: Letter dated April 18, 2011, to Lisandra Santiago; Describing Proffer Commitments
Attachment 16: Transcript of November 1, 2011, Board of Supervisors Public Hearing

STAFF:
Robert A. Stalzer, Deputy County Executive
Fred R. Selden, Director, Department of Planning and Zoning (DPZ)
Leslie Johnson, Zoning Administrator, DPZ
Barbara C. Berlin, Director, Zoning Evaluation Division (ZED), DPZ
Kevin J. Guinaw, Chief, Special Projects/Applications/Management Branch, ZED, DPZ
Stephen Gardner, Staff Coordinator, ZED, DPZ

ATTACHMENT 1

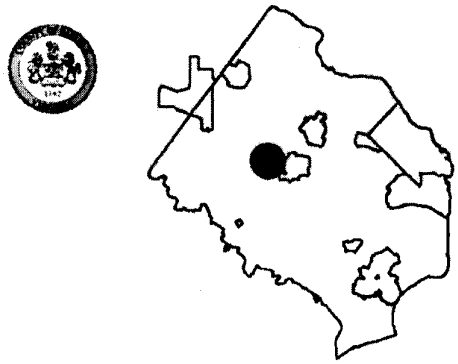
Rezoning Application RZ 2006-PR-027		Final Development Plan FDP 2006-PR-027	
Applicant:	TCR MIDATLANTIC PROPERTIES, INC. & FAIRFAX RIDGE DEVELOPMENT, LLC & FAIRFAX RIDGE CONDOMINIUM UNIT OWNERS ASSOCIATION	Applicant:	TCR MIDATLANTIC PROPERTIES, INC. & FAIRFAX RIDGE DEVELOPMENT, LLC & FAIRFAX RIDGE CONDOMINIUM UNIT OWNERS ASSOCIATION
Accepted:	09/08/2006	Accepted:	09/08/2006
Proposed:	RESIDENTIAL	Proposed:	RESIDENTIAL
Area:	23.01 AC OF LAND; DISTRICT - PROVIDENCE	Area:	23.01 AC OF LAND; DISTRICT - PROVIDENCE
Zoning Dist Sect:		Zoning Dist Sect:	
Located:	SOUTH SIDE OF INTERSTATE 66, WEST SIDE OF WAPLES MILL ROAD, NORTH SIDE OF LEE JACKSON MEMORIAL HIGHWAY	Located:	SOUTH SIDE OF INTERSTATE 66, WEST SIDE OF WAPLES MILL ROAD, NORTH SIDE OF LEE JACKSON MEMORIAL HIGHWAY
Zoning:	FROM PDH-20 TO PDH-30	Zoning:	PDH-30
Overlay Dist:	HC	Overlay Dist:	HC
Map Ref Num:	46- 4 ((19)) ALL PARCELS ; 56- 2 ((27)) ALL PARCELS ; 56- 2 ((1)) 18A	Map Ref Num:	46- 4 ((19)) ALL PARCELS ; 56- 2 ((27)) ALL PARCELS ; 56- 2 ((1)) 18A



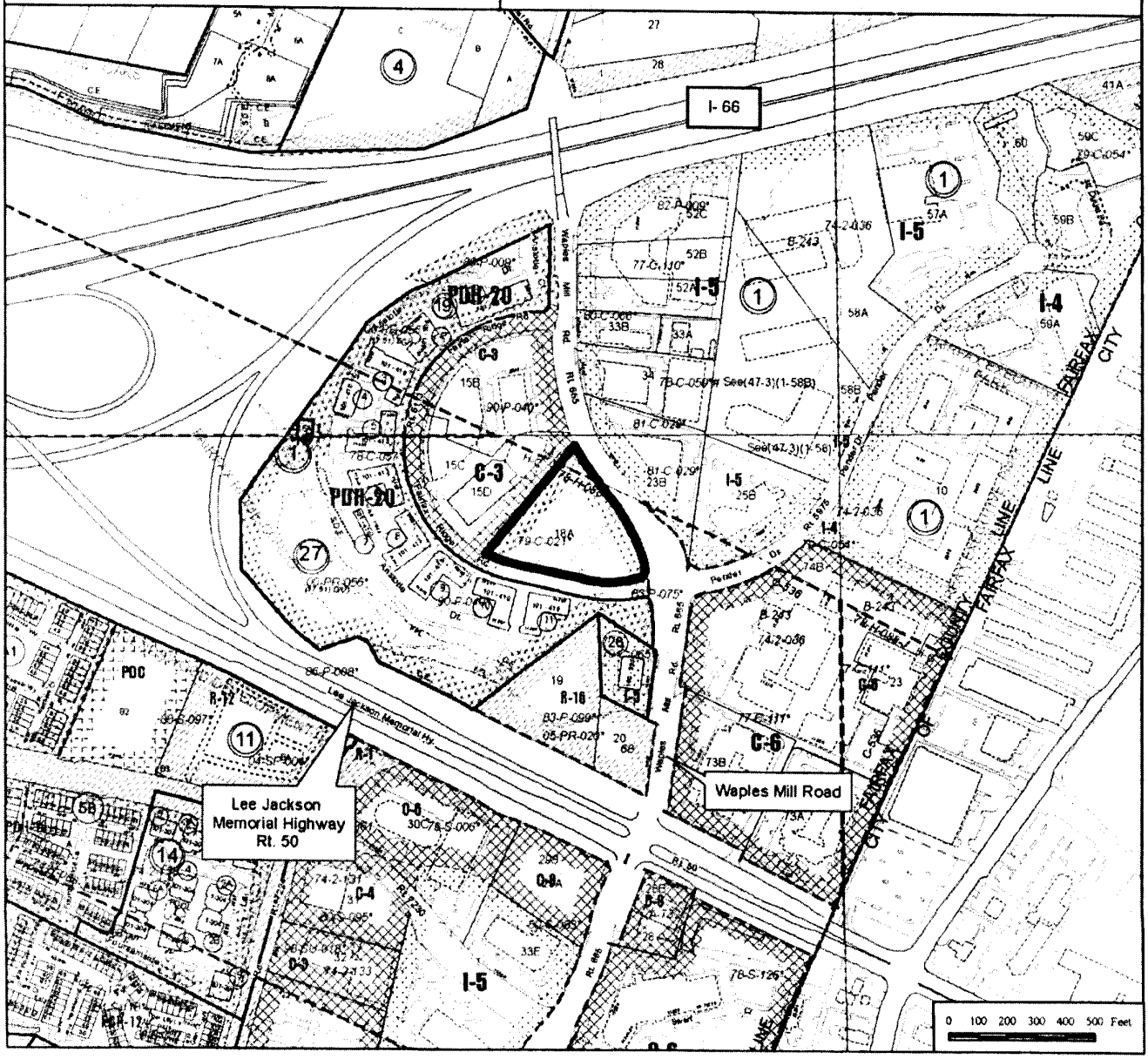
ATTACHMENT 2

Special Exception Amendment

SEA 00-P-050



Applicant:	TCR MIDATLANTIC PROPERTIES, INC.
Accepted:	09/08/2006
Proposed:	TO AMEND SE 00-P-050 PREVIOUSLY APPROVED FOR PARKING IN AN R-DISTRICT TO PERMIT SITE MODIFICATIONS
Area:	3.19 AC OF LAND; DISTRICT - PROVIDENCE
Zoning Dist Sect:	09-0609
Art 9 Group and Use:	6-05
Located:	NORTHWEST QUADRANT OF THE INTERSECTION OF WAPLES MILL ROAD AND FAIRFAX RIDGE ROAD
Zoning:	PDH-30
Plan Area:	2,
Overlay Dist:	HC
Map Ref Num:	056-2- /01/ /0018A



ATTACHMENT 3

ATTACHMENT 4

County of Fairfax, Virginia

To protect and enrich the quality of life for the people, neighborhoods and diverse communities of Fairfax County

November 2, 2011

Lynne J. Strobel
Walsh, Colucci, Lubeley, Emrich & Walsh, P.C.
2200 Clarendon Boulevard
13th Floor
Arlington, VA 22201

RE: Rezoning Application RZ 2006-PR-027
(Concurrent with Special Exception Amendment Application SEA 00-P-050)

Dear Ms. Strobel:

Enclosed you will find a copy of an Ordinance adopted by the Board of Supervisors at a regular meeting held on November 1, 2011, granting Rezoning Application RZ 2006-PR-027 in the name of TCR Mid Atlantic Properties, Incorporated and Fairfax Ridge Condominium Unit Owners Association. The Board's action rezones certain property in the Providence District from the PDH-20 and HC Districts to the PDH-30 and HC Districts and permits residential development and approval of the conceptual development plan. The subject property is located on the S. side of I-66, W. side of Waples Mill Road, and N. side of Lee Jackson Memorial Highway on approximately 15.51 acres of land [Tax Map 46-4 ((19)) all parcels; 56-2 ((27)) all parcels except Parcel C; and 56-2 ((1)) 18A], and is subject to the proffers dated October 31, 2011. The Board also approved the following waivers and modifications: a waiver of the loading space requirement for Land Bay A only; a modification of the transitional screening requirements and a waiver of the barrier requirements along the I 66 right-of-way; a waiver of the service drive requirement along Route 50 and I-66; a waiver of on-site stormwater management requirement in favor of the regional pond constructed on Land Bay A; and a waiver of the open space requirement in favor of that shown on the CDP/FDP. The Board also approved concurrent application SEA 00-P-050 subject to development conditions dated September 22, 2011.

Please note that on October 20, 2011, the Planning Commission approved Final Development Plan Application FDP 2006-PR-027.

Sincerely,

Catherine A. Chianese

Catherine A. Chianese
Clerk to the Board of Supervisors

Office of the Clerk to the Board of Supervisors
12000 Government Center Parkway, Suite 533
Fairfax, Virginia 22035
Phone: 703-324-3151 ♦ Fax: 703-324-3926 ♦ TTY: 703-324-3903
Email: clerktothebos@fairfaxcounty.gov
http://www.fairfaxcounty.gov/bosclerk

Cc: Chairman Sharon Bulova
Supervisor Lynda Smyth, Providence District
Janet Coldsmith, Director, Real Estate Division, Dept. of Tax Administration
Barbara Berlin, Director, Zoning Evaluation Division, DPZ
Diane Johnson-Quinn, Deputy Zoning Administrator, Dept. of Planning and Zoning
Thomas Conry, Dept. Manager – GIS - Mapping/Overlay
Angela K. Rodeheaver, Section Chief, Transportation Planning Division
Ken Williams, Plans & Document Control, ESRD, DPWES
Department of Highways-VDOT
Sandy Stallman, Park Planning Branch Manager, FCPA
District Planning Commissioner
Denise James, Office of Capital Facilities/Fairfax County Public Schools
Karyn Moreland, Chief Capital Projects Sections, Dept. of Transportation

At a regular meeting of the Board of Supervisors of Fairfax County, Virginia, held in the Board Auditorium in the Government Center at Fairfax, Virginia, on the 1st day of November, 2011, the following ordinance was adopted:

AN ORDINANCE AMENDING THE ZONING ORDINANCE
PROPOSAL NUMBER RZ 2006-PR-027
(Concurrent with Special Exception Amendment Application SEA 00-P-050)

WHEREAS, TCR Mid Atlantic Properties, Incorporated and Fairfax Ridge Condominium Unit Owners Association, filed in the proper form an application requesting the zoning of a certain parcel of land herein after described, from the PDH-20 and HC Districts to the PDH-30 and HC Districts, and

WHEREAS, at a duly called public hearing the Planning Commission considered the application and the propriety of amending the Zoning Ordinance in accordance therewith, and thereafter did submit to this Board its recommendation, and

WHEREAS, this Board has today held a duly called public hearing and after due consideration of the reports, recommendation, testimony and facts pertinent to the proposed amendment, the Board is of the opinion that the Ordinance should be amended,

NOW, THEREFORE, BE IT ORDAINED, that that certain parcel of land situated in the Providence District, and more particularly described as follows (see attached legal description):

Be, and hereby is, zoned to the PDH-30 and HC Districts, and said property is subject to the use regulations of said PDH-30 and HC Districts, and further restricted by the conditions proffered and accepted pursuant to Va. Code Ann., 15.2-2303(a), which conditions are in addition to the Zoning Ordinance regulations applicable to said parcel, and

BE IT FURTHER ENACTED, that the boundaries of the Zoning Map heretofore adopted as a part of the Zoning Ordinance be, and they hereby are, amended in accordance with this enactment, and that said zoning map shall annotate and incorporate by reference the additional conditions governing said parcel.

GIVEN under my hand this 1st day of November, 2011.

Catherine A. Chianese
Clerk to the Board of Supervisors

PROFFERS
TCR MID ATLANTIC PROPERTIES, INC.

RZ 2006-PR-027

October 31, 2011

Pursuant to Section 15.2-2303(a), *Code of Virginia*, 1950 as amended and subject to the Board of Supervisors approving a rezoning to the PDH-30 District, for property identified as Tax Map 46-4 ((19)) All Parcels and 56-2 ((27)) All Numbered Parcels (hereinafter referred to as "Land Bay A") and Tax Map 56-2 ((1)) 18A (hereinafter referred to as "Land Bay B"), with both Land Bay A and Land Bay B being referred to as the "Property", the Applicant and the owner proffer for themselves, their successors and assigns the following conditions, which if approved, supersede all previously approved proffers for the Property:

1. Development Plan.

   A. Development of the Property shall be in substantial conformance with the Conceptual Development Plan/Final Development Plan (CDP/FDP) prepared by Land Design, Inc., consisting of twenty-nine (29) sheets, dated April 4, 2005, as revised through September 6, 2011. Notwithstanding the tabulation on Sheet 2 of the CDP/FDP, the parking garage on Land Bay B shall be a maximum of 7 ½ levels as depicted on Sheets 7 and 7C. Should the parking garage on Land Bay B be constructed with less than 7 ½ levels, it shall be deemed to be in conformance with the CDP/FDP.

   B. Notwithstanding that the CDP/FDP is presented on twenty-nine (29) sheets, it shall be understood that the proffered portion of the CDP shall be the entire plan shown on Sheets 2, 2A, 2B, and 2C relative to the points of access, the maximum number and type of dwelling units, the amount and location of open space, the location of the limits of clearing and grading, and the general location and arrangement of the buildings and parking garages. The Applicant has the option to request a FDPA for elements other than the CDP elements from the Planning Commission for all or a portion of the CDP/FDP in accordance with the provisions set forth in Section 16-402 of the Zoning Ordinance with respect to the remaining elements.

   C. Pursuant to Paragraph 4 of Section 16-403 of the Zoning Ordinance, minor modifications from the Final Development Plan (FDP) may be permitted as determined by the Zoning Administrator. The Applicant shall have the flexibility to modify the layouts shown on the FDP without requiring approval of an amended FDP provided such changes are in substantial conformance with the FDP as determined by the Zoning Administrator and do not increase the total number of dwelling units, increase building height, increase surface parking, decrease the amount of open space; decrease the setback from the peripheries; or reduce open space or landscaping.

D. The CDP/FDP provides for commercial parking on Land Bay B serving office buildings on adjacent parcels identified as Tax Map 46-4 ((1)) 15B and 56-2 ((1)) 15C, 15D, which is subject to Special Exception approval as a secondary use in a PDH District, in accordance with Par. 6C of Sect. 6-106 of the Ordinance. These parking spaces are not required parking spaces for the uses located on the Property or on the adjacent parcels. The site plan submitted for Land Bay B shall include a parking plan, which shall provide for separate commercial and residential structured parking entrances. The parking plan shall include a color designation of spaces assigned to the office building located on the adjacent parcels, for the residents of Land Bay B, and for the residents of Land Bay A. In addition, a barrier gate may be located within the parking garage to separate the commercial and residential parking. Should the commercial parking no longer be required by the adjacent owner, the special exception for commercial parking in a residential district shall be abandoned and the parking spaces shall support residential uses. Said parking spaces shall benefit the residents of Land Bay B. All or a portion of the parking spaces may be allocated to the residents of Land Bay A subject to a separate agreement that may be negotiated between the Owner of Land Bay B and the Owner of Land Bay A. The garage design shall not preclude convenient pedestrian access from residential units to designated residential parking, nor from designated office parking to designated residential parking.

2. Transportation

A. Waples Mill Road

(1) The Applicant shall complete a signal warrant study at the time of site plan for Land Bay B and, if warranted, as determined by VDOT, shall install a traffic signal, with pedestrian heads, at the intersection of Fairfax Ridge Road North and Waples Mill Road, prior to the issuance of the final RUP for Land Bay B.

(2) At time of site plan approval for Land Bay B, and subject to VDOT approval, the Applicant shall prepare plans to modify the existing traffic signal located at the intersection of Waples Mill Road and Fairfax Ridge Road/Pender Drive to include a designated left turn arrow (phase) from northbound Waples Mill Road onto Fairfax Ridge Road South. Said improvements shall be completed prior to the issuance of the final RUP for Land Bay B.

(3) Subject to the approval of the Fairfax County Department of Transportation (FCDOT) and VDOT, the Applicant shall diligently pursue approval and install a right-out access from that property identified as 56-2 ((1)) 15C to Waples Mill Road. Said access shall be completed prior to the issuance of the first Residential Use Permit (RUP) for Land Bay B.

Should a right-out access not be approved by FCDOT and VDOT, the Applicant shall have no further obligations in accordance with this proffer.

B. Fairfax Ridge Road. Subject to receipt of necessary easements at no monetary cost to the Applicant, the Applicant shall construct a commercial entrance on that property identified as 56-2 ((1)) 15C that serves the uses on Tax Map 46-4 ((1)) 15B and 56-2 ((1)) 15C, 15D on Parcel 15C. The entrance shall be unrestricted for turns in to Parcel 15C, and restricted to right only for turns out of Parcel 15C. Either pavement striping or a curb island, as approved by VDOT, shall be installed to prevent this turning movement. If the necessary easements are not granted, an administrative approval of a minor modification in accordance with Section 16-403 of the Zoning Ordinance, or an amendment to the CDP/FDP, and the associated special exception, will be necessary to provide alternative access. The minor modification or amendment to the CDP/FDP, if submitted, may necessitate changes to the building footprint, design and layout on Land Bay B. Should the Applicant request a minor modification in accordance with Section 16-403 of the Zoning Ordinance, a copy of the request shall be mailed by certified mail to the owner of that property identified as 56-2 ((1)) 15C concurrent with submission to the Director of the Zoning Evaluation Division. Said entrance shall be constructed prior to the issuance of a building permit for the residential building on Land Bay B.

C. Fairfax Center Area Road Fund. At time of site plan approval for Land Bay B, the Applicant shall provide a contribution for Land Bay B to the Fairfax Center Area Road Fund consistent with the Procedural Guidelines adopted by the Board of Supervisors on November 22, 1982, as may be revised. In accordance with the Fairfax Center Road Fund Policy, the Applicant shall receive credit against the Fairfax Center Road Fund contribution for those improvements that are creditable expenses.

D. Density Credit. Advanced density credit shall be reserved as may be permitted by the provisions of Paragraph 5 of Section 2-308 of the Fairfax County Zoning Ordinance for all eligible dedications described herein, or as may be required by Fairfax County or VDOT at time of site plan approval.

E. Signs. Subject to the approval of VDOT, the Applicant shall install signs at the intersection of Waples Mill Road and Pender Drive directing motorists not to block the intersection. Signs shall be installed prior to the issuance of the first RUP for Land Bay B. In conjunction with sign installation, and subject to the approval of VDOT, Applicant shall paint the stop bars at the intersection with white reflective paint.

F. Delays. Should any of the transportation improvements described herein be delayed due to circumstances beyond the Applicant's control, later dates for compliance may be permitted as determined appropriate by the Zoning Administrator.

3. Landscape Plan. A landscape plan that shows, at a minimum, landscaping in conformance with the landscape design shown on Sheets 4, 4A, 4B, 4C and 13 of the CDP/FDP shall be submitted concurrently with the first submission of the site plan for Land Bay B. The landscape plan shall include detailed streetscape, courtyard and open space landscaping. Said plan shall be coordinated with and approved by the Urban Forester. Unless already planted, street trees along Waples Mill Road and Fairfax Ridge Road shall be a minimum of 3½ inch caliper at the time of planting. Street trees along the eastern side of Fairfax Ridge Road (that portion abutting Land Bay B) shall be a minimum of 4.0 inch caliper at the time of planting. All street trees shall be located subject to VDOT approval so as not to interfere with required sight distance. The Applicant shall provide maintenance and replacement of landscaping as necessary.

4. Tree Preservation.

   A. The Applicant shall submit a Tree Preservation Plan and Narrative for Land Bay B as part of the first and all subsequent site plan submissions for Land Bay B. The preservation plan and narrative shall be prepared by a Certified Arborist or a Registered Consulting Arborist, and shall be subject to the review and approval of the Urban Forest Management Division, DPWES.

   The tree preservation plan shall include a tree inventory that identifies the location, species, critical root zone, size, crown spread and condition analysis percentage rating for all individual trees to be preserved, as well as all on and off-site trees, living or dead with trunks 8 inches in diameter and greater (measured at 4 ½ feet from the base of the trunk or as otherwise allowed in the latest edition of the Guide for Plant Appraisal published by the International Society of Arboriculture) located within 25 feet to either side of the limits of clearing and grading. The tree preservation plan shall provide for the preservation of those areas shown for tree preservation, those areas outside of the limits of clearing and grading for Land Bay B shown on the CDP/FDP and those additional areas in which trees can be preserved as a result of final engineering. The tree preservation plan and narrative shall include all items specified in PFM 12-0506 and 12-0508. Specific tree preservation activities that will maximize the survivability of any tree identified to be preserved, such as: crown pruning, root pruning, mulching, fertilization, and others as necessary, shall be included in the plan.

   B. The Applicant shall retain the services of a certified arborist or landscape architect in conjunction with the development of Land Bay B, and shall have the limits of clearing and grading marked with a continuous line of flagging prior to the walk-through meeting. During the tree-preservation walk-through meeting, the Applicant's certified arborist or landscape architect shall walk the limits of clearing and grading with an UFMD, DPWES, representative to determine where adjustments to the clearing limits can be made to increase the area of tree preservation and/or to increase the survivability of trees at the edge of the limits of clearing and grading, and such adjustment shall be implemented. Trees that are

identified as dead or dying may be removed as part of the clearing operation. Any tree that is so designated shall be removed using a chain saw and such removal shall be accomplished in a manner that avoids damage to surrounding trees and associated understory vegetation. If a stump must be removed, this shall be done using a stump-grinding machine in a manner causing as little disturbance as possible to adjacent trees and associated understory vegetation and soil conditions.

C. Clearing, grading and construction shall conform to the limits of clearing and grading as shown on the CDP/FDP. The limits of clearing and grading on Land Bay A shall be subject to the installation of necessary utility lines, trails and other required site improvements, all of which shall be installed in the least disruptive manner possible, considering cost and engineering, as determined in accordance with the approved plans; but, the limits of clearing and grading on Land Bay B shall not be subject to the installation of utility lines, trails or any other site improvements.

D. All trees shown to be preserved on the tree preservation plan shall be protected by tree protection fence. Tree protection fencing in the form of four (4) foot high, fourteen (14) gauge welded wire attached to a six (6) foot steel posts driven eighteen (18) inches into the ground and placed no further than ten (10) feet apart or, super silt fence to the extent that required trenching for super silt fence does not sever or wound compression roots which can lead to structural failure and/or uprooting of trees shall be erected at the limits of clearing and grading as shown on the demolition, and phase I & II erosion and sediment control sheets, as may be modified by the "Root Pruning" proffer below.

All tree protection fencing shall be installed after the tree preservation walk-through meeting but prior to any clearing and grading activities, including the demolition of any existing structures. The installation of all tree protection fencing shall be performed under the supervision of a certified arborist, and accomplished in a manner that does not harm existing vegetation that is to be preserved. Three (3) days prior to the commencement of any clearing, grading or demolition activities, but subsequent to the installation of the tree protection devices, the UFMD, DPWES, shall be notified and given the opportunity to inspect the site to ensure that all tree protection devices have been correctly installed. If it is determined that the fencing has not been installed correctly, no grading or construction activities shall occur until the fencing is installed corrected, as determined by the UFMD, DPWES.

E. The Applicant, in conjunction with the development of Land Bay B, shall root prune, as needed to comply with the tree preservation requirements of these proffers. All treatments shall be clearly identified, labeled, and detailed on the erosion and sediment control sheets of the subdivision plan submission. The details for these treatments shall be reviewed and approved by the UFMD,

DPWES, accomplished in a manner that protects affected and adjacent vegetation to be preserved, and may include, but not be limited to the following:

(1) Root pruning shall be done with a trencher or vibratory plow to a depth of 18 inches.

(2) Root pruning shall take place prior to any clearing and grading, or demolition of structures.

(3) Root pruning shall be conducted with the supervision of a certified arborist.

(4) An UFMD, DPWES, representative shall be informed when all root pruning and tree protection fence installation is complete.

F. During any clearing or tree/vegetation/structure removal on Land Bay B, a representative of the Applicant shall be present to monitor the process and ensure that the activities are conducted as proffered and as approved by the UFMD. The Applicant shall retain the services of a certified arborist or landscape architect to monitor all construction and demolition work and tree preservation efforts in order to ensure conformance with all tree preservation proffers, and UFMD approvals. The monitoring schedule shall be described and detailed in the Landscaping and Tree Preservation Plan, and reviewed and approved by the UFMD, DPWES.

5. Stormwater Management/Best Management Practices.

A. Stormwater management for Land Bay A and Land Bay B shall be provided in a regional stormwater pond located on property identified as 56-2 ((27)) C (Parcel C) (the "Pond"), which has been constructed in accordance with the plans and specifications approved by DPWES. The Pond was constructed with the following design characteristics:

(1) A micropool designed to contain a minimum of 10 percent of the BMP value, subject to DPWES approval.

(2) Sediment forebays sized to contain either 0.1 inch of runoff for impervious acre or a minimum of 10 percent of the BMP value associated with the contributing drainage of each forebay, subject to DPWES approval.

(3) The two-year post development peak flow rate reduced to a level that is two-thirds less than the predevelopment rate, to the extent feasible.

(4) The detention of the one-year storm and release over a 24-hour period, to the extent feasible.

(5) Removal of trees (greater than three inches in diameter) below an elevation that is the lower of (i) three feet below the two-year elevation, or (ii) two feet below the BMP elevation, except as required by grading for the construction and development of the community as depicted on the CDP/FDP.

B. In accordance with the release of bonds, DPWES has assumed all maintenance responsibilities for the Pond. Should maintenance of the Pond, including routine cleaning and removal of debris, be performed by either the Association established for the owners of the Land Bay A or the Owner of Land Bay B, said cost shall be allocated between Land Bays A and B on a pro-rata basis in accordance with the number of dwelling units in each Land Bay. Upon performance of maintenance, detailed invoices shall be submitted to the other owner and payment shall be due and payable within thirty (30) days or subject to collection. Said cost sharing of maintenance shall not be in effect until after the issuance of the first RUP on Land Bay B.

C. The Applicant shall be able to construct alternative stormwater management/Best Management Practices facilities to serve development on a temporary basis, as determined by DPWES if in substantial conformance with the CDP/FDP.

D. Surface parking spaces at the residential entrance for Land Bay B shall be paved with pervious pavers, as shown on the CDP/FDP.

6. Recreational Facilities.

A. Pursuant to Paragraph 2 of Section 6-409 of the Zoning Ordinance regarding developed recreational facilities, the Applicant shall provide the following recreational facilities to serve the Property.

(1) The facilities on Land Bay A shall include a swimming pool, passive seating areas, tot lot, on-site trail and an indoor recreational/leasing facility that is a minimum of 4,500 square feet in size.

(2) The facilities on Land Bay B shall include, at a minimum, a landscaped courtyard that is a minimum of 8,000 square feet in size with benches, seating areas, a fire pit, water feature and other amenities that have comparable recreational value as determined by the Director of DPWES, and an indoor recreational facility, that is a minimum of 3,000 square feet in size. The indoor recreational facility shall include an exercise room that is a minimum of 1,000 square feet, a media center and cyber cafe. A half court basketball court shall be striped out on the top level of the parking garage located on Land Bay B as shown on the CDP/FDP. The court shall be available for recreation and shall not be striped for nor used as parking spaces. The scheduling of use and the operation of the court shall be one of the duties assigned to the property manager of Land Bay B.

(3) Subject to the receipt of permission from Fairfax County and the Association established for the owners of Land Bay A at no cost, the Owner of Land Bay B shall install a tot lot, or dog park of an equivalent size to a tot lot, on Parcel C or Land Bay A for use by the residents of Land Bay A and Land Bay B. The location of the tot lot or dog park shall be determined at time of site plan approval for Land Bay B in coordination with Fairfax County and the Association established for the owners of Land Bay A.

B. The recreational facilities on Land Bay B shall be made available to the residents of Land Bay C. The recreational facilities in Land Bay B shall also be made available to the residents of Land Bay A, if an agreement is reached between the Owner of Land Bay A and Land Bay B regarding cost sharing and reciprocal use of such facilities. Such efforts shall be documented by the Applicant, shall be diligently prosecuted, and shall be provided to DPWES prior to the issuance of the first RUP for Land Bay B.

C. At the time of site plan for Land Bay B, the Applicant shall demonstrate that the minimum expenditure for the recreational facilities on Land Bay A was $955.00 per residential unit within Land Bay A and that the minimum expenditure in accordance with Section 6-110 of the Zoning Ordinance for the recreational facilities on Land Bay B was $1,500.00 per residential unit within Land Bay B. In the event the total cost of recreational improvements constructed on Land Bay A and Land Bay B by the Applicant is demonstrated to be less than $955.00 per unit and $1,500.00 per unit, respectively, the Applicant shall provide the remainder in a cash contribution to the Fairfax County Park Authority for the development of active recreational facilities in the vicinity of the Property prior to site plan approval for Land Bay B.

D. The Applicant shall make a contribution in the amount of $68,878.00 to the Board of Supervisors for use in improving public recreation facilities in the vicinity of the Property prior to site plan approval for Land Bay B.

E. The Applicant shall provide a contribution in the amount of $2,000.00 to the Nottoway Nights program in the Providence District. Said contribution shall be made to the Fairfax County Park Authority prior to site plan approval for Land Bay B.

7. Noise Attenuation.

A. The Applicant shall provide the following noise attenuation measures as a result of the Traffic Noise Analysis prepared by Polysonics, Corp. dated April 2001:

(1) In order to reduce exterior noise to a level of approximately 65 dBA Ldn at the proposed outdoor recreational areas, a noise attenuation barrier, composed of a combination sound wall and/or berm, has been installed along the frontage of I-66. The noise attenuation barrier is built to

VDOT standards and located within the I-66 right-of-way. Neither the Applicant, nor its successors or assigns, shall be responsible for restoration, removal, relocation or reconstruction of the noise wall if such wall is removed or otherwise altered in conjunction with future improvements to I-66.

(2) In order to reduce interior noise to a level of approximately 45 dBA Ldn, units identified in the supplemental noise analysis described in Proffer 7A(1), as being impacted by highway noise from I-66 having levels projected to be greater than 70 dBA Ldn after the noise attenuation wall is in place shall employ the following acoustical measures:

Exterior walls shall have a laboratory sound transmission class (STC) rating of at least 45. Doors and glazing shall have a laboratory STC rating of at least 37 unless glazing constitutes more than 20% of any façade exposed to noise levels of Ldn 65 dBA or above. If glazing constitutes more than 20% of an exposed façade, then the glazing shall have a STC rating of at least 45. All surfaces shall be sealed and caulked in accordance with methods approved by the American Society for Testing and Materials (ASTM) to minimize sound transmission.

(3) In order to reduce interior noise to a level of approximately 45 dBA Ldn within Land Bay B for those units facing Waples Mill Road, and for those units within Land Bay A identified in the supplemental noise analysis described in Proffer 7A(1), as being impacted by highway noise from I-66 having levels projected to be between 65 and 70 dBA Ldn after the noise attenuation wall is in place shall employ with the following acoustical measures:

Exterior walls shall have a laboratory sound transmission class (STC) rating of at least 39. Doors and glazing shall have a laboratory STC rating of at least 28 unless glazing constitutes more than 20% of any façade exposed to noise levels of Ldn 65 dBA or above. If glazing constitutes more than 20% of an exposed façade, then the glazing shall have a STC rating of at least 39. All surfaces shall be sealed and caulked in accordance with methods approved by the American Society for Testing and Materials (ASTM) to minimize sound transmission.

B. Alternative interior noise attenuation measures may be provided subject to the implementation of a refined noise study as reviewed and approved by DPWES after consultation with DPZ.

8. Architectural Design.

A. The architectural design of the buildings within Land Bay A shall be consistent with the elevations shown on Sheet 10 of the CDP/FDP, and shall be generally

consistent in style on all sides of the structure. The buildings on Land Bay A shall be constructed with a mixture of masonry, siding and glass materials. No balconies shall be provided for those dwelling units within Building 1 in Land Bay A that face the noise wall.

B. The building on Land Bay B shall be in substantial conformance with the elevations shown on Sheet 7C of the CDP/FDP, shall be constructed with a mixture of masonry, cementatious siding and glass materials, shall be substantially consistent in style on all sides of the structure, and shall be similar in façade design, color, materials and quality to the structures within Land Bay A, as shown on the CDP/FDP. No vinyl siding shall be used on the exterior building facades, but may be used within the courtyard facades. All mechanical equipment for the building on Land Bay B shall be located on the roof, and shall be screened from the view of pedestrians who are at ground level. All dumpsters shall be fully screened from view through the use of solid, opaque enclosures. The building on Land Bay B shall meet the R-30 District Angle of Bulk Plane requirements for multi-family structures within affordable dwelling developments (Par. 2A of Sect. 3-3010 of the Ordinance).

C. The elevations may be refined as a result of final design and engineering so long as the character and quality of the buildings remain in substantial conformance with those shown on the CDP/FDP.

D. At time of site plan and building plan approval for Land Bay B, the Applicant shall demonstrate compliance of the multi-family residential building on Land Bay B with the universal design criteria as set forth in the ICC/ANSI A117.1-2003 and the 1998 Fair Housing Design Manual.

E. Subject to the provisions of the Federal Telecommunications Act of 1996, the Applicant shall prohibit the installation of satellite dishes or antennas on the balconies or exterior of individual residential dwelling units located on Land Bay B. This restriction shall not preclude the installation of satellite dishes or antennas on the roof of the building and/or parking garage located on Land Bay B to provide common service to residents.

F. The multi-family residential building constructed on Land Bay B shall be comprised of 50% one bedroom units and 50% two bedroom units. The number of one bedroom and two bedroom units may be modified at time of site plan based on final design as long as the parking ratio established in proffer 16.D. is satisfied. Any dens that are part of a unit in the multi-family residential building constructed on Land Bay B shall be connected to the internet with appropriate wiring for electronics to facilitate use as a home office, and the closet, if provided, shall not be a walk-in closet.

9. Sustainable Design. In order to promote energy conservation and green building techniques, the Applicant shall select one of the following programs, within its sole discretion at time of site plan submission, to be implemented in the construction of multi-family residential dwelling units on Land Bay B:

   A. LEED for Homes Certification;

   B. Certification in accordance with the Earthcraft House Program as demonstrated through documentation provided to DPWES and DPZ prior to the issuance of a RUP;

   C. Certification in accordance with the National Association of Home Builders (NAHB) National Green Building Certification for multi-family developments, using the ENERGY STAR® Qualified Homes path for energy performance, as demonstrated through documentation submitted to DPWES and the Environmental and Development Review Branch of DPZ from a home energy rater certified through the NAHB Research Center that demonstrates that the dwelling unit has attained the certification prior to the issuance of the RUP for each dwelling; or

   D. Qualification in accordance with ENERGY STAR® for Homes as determined by the submission of documentation to the Environment and Development Review Branch of DPZ from a home energy rater certified through the Residential Energy Services Network (RESNET) program that demonstrates that the dwelling unit has attained the ENERGY STAR® for Homes qualification prior to the issuance of the RUP for each dwelling.

   Should the Applicant select LEED for Homes Certification, prior to approval of the building plan for the residential building on Land Bay B, the Applicant shall execute a separate agreement and post, for that building, a "green building escrow," in the form of cash or a letter of credit from a financial institute acceptable to DPWES as defined in the Public Facilities Manual, in the amount of $72,000.00. This escrow will be in addition to and separate from other bond requirements and will be released upon demonstration of attainment of certification, by the U.S. Green Building Council (USGBC), under the most current version of the USGBC Leadership in Energy and Environmental Design for Homes (LEED® for Homes) rating system. Except as further described herein, if the Applicant fails to provide documentation to the Environment and Development Review Branch (EDRB) of DPZ demonstrating attainment of LEED certification within one year of issuance of the final RUP for the building, the escrow will be released to Fairfax County and will be posted to a fund within the County budget supporting implementation of County environmental initiatives. The Applicant shall utilize the following procedures for attainment of LEED certification:

      i. The Applicant shall include a LEED-accredited professional as a member of the design team. The professional will also be a professional engineer, licensed architect or licensed landscape architect. The LEED-accredited

professional will work with the team to incorporate sustainable design elements and innovated technologies into the project with a goal of having the project attain LEED certification. At the time of site plan submission, the Applicant will provide documentation to the EDRB of DPZ demonstrating compliance with the commitment to engage such a professional.

ii. The Applicant shall include, as part of the site plan submission and building plan submission for Land Bay B, a list of specific credits within the most current version of the U.S. Green Building Council's LEED® for Homes rating system that the Applicant anticipates attaining. A professional engineer, licensed architect or licensed landscape architect will provide certification statements at the time of building plan review confirming that the items on the list will meet at least the minimum number of credits necessary to attain LEED certification.

iii. Prior to approval of the final RUP, the Applicant will provide to the EDRB of DPZ a letter from a LEED-accredited professional certifying that a green building maintenance reference manual has been prepared for use by the building manager, that this manual has been written by a LEED-accredited professional, that copies of this manual will be provided to all future building managers and that this manual, at a minimum:

- provides a narrative description of each green building component, including a description of the environmental benefits of that component and including information regarding the importance of maintenance and operation in retaining the attributes of a green building;
- provides, where applicable, product manufacturer's manuals or other instructions regarding operations and maintenance needs for each green building component, including operational practices that can enhance energy and water conservation;
- provides, as applicable, either or both of the following: (1) a maintenance staff notification process for improperly functioning equipment; or (2) a list of local service providers that offer regularly scheduled service and maintenance contracts to assure proper performance of green building-related equipment and the structure, to include, where applicable, the HVAC system, water heating equipment, water conservation features, sealants, and caulks; and
- provides contact information that can be used to obtain further guidance on each green building component.

Prior to approval of the final RUP, the Applicant will provide an electronic copy of the manual in pdf format to the Environment and Development Review Branch of DPZ.

iv. Prior to site plan approval, the Applicant will designate the Chief of the Environment and Development Review Branch of DPZ as a team member in the USGBC's LEED Online system. This team member will have privileges to review the project status and monitor the progress of all documents submitted by the project team, but will not be assigned responsibility for any LEED credits and will not be provided with the authority to modify any documentation or paperwork.

v. If, within one (1) year of the issuance of the final RUP, the Applicant provides to the EDRB of DPZ documentation demonstrating that LEED Certification for the residential building has not been attained, but that the building has been determined by the USGBC to fall within three (3) points of attainment of LEED Certification, 50% of the escrow shall be released to the Applicant, and the other 50% shall be released to Fairfax County and will be posted to a fund within the County budget supporting implementation of County environmental initiatives. However, if the Applicant provides documentation demonstrating, to the satisfaction of the EDRB of DPZ, that USGBC completion of the review of the LEED Certification application has been delayed through no fault of the Applicant, the Applicant's contractors or subcontractors, this proffered time frame shall be extended for one (1) year, and no release of escrowed funds shall be made to the Applicant or to Fairfax County during the extension unless the Applicant provides documentation from the USGBC to ERDB within this time frame that the LEED Certification has been obtained. After this one (1) year extension, additional one (1) year extensions may be granted if the Applicant provides documentation at the end of the previous one (1) year extension period demonstrating, to the satisfaction of EDRB of DPZ, that USGBC completion of the review of the LEED Certification application has continued to be delayed through no fault of the Applicant or the Applicant's contractors or subcontractors.

vi. All references to LEED for Homes Certification may be modified to other LEED certification programs as adopted by the USGBC that may be applicable to the building type constructed by the Applicant. An alternative LEED certification program may be selected by the Applicant, subject to the review of EDRB of DPZ. Further, all references to the USGBC shall apply to similar certifying agencies that are created subsequent to approval of this application, provided that the alternative certifying agency is acceptable to the EDRB of DPZ and the Applicant.

10. Pedestrian Facilities.

A. The Applicant shall provide a comprehensive sidewalk system within the developed portions of the Property as generally shown on Sheets 2, 2A, 2B and 2C of the CDP/FDP, including completion of sidewalks along the Property frontages, including connections from Fairfax Ridge Road to residential units, and internal connections between all the residential buildings, and between Land Bay B and the adjacent office building. Construction of sidewalks shall be concurrent with development activity on the Property.

B. The Applicant shall construct a ten (10) foot wide asphalt trail along Land Bay B's Waples Mill Road frontage, with the exact location and design determined at the time of site plan approval.

C. The six-foot wide asphalt pedestrian trail along the southern side of the Pond is located within a dedicated easement and is to be maintained by Fairfax County. Should maintenance of the trail, including routine cleaning and removal of debris, be performed by either the Association established for owners of the Land Bay A or the Owner of Land Bay B, said cost shall be allocated between Land Bay A and B on a pro-rata basis in accordance with the number of dwelling units in each Land Bay. Upon performance of maintenance, detailed invoices shall be submitted to the other owner and payment shall be due and payable within thirty (30) days or subject to collection. Said cost sharing shall not be in effect until after the issuance of the first RUP on Land Bay B.

D. Subject to VDOT approval, the Applicant shall install signs at the crosswalks located on Fairfax Ridge Road to alert motorists of State law requirements to yield to pedestrians in crosswalks.

11. Affordable Dwelling Units. The Applicant shall provide twenty-one (21) Affordable Dwelling Units (ADU) within Land Bay B in accordance with Section 2-800 of the Zoning Ordinance, except as may be modified by the ADU Advisory Board in accordance with Section 2-815 of the Zoning Ordinance. Should the Applicant elect to construct less than 150 dwelling units on Land Bay B, the number of required ADUs shall be reduced in accordance with the Zoning Ordinance. No new dwelling units are proposed within Land Bay A other than those approved pursuant to RZ 2000-PR-056.

12. Workforce Housing. The Applicant shall provide eleven (11) Workforce Dwelling Units (WDUs) within Land Bay B in accordance with the Policy Guidelines adopted by the Board of Supervisors on October 15, 2007. Should the Applicant elect to construct less than 150 dwelling units on Land Bay B, the number of WDUs shall be reduced in accordance with the Policy.

13. Exterior Lighting. All on-site lighting shall be directed downward and inward in order to minimize light from spilling onto adjacent properties. In order to provide maximum security, energy efficiency and quality ambient lighting, full cut-off light fixtures shall be used for all parking lot and parking deck lighting, including any "wall-pack" security lighting. Lighting for landscaping shall not utilize "up-lighting", but shall rather utilize downward-focused lighting that does not present glare or provide an overly lit environment that hinders night-time vision.

14. Bicycle Racks. The Applicant shall provide bicycle racks in the vicinity of the front door of the building on Land Bay B sufficient to store a minimum of four (4) visitor bicycles. The Applicant shall provide additional secured bicycle storage within the parking structure on Land Bay B for use by the residents of Land Bay B, as further described in Proffer17.D.(8). Subject to the approval of the Owner of Land Bay A at no cost, the Applicant shall provide bicycle racks in the vicinity of the pool on Land Bay A, or another mutually agreeable location, sufficient to store a minimum of four (4) visitor bicycles. The design, style and installation of the bike racks and bicycle storage shall be approved by FCDOT at time of site plan approval for Land Bay B. Bicycle racks shall be installed prior to the issuance of the last RUP for Land Bay B.

15. Use of Garages. The Applicant agrees that individual garages on Land Bay A shall only be used for a purpose that will not interfere with the intended purpose of garages (e.g., parking of vehicles). Likewise, any required parking space within the Land Bay B parking garage shall only be used for a purpose that will not interfere with the intended purpose of that parking space (e.g. parking of vehicles.) Tenants and/or owners shall be advised of the use restriction which shall be included in the initial lease/sales documents.

16. Parking Management.

    A. The Owner of Land Bay B shall assign parking management as one of the duties of its property manager. Parking management shall entail the efficient use of available constructed parking spaces within Land Bay B, including the assignment of parking spaces to residents, either in a lease or purchase agreement. Said lease or purchase agreement shall include specifications that residents of and visitors to Land Bay B shall not utilize any parking located on Land Bay A (unless such a visitor is a resident of Land Bay A), whether or not spaces on Land Bay A are assigned, or Fairfax Ridge Road. At time of lease execution and periodically during the lease term, the lessee shall be required to disclose the number of vehicles owned or used. Parking management shall include the issuance of a distinguishable parking decal to residents of Land Bay B so that their vehicle(s) may be readily identified. Failure to comply with parking restrictions shall be deemed a violation of the lease or purchase agreement and enforceable as such.

    B. The Applicant shall pursue an agreement with the owner of the property identified as Tax Map 46-4 ((1)) 15B and 56-2 ((1)), 15C and 15D to allow parking on these properties by the residents of Land Bay A on weekends and during the week after

typical working hours. The agreement shall also allow residents of Land Bay B to park in designated commercial parking spaces on Land Bay B on weekends and during the week after typical working hours. In the alternative, the Applicant shall construct one hundred (100) generally contiguous additional parking spaces within the parking garage located on Land Bay B that will be available for use by the residents of Land Bay A on an unrestricted basis at no cost, including no cost for maintenance. The parking spaces shall be located in proximity to one of the entrances into the parking garage located on Land Bay B. Said parking shall be clearly delineated and parking management shall include the issuance of a distinguishable parking decal to residents of Land Bay A so that their vehicle may be readily identified. The location of parking for the residents of Land Bay A, either by an agreement on property identified as Tax Map 46-4 ((1)) 15B and 56-2 ((1)) 15C and 15D or within the parking garage located on Land Bay B, shall be determined by the Applicant at time of site plan or within one year of the approval of this application, whichever is earlier. Whether located on property identified as Tax Map 46-4 ((1)) 15B and 56-2 ((1)) 15C and 15D or within the parking garage located on Land Bay B, the parking spaces shall be subject to a recorded access easement.

C. The Owner of Land Bay B shall provide written support to the Association established for the owners of Land Bay A to pursue a parking overlay district to establish parking restrictions on Fairfax Ridge Road by the Association.

D. The Applicant shall provide parking for the residents of Land Bay B within the parking garage located on Land Bay B at a minimum ratio of one (1) parking space per bedroom or one (1) parking space per bathroom in each residential unit, whichever is greater. Should the parking requirement for multi-family residential dwellings under the Zoning Ordinance be greater than the requirement of this proffer, parking shall be provided in accordance with the Zoning Ordinance.

17. TDM Strategies.

A. Transportation demand management ("TDM") strategies, as detailed below, shall be utilized by the Applicant and/or its successors or assigns to reduce vehicular trips generated by residents of the Property during peak hours.

B. Mass transit, ride-sharing, and other transportation strategies shall be utilized to reduce baseline trips generated from the Property (Land Bays A and B, combined) during peak hours by a minimum of 15%. For purposes of this proffer, the baseline number of trips from which such reductions are measured shall be determined using the trip generation rates data published by the Institute of Transportation Engineers in the Trip Generation Manual, 8th Edition and as determined by FCDOT for a total of 570 dwelling units during the highest peak hour period (AM or PM) of the adjacent street, Waples Mill Road. In the event the Property is developed with fewer than 570 dwelling units, then the baseline number of trips shall be calculated as if 570 units were constructed. Residents of

the Property shall be advised of this transportation strategy. Transportation coordination duties shall be carried out by the Owner of Land Bay B, or assigns.

C. To encourage use of mass transit, the Owner of Land Bay B shall work with the Fairfax County Department of Transportation to relocate bus service from Lee Jackson Memorial Highway (Route 50) to a route that will include Fairfax Ridge Road and Waples Mill Road. Efforts to relocate the bus services shall be documented to DPWES prior to the issuance of the first RUP for Land Bay B. Upon successful relocation of said route, the Applicant shall construct a bus shelter, subject to VDOT approval, on Fairfax Ridge Road prior to the issuance of the final RUP for Land Bay B. If the Applicant is not successful with its efforts to relocate the bus route prior to the issuance of the first RUP for Land Bay B, efforts will continue up until the issuance of the final RUP for Land Bay B. If the route is relocated prior to the issuance of the final RUP for Land Bay B, the Applicant shall construct the bus shelter, subject to VDOT approval, on Fairfax Ridge Road prior to final bond release on Land Bay B.

D. The following is a list of strategies that shall be instituted by the Owner of Land Bay B prior to the issuance of the first RUP for Land Bay B:

(1) Designate an individual (such as property management staff and/or condominium association representative) to act as the transportation coordinator ("TC") for the Property (Land Bays A and B), who shall be responsible to implement the TDM strategies for the Property, with on-going coordination with FCDOT. Such individual shall also be responsible for communication and coordination of TDM strategies with the development association on adjacent Land Bay C. This individual may, if appropriate, be the same person for all three land bays (A, B and C). The Applicant shall provide written notice to FCDOT within 10 days of the designation of the TC and thereafter within 10 days of any change in said designation.

(2) Market new units to bicyclists, and to one-car or no-car families.

(3) Disseminate information regarding Metrobus, carpool and/or vanpool, ridesharing, and other relevant transit options in residential sale/leasing packages.

(4) Provide Metro maps, schedules, and forms; information on the Fairfax County Ride Share Program; and information on other relevant transit options available to owners/tenants either in a newsletter to be published on a regular basis and not fewer than four (4) times per calendar year or on a web site. In the event, the Applicant elects to establish a website for the project, then the Applicant shall provide written notice to FCDOT of the website address and the date the site became operational.

(5) Provide SmartTrip cards loaded with a minimum of $25 to all tenants of Land Bay B upon their initial lease or to initial purchasers at the time of settlement.

(6) Provide a business center on Land Bay B for use by the residents of the Property. The business center shall include, at a minimum, access to telephone(s), a fax machine, computer(s), printer(s), a scanner, and high-speed internet.

(7) Equip all residential units on the Property with broadband wiring for internet access.

(8) Provide secure bike storage for residents of Land Bay B, sufficient to store, at a minimum, one (1) bicycle for every forty (40) required residential vehicle parking spaces. Provide bicycle racks for visitors either in the visitor parking area or in the vicinity of the main entrance, as further qualified by Proffer 14. The design, style and installation of the bike racks and bicycle storage shall be approved by FCDOT.

(9) Participate in a larger Traffic Management Area Program should one be established by the County for this area.

(10) The TDM program shall be continued by the COA in the event of a condominium conversion.

E. Eighteen (18) months following build-out of the Property, the Transportation Coordinator will administer a survey of residents of the Property. For purposes of this proffer, build-out of the Property shall be deemed to occur upon the issuance of the last RUP for Land Bay B. The survey shall include, at a minimum, details regarding the number of times per week the resident commutes, the mode of transportation for community purposes, and his or her work destination.

F. Eighteen (18) months following build-out of the Property, and annually thereafter, the effectiveness of the TDM strategies shall be evaluated and reported to FCDOT. For purposes of this proffer, build-out of the Property shall be deemed to occur upon the issuance of the last RUP for Land Bay B. The TC shall submit to FCDOT a report describing the previous year's TDM strategic efforts and the effectiveness of the TDM program in reaching trip reduction goals, including, as applicable, sample marketing materials, expenditures, the result of traffic counts as outlined in Paragraph G below. The report shall be submitted to FCDOT no later than April 30th of each year. The TC shall coordinate draft survey materials and the methodology for conducting traffic counts with FCDOT prior to each year's count, as applicable.

G. As part of the annual reporting process, the Owner of Land Bay B shall measure actual trip generation of the Property in order to evaluate the success of meeting the trip reduction objectives set forth in subparagraph B., above.

(1) Only trips that are generated by the residential uses in Land Bays A and B shall be counted. Peak hour counts shall be conducted during the highest peak traffic period (AM or PM, whichever is highest) ("Peak Hour Trips") of the adjacent street, Waples Mill Road, over two (2) days, within a maximum two (2) week period, at a time of year that reflects typical travel demand conditions (e.g., September to May - and not during holiday weeks, on Mondays or Fridays, or when public schools are not in session.) The average number of peak hour trips shall be computed by summing the number of applicable peak hour trips entering and exiting the Property (at all driveways) on each of the two (2) day's counts and dividing that sum by two (2).

Residents of Land Bays A and B shall not be notified in advance of the days or times that these counts will be taken.

The Applicant shall notify FCDOT at least one (1) week in advance of the dates that the counts are to be undertaken.

(2) The results of the trip generation analyses referenced in subparagraph F., above, shall be compared to the baseline trip generation referenced in subparagraph B., above, to determine if the proffered 15% reduction of peak hour trips has been met.

(3) In the event the traffic counts reveal that the proffered 15% peak hour trip reduction has been met, then the Applicant shall continue to implement the TDM strategies in place and no adjustments to the program or penalties are required.

(4) If applicable, the first time traffic counts that are conducted in accord with proffer subparagraph G.1., above, reveal that the baseline trip reduction has not been met, the TC shall request a meeting with FCDOT within thirty (30) days after the completion of the traffic counts to review the results of that report and the TDM strategies then in place for the Property. The TC shall be responsible to design and implement a strategy that is intended to bring baseline peak hour trip reductions to the proffered percentage. The Applicant shall submit any revisions to the TDM Plan to FCDOT within thirty (30) days following this meeting.

(5) In the event that a subsequent (second) annual traffic count conducted in accord with proffer subparagraph G.1., above, reveals that the baseline trip reductions have not been met, then the Owner of Land Bay B shall pay a penalty at a rate of $125 per trip for each trip not reduced from the baseline reduction, into a fund established with the TC for the implementation of certain other on-site TDM incentives/enhancements. (For example, if the baseline reduction is established as 49 trips (or 327 PM peak hour trips X .15 reduction), then the "penalty paid" is $125 *

(49- X), where "X" is the number of trips actually reduced from the ITE base of 327 PM peak hour trips.) The TC shall request a meeting with FCDOT within thirty (30) days after the completion of the traffic counts to review the results of that report and the TDM strategies then in place for the Property. The TC shall be responsible to design and implement a strategy that is intended to bring baseline peak hour trip reductions to the proffered percentage. The Applicant shall submit any revisions to the TDM Plan to FCDOT within thirty (30) days following this meeting.

(6) If a following (third) annual traffic count is required in accord with proffer subparagraph G.1., above, reveals that the baseline trip reduction has not been met, then the penalty described in subparagraph G.5., above, shall again be paid. Further, the TC shall request a meeting with FCDOT within thirty (30) days after the completion of the Trip Counts to review the results of that report and the TDM strategies then in place for the Property, to discuss alternative strategies to meet the proffered reduction, to discuss the appropriateness of the proffered reduction, and/or to discuss setting an alternative peak hour trip reduction (that may be less than 15%), and which must be formalized through an interpretation of these proffers. The TC shall submit any revisions to the TDM Plan and TDM Budget to FCDOT within thirty (30) days following this meeting. FCDOT shall approve any changes to the TDM Plan prior to its implementation.

H. If three (3) consecutive annual trip counts conducted in accord with subparagraph G.1, above, reveal that the trip reduction thresholds are met after build out of the Property as defined herein, then trip counts shall only be conducted biannually if requested by the County, or less (including elimination of this requirement) if it is determined by FCDOT that fewer counts are necessary to indicate continued compliance. Further, upon such event, only annual reports detailing the programmatic elements in place and yearly TDM expenditure assessment and/or survey results will be required.

I. If subsequent trip counts reveal that the trip reduction thresholds are not being met, then the annual counts, reports and penalties shall again be required as described in Subparagraphs G.4, G.5, and G.6. If three (3) consecutive annual trip counts reveal that the trip reduction thresholds are met, then trip counts shall again only be conducted biannually if requested by the County, or less (including elimination of this requirement) if it is determined by FCDOT that fewer counts are necessary to indicate continued compliance. Further, upon such event, only annual reports detailing the programmatic elements in place and yearly TDM expenditure assessment and/or survey results will be required.

18. Asbestos. If DPWES and the Owner of Land Bay B determine that a potential health risk exists during construction due to the presence of asbestos-containing rock on the Property, the Owner of Land Bay B shall:

A. Take appropriate measures as determined by the Health Department to alert all construction personnel and residents of Land Bay A as to the potential health risks.

B. Commit to appropriate construction techniques as determined by DPWES in coordination with the Health Department and the Applicant to minimize this risk. Such techniques may include, but are not limited to, dust suppression measures during all blasting and drilling activities and covered transportation of removed material presenting this risk, and appropriate disposal.

19. Schools Contribution. At the time of site plan approval for Land Bay B, the Applicant shall contribute the amount of $132,582.00 ($11,630.00 per student generated by Land Bay B, which is .076 student per unit), plus $23,260.00 for the two (2) additional students generated by the development of Land Bay A (which were actually generated by the development of Land Bay A, but not anticipated in a previous rezoning application) to the Fairfax County Board of Supervisors for the construction of capital improvements to Fairfax County public schools to which the students generated by the Property are scheduled to attend. The contribution based on student generation by Land Bay B may be reduced by $11,630.00 x .076 per unit should the Applicant elect to construct less than 150 dwelling units on Land Bay B.

20. Blasting. If blasting is required during construction of the improvements on Land Bay B, and before any blasting occurs on Land Bay B, the Applicant or its successors will ensure that blasting is done per Fairfax Fire Marshal requirements and all safety recommendations of the Fire Marshal, including, without limitation, the use of blasting mats, shall be implemented. In addition:

A. A professional consultant shall be retained to perform a pre-blast survey of each house, residential building and office building located within one hundred fifty (150) feet (TM 46-4 ((1)) 15B; TM 56-2 ((1)) 15C, 15D, 19, 23B, 25B; 56-2 ((26)) All; and 56-2 ((27)) (9) – (11) All) and any well located within two hundred fifty (250) feet (TM 46-4 ((1)) 15B, 34; TM 56-2 ((1)) 15C, 15D, 19, 23B, 25B, 74B; 56-2 ((26)) All; and 56-2 ((27)) (8) – (11) All) of Land Bay B. The consultant shall request access by way of certified mail to the last known address of the owner(s) of any house, buildings, swimming pools or wells located within the aforesaid ranges, to determine the pre-blast conditions of these structures. The consultant shall give a minimum of fourteen (14) days notice of the scheduling of the pre-blast survey. All owners of structures entitled to pre-blast inspections shall be provided with the name, address, and phone number of the blasting contractor's insurance carrier. Written confirmation that the pre-blast survey has been completed shall be provided to DPWES and copies of the survey shall be provided to Fairfax County upon request prior to any blasting.

B. The consultant shall place seismographic instruments prior to blasting to monitor the shock waves. Seismographic monitoring records shall be provided to County agencies upon their request.

C. The consultant shall provide an analysis of the potential for gas migration from the site to the Fire Marshal for review and approval prior to blasting, and appropriate mitigation or notification as determined by the Fire Marshal shall be implemented.

D. All residences and office buildings within 150 feet of the Land Bay B boundary shall be notified ten (10) days prior to blasting, no blasting shall occur until such notice has been given.

E. Upon receipt of a claim of actual damage resulting from said blasting, the consultant shall respond within five (5) days by meeting at the site of the alleged damage to confer with the property owner. Any verified claims for damage due to blasting shall be expeditiously resolved.

F. Blasting subcontractors shall be required to maintain necessary liability insurance to cover the costs of repairing any damages to structures that are directly attributable to the blasting activity.

21. Construction Activities and Lighting

A. At a minimum of one (1) month prior to the commencement of construction activities on Land Bay B ("Commencement of Construction"), the Owner of Land Bay B shall request a preconstruction meeting with Owner of Land Bay A to discuss the timetable for construction and to present strategies for construction related parking management – particularly as to how construction parking will be managed along Fairfax Ridge Road. The Owner of Land Bay A agrees to schedule such a meeting within one (1) month of the request, and the Owner of Land Bay B shall attend that meeting. In addition, after Commencement of Construction, the Owner of Land Bay B shall meet quarterly with the Owner of Land Bay A, if requested by the Owner of Land Bay A, to discuss ongoing construction activities. The name of a contact person for construction issues shall be provided to a representative of the Owner of Land Bay A.

B. Outdoor construction activities on Land Bay B shall only occur between the hours of 7:00 a.m. and 9:00 p.m., Monday through Saturday, and between the hours of 9:00 a.m. and 9:00 p.m. on Federal Holidays, exclusive of Thanksgiving, Christmas, New Year's Day, Memorial Day and Labor Day.

C. Construction within utility easements on Land Bay A, which are related to the construction of the improvements on Land Bay B, shall only occur between the hours of 9:30 a.m. and 3:30 p.m., daily.

D. Trash collection during the construction of the improvements on Land Bay B shall only occur between the hours of 7:00 a.m. and 9:00 p.m., Monday through Saturday, and between 9:00 a.m. and 9:00 p.m. on Federal holidays, exclusive of Thanksgiving, Christmas, New Year's Day, Memorial Day and Labor Day.

E. Any construction-related loading or unloading of vehicles shall only occur between the hours of 7:00 a.m. and 9:00 p.m., Monday through Saturday, and between 9:00 a.m. and 9:00 p.m. on Federal holidays, exclusive of Thanksgiving, Christmas, New Year's Day, Memorial Day and Labor Day.

F. Construction workers shall either park on-site during the construction of the improvements on Land Bay B or shall park in a remote location and be shuttled to the site. Construction workers shall not be permitted to park on Fairfax Ridge Road, which shall be enforced by the general contractor.

G. Construction hours, and any other information posted on the Property during construction, shall be posted in both English and Spanish.

H. Prior to initiating construction, during construction, and until parking is available in the garage on Land Bay B, the Applicant shall coordinate with the owners of the office buildings on adjacent parcels identified as Tax Map 46-4 ((1)) 15B and 56-2 ((1)) 15C and 15D and provide replacement parking for the office building tenants. Replacement parking shall be provided in a remote location selected by the Applicant, and tenants shall be shuttled to the office buildings in the morning between the hours of 7:00 a.m. and 9:00 a.m. and in the afternoon between the hours of 4:00 p.m. and 6:00 p.m.

I. At any time during construction that parking is displaced from Fairfax Ridge Road by construction on Land Bay B, the Applicant shall secure alternative parking proportionate to the number of spaces displaced within .2 mile of Land Bay A for exclusive use by Land Bay A residents between the hours of 6:00 p.m. and 7:00 a.m. at no cost.

J. All construction site lighting, with the exception of lighting that is used to illuminate the interiors of buildings under construction which is provided for in the following paragraph, shall use full cut-off or directionally shielded fixtures that are aimed and controlled so the directed light shall be substantially confined to the object intended to be illuminated. Directional control shields shall be used where necessary to limit stray light.

K. If interiors of the multifamily structure on Land Bay B are lit during construction, then frosted light bulbs (as opposed to clear light bulbs) shall be used to light the ten (10) foot outermost perimeter area of the interiors of the building in order to diffuse the light.

L. The Applicant shall list the Owners Association for Land Bay A as an additional insured on the general contractor's certificate of insurance for the construction of the parking garage and multi-family residential building on Land Bay B.

22. Cooperation Between Owners:

A. "Owner", as used in these Proffers, shall mean the legal owner of a Land Bay's Parcel(s), if under common ownership, or shall mean the unit owners, collectively, acting through the executive organ of a duly constituted Condominium Owners Association ("COA"), and not the owners of individual condominium units.

B. The Owner of Land Bay A, shall own, manage and maintain all common areas of Land Bay A; and the Owner of Land Bay B shall own, manage and maintain all common areas of Land Bay B, and operate the TDM program for the Property, as defined in Proffer 17. In the event that Land Bay B is converted to condominiums, the maintenance and operational responsibilities of Land Bay B's Owner shall be included in Land Bay B's COA documentation, which includes maintenance of all open space and recreational facilities, landscaping, commercial parking spaces on Land Bay B, and parking spaces on Land Bay B for the residents of Land Bay A. In accordance with the Virginia Condominium Act, purchasers of units within Land Bay B shall be advised of these requirements and restrictions prior to entering into a contract of sale through the Public Offering Statement of the condominium.

C. The Owner of Land Bay B shall use best efforts to establish a program with the Owner of Land Bay C for cost sharing and for the shared implementation of the TDM Plan. Further, the Owner of Land Bay B shall use best efforts to establish a cooperative agreement between the Owner of Land Bays A, B and C, regarding sharing the use of amenities on the combined properties, sharing of maintenance obligations, implementation of the TDM Plan, and the discussion of the potential removal or relocation of the gate currently separating Land Bays A and C. These efforts shall be diligently prosecuted. In the event that the Owner of Land Bay B is successful in reaching such agreements, any obligations shall be disclosed to contract purchasers prior to entering into a contract of sale, and shall be disclosed in the COA documents prepared for the Property. In the event the Owner of Land Bay B is unable to reach such an agreement, the Owner of Land Bay B shall provide written documentation of its best efforts to DPWES.

23. Signs.

A. The Applicant shall abide by the regulations in Article 12 of the Zoning Ordinance with regard to permanent and temporary signs on the Property including: "real estate signs" advertising the sale, rental or lease of units on Land Bay B – which signs shall be limited to two (2), temporary signs that have a maximum area of twelve (12) square feet each and a maximum height of eight (8) feet each (Par. 3D of Sect. 12-103 of the Ordinance); temporary signs announcing such happenings as "grand opening", which are limited to a maximum of twenty (20) square feet in area, eight (8) feet in height, for a period of fourteen (14) days (Par. 3G of Sect. 12-103 of the Ordinance); and bunting, banners, pennants and

other decorative materials which must be securely attached to the building, shall not exceed twice the allowable building-mounted sign area, for a period not to exceed fourteen (14) days, only in a location that has been given written approval by the Zoning Administrator, which may be displayed only one (1) time in a twelve (12) month period, and only upon the posting of a bond, with surety satisfactory to the Zoning Administrator, to ensure the removal of the signs at the termination of the fourteen (14) day period (Par. 3G of Sect. 12-103 of the Ordinance).

B. Regardless of the "Possible Sign Location" denoted in the CDP/FDP for Land Bay B, freestanding identification signs shall be limited to one (1) at each primary entrance to the development off of Fairfax Ridge Road, and shall be of a design, style, and color in substantial conformance with that shown on the CDP/FDP for Land Bay A.

C. Illumination of signs shall be in conformance with the performance standards for glare as set forth in Part 9 of Article 14 of the Zoning Ordinance. Additionally, signs that require lighting shall be internally illuminated or down-lit to avoid glare and light trespass. No uplighting shall be permitted on any sign.

D. No temporary signs (including "popsicle" paper or cardboard signs) which are prohibited by Article 12 of the Zoning Ordinance, and no signs which are prohibited by Chapter 7 of Title 33.1 or Chapter 8 of Title 46.2 of the Code of Virginia shall be placed on or off-site by the Applicant or by any builder or at the Applicant's or any builder's direction to assist in the initial and future marketing and/or sales/rental of dwelling units on the Property. The Applicant shall direct its agents and employees involved in marketing the Property to adhere to this proffer.

24. Sewer Capacity. The Applicant shall demonstrate that there is adequate sewer capacity to service the proposed development on Land Bay B, to the satisfaction of DPWES, prior to approval of a site plan for the building on Land Bay B. Further, the Applicant shall ensure that any deficiencies in the sewer system that are identified by DPWES, which are necessary to be addressed in order to ensure adequate sewer capacity for Land Bay B, are addressed. No site plan shall be approved for any structure that will require additional sewer capacity shall occur on Land Bay B, if and until adequate sewer capacity is verified by DPWES. Such verification shall occur prior to site plan submission.

25. Swimming Pool Discharge. Swimming pool discharge water shall be routed into the stormwater management system. The discharge process shall follow the guidelines below in order to ensure that pool water is property neutralized prior to being discharged:

A. In order to ensure that high levels of chlorine are not discharged into the surface water system, pool water shall not be chlorinated prior to backwashing and/or discharge.

B. All waste water resulting from the cleaning and draining of the pool shall meet the appropriate level of water quality prior to discharge.

C. If the water being discharged from the pool is discolored or contains a high level of suspended solids that could affect the clarity of the receiving stream, it shall be allowed to stand so that most of the solids settle out prior to being discharged.

26. Severability. If determined appropriate in accordance with the parameters stated in Par. 10D of Sect. 16-402 of the Ordinance, any of these land bays/sections/buildings within the Property may be subject to Proffered Condition Amendments and Final Development Plan Amendments without joinder or consent of the property owners of the other land bays/sections/buildings.

27. Successors and Assigns. These proffers will bind and inure to the benefit of the Applicant and his/her successors and assigns, and shall remain in full force and effect regardless of whether the multi-family residential units on Land Bay B are for rent or for sale.

28. Counterparts. These proffers may be executed in one or more counterparts, each of which when so executed and delivered shall be deemed an original document and all of which taken together shall constitute but one in the same instrument.

{A0502251.DOC / 1 Proffers RZ 2006-PR-027 10-31-11 (cln) 000096 000048}

[SIGNATURES BEGIN ON NEXT PAGE]

RZ 2006-PR-027
Signature Sheet

CO-APPLICANT

TCR MID ATLANTIC PROPERTIES, INC.

Alice S. Tanchel

By: Alice S. Tanchel
Its: Vice President

[SIGNATURES CONTINUED ON NEXT PAGE]

RZ 2006-PR-027
Signature Sheet

CO-APPLICANT / AGENT FOR TITLE OWNERS OF TAX MAP 56-2 ((27)) (5) 101-413, (6) 101-413, (7) 101-410, (8) 101-413, (9) 101-413, (10) 101-410, (11) 101-410 and 46-4 ((19)) (1) 101-421, (2) 101-306, (3) 101-413, (4) 101-410

FAIRFAX RIDGE CONDOMINIUM UNIT OWNERS ASSOCIATION

By: OAC Fairfax LLC
Its: Attorney-in-Fact by virtue of Declaration and Power of Attorney dated 11/16/04 recorded at Deed Book 16740 Page 2163 among the Land Records of Fairfax County, Virginia

By: CREL/OAC L.L.C.,
Its: Sole Member

By: Anthony S. Fusco
Its: Vice President

By: Camile C. Saba
Its: Senior Vice President

[SIGNATURES CONTINUED ON NEXT PAGE]

RZ 2006-PR-027
Signature Sheet

TITLE OWNER OF TAX MAP 56-2 ((1)) 18A

OAC FAIRFAX LLC

By: CREL/OAC L.L.C.
Its Sole Member

By: Anthony S. Fusco
Its: Vice President

By: Camile G. Saba
Its: Senior Vice President

[SIGNATURES END]

County of Fairfax, Virginia

To protect and enrich the quality of life for the people, neighborhoods and diverse communities of Fairfax County

November 2, 2011

Lynne J. Strobel
Walsh, Colucci, Lubeley, Emrich & Walsh, P.C.
2200 Clarendon Boulevard, 13th Floor
Arlington, VA 22201

Re: Special Exception Amendment Application SEA 00-P-050
(Concurrent with Rezoning Application RZ 2006-PR-027)

Dear Ms. Strobel:

At a regular meeting of the Board of Supervisors held on November 1, 2011, the Board approved Special Exception Amendment Application SEA 00-P-050 in the name of TCR Mid Atlantic Properties, Incorporated. The subject property is located in the N.W. quadrant of the southern intersection of Waples Mill Road and Fairfax Ridge Road on approximately 3.19 acres of land zoned PDH-30 and HC in the Providence District [Tax Map 56-2 ((1)) 18A]. The Board's action amends Special Exception Application SE 00-P-050 previously approved for parking in an R-district to permit site modifications and modifications to development conditions pursuant to Sections 9-609 of the Fairfax County Zoning Ordinance, by requiring conformance with the following development conditions which supersede all previous development conditions; conditions carried forward unchanged from previous approvals are marked with an asterisk (*):

1. This Special Exception is granted for and runs with the land indicated in this application and is not transferable to other land. *

2. This Special Exception is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special exception plat approved with the application, as qualified by these development conditions. *

3. This Special Exception is subject to the provisions of Article 17, Site Plans, as may be determined by the Director, Department of Public Works and Environmental Services (DPWES). Any plan submitted pursuant to this special exception shall be in substantial conformance with the approved Special Exception Plat entitled "Fairfax Ridge Land Bays A & B" prepared by Land Design, and dated April 4, 2005, as revised through September 6, 2011, and these conditions. Minor modifications to the approved special exception may be permitted pursuant to Par. 4 of Sect. 9-004 of the Zoning Ordinance. *

Office of the Clerk to the Board of Supervisors
12000 Government Center Parkway, Suite 533
Fairfax, Virginia 22035
Phone: 703-324-3151 ♦ Fax: 703-324-3926 ♦ TTY: 703-324-3903
Email: clerktothebos@fairfaxcounty.gov
http://www.fairfaxcounty.gov/bosclerk

4. Pursuant to Par. 6 of Sect. 6-106 of the Zoning Ordinance, the maximum area devote to this parking use shall not exceed that shown on the SEA Plat, and shall not exceed 275 parking spaces.

5. The parking area shall not be used as a commercial off-street parking lot as defined by the Zoning Ordinance, where a charge or fee is imposed for temporary, daily or overnight storage of motor vehicles. *

6. No signage (other than directional signage) associated with the parking use shall be placed on the application property.

This approval, contingent on the above noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be himself responsible for obtaining the required Non-Residential Use Permit through established procedures, and this Special Exception shall not be valid until this has been accomplished.

Pursuant to Section 9-015 of the Zoning Ordinance, this special exception shall automatically expire, without notice, thirty (30) months after the date of approval unless, at a minimum, the use has been established or construction has commenced and been diligently prosecuted. The Board of Supervisors may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special exception. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

The Board also:

- Waived the loading space requirement for Land Bay A only.
- Modified transitional screening requirements and waiver of the barrier requirements along the I-66 right-of-way.
- Waived the service drive requirement along Route 50 and I-66.
- Waived on-site stormwater management requirements, in favor of the regional pond constructed on Land Bay A.
- Waived of the open space requirement, in favor of that shown on the Conceptual/Final Development Plan (CDP/FDP).

The Board also approved concurrent rezoning application RZ 2006-PR-027 subject to proffers dated October 31, 2011. Please note that on October 20, 2011, the Planning Commission approved Final Development Plan Application FDP 2006-PR-027.

Sincerely,

Catherine A. Chianese
Clerk to the Board of Supervisors

Cc: Chairman Sharon Bulova
Supervisor Lynda Smyth, Providence District
Janet Coldsmith, Director, Real Estate Division, Dept. of Tax Administration
Barbara C. Berlin, Director, Zoning Evaluation Division, DPZ
Diane Johnson-Quinn, Deputy Zoning Administrator, Dept. of Planning and Zoning
Angela K. Rodeheaver, Section Chief, Transportation Planning Division
Ken Williams, Plans & Document Control, ESRD, DPWES
Department of Highways-VDOT
Sandy Stallman, Park Planning Branch Manager, FCPA
District Planning Commissioner
Karyn Moreland, Chief Capital Projects Sections, Dept. of Transportation

ATTACHMENT 6

CONCEPTUAL DEVELOPMENT PLAN/FINAL DEVELOPMENT PLAN

TAX MAP 46-4 ((19)) (01) -0101 THRU -0421 TAX MAP 56-2 ((27)) (07) -0101 THRU -0410
TAX MAP 46-4 ((19)) (02) -0101 THRU -0306 TAX MAP 56-2 ((27)) (08) -0101 THRU -0413
TAX MAP 46-4 ((19)) (03) -0101 THRU -0413 TAX MAP 56-2 ((27)) (09) -0101 THRU -0413
TAX MAP 46-4 ((19)) (04) -0101 THRU -0410 TAX MAP 56-2 ((27)) (10) -0101 THRU -0410
TAX MAP 56-2 ((27)) (05) -0101 THRU -0413 TAX MAP 56-2 ((27)) (11) -0101 THRU -0410
TAX MAP 56-2 ((27)) -0101 THRU -0413 TAX MAP 56-2 ((01)) 18A

SPECIAL EXCEPTION AMENDMENT PLAT/SEA

FOR TAX MAP 56-2 ((01)) 18A

FAIRFAX RIDGE LAND BAYS A & B

Providence Magisterial District
Fairfax County, Virginia

PREPARED FOR:

TCR MID-ATLANTIC PROPERTIES

APRIL 4, 2005

Application No. RZ / FDP 2006-PR-027 Staff T.S.
Approved Development Plan
(DP) (FDP) (CDP) (PDP)
SEE PROFFERS DATED 10-31-2011
Date of (BOS)(PC) approval 11-1-2011
Sheet 1 of 29
FDP approved by PC 10-20-2011 w/ conditions
Concur w/ SEA 2006-P-027 approved 11-1-2011
w/ SEA conditions 9-23-2011

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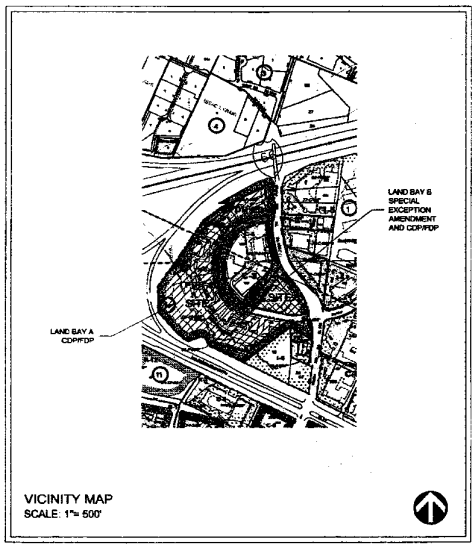
12	REGIONAL DETENTION POND #D-47 CROSS SECTION*
13	STREETSCAPE PLAN*

*THESE SHEETS ARE FOR LANDBAY A ONLY, WHICH WAS PREVIOUSLY CONSTRUCTED. NO CHANGES ARE PROPOSED.



VICINITY MAP
SCALE: 1"= 500'

REVISION

REVISED JUNE 27, 2005 - COUNTY COMMENTS
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REVISED JANUARY 7, 2011 - COUNTY COMMENTS
REVISED MARCH 18, 2011 - PARCEL C
REVISED AUGUST 26, 2011
REVISED SEPTEMBER 6, 2011

RECEIVED
Department of Planning & Zoning
SEP 07 2011
Zoning Evaluation Division

COMMONWEALTH OF VIRGINIA
MATTHEW V. CLARK
Cert. No. 662
LANDSCAPE ARCHITECT
9/6/2011

WALSH COLUCCI LUBELEY EMRICH & WALSH PC

VIKA INCORPORATED
8180 GREENSBORO DRIVE SUITE 200 MCLEAN, VIRGINIA 22102
(703)442-7800 FAX (703)761-2787
MCLEAN, VA GAITHERSBURG, MD

PREPARED BY:
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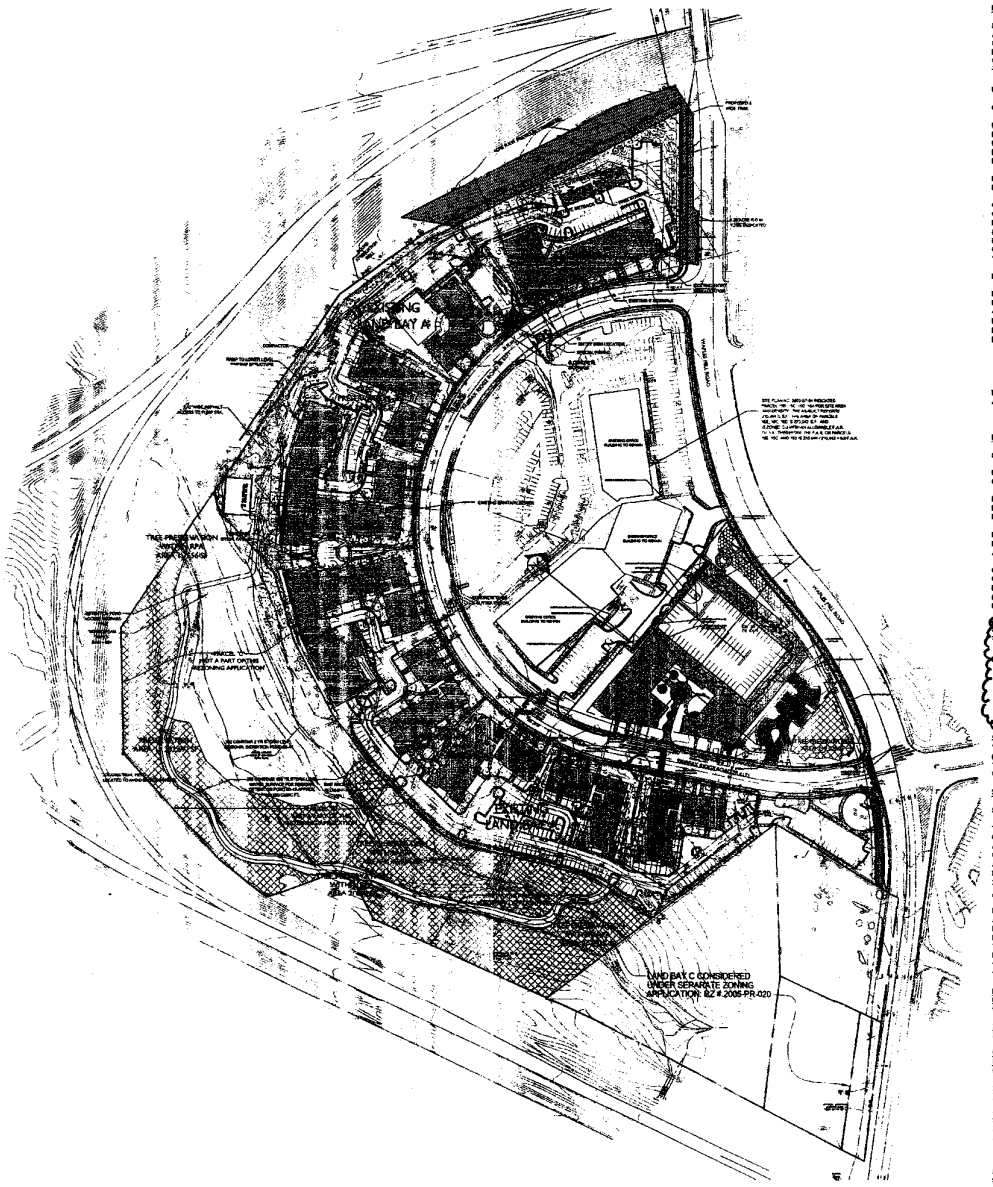
LDI# 2010005

SHEET NUMBER: 1



FINAL DEVELOPMENT PLAN TABULATION FOR LAND BAY A

SITE AREA:	536,695 SF OR 12.32082 AC.
AREA DEDICATED TO BOS-ZONED PDH-20	
GRANTED DENSITY CREDIT DB 20235 PG2134:	326,800 SF OR 7.502030 AC.
PREVIOUS STREET DEDICATION	
WITH DENSITY CREDIT DB 13119 PG1704:	42,354 SF OR 0.97231 AC.
TOTAL AREA FOR DENSITY CALCULATION	905,849 SF OR 20.79543 AC.
NUMBER OF MULTI-FAMILY DWELLING UNITS:	420
CLUBHOUSE/LEASING OFFICE:	6,500 SQUARE FEET
NUMBER OF RESIDENTIAL STORIES	
BUILDINGS 1 -4	4 STORIES
BUILDING HEIGHT:	60 FEET
BUILDINGS 5-13	6 STORIES
BUILDING HEIGHT:	65 FEET
NUMBER OF PARKING GARAGE LEVELS:	2
HEIGHT OF PARKING GARAGE:	8 FEET
OPEN SPACE REQUIRED:	40% (8.31 AC)
OPEN SPACE PROVIDED:	23.8% (4.95 +/- AC)
DEVELOPED RECREATIONAL OPEN SPACE: (INCLUDES POOL, RECREATIONAL FACILITIES IN CLUBHOUSE, TOTLOT, AMENITY COURTYARDS, AND JOGGING TRAIL.)	1.65 AC +/- 1.85 AC +/-

**SEE SHEET 3 NOTE 25.H. REGARDING WAIVER OF OPEN SPACE REQUIREMENT.

PARKING TABULATION (PER APPROVED AS-BUILT #3993-SAB-002)

REQUIRED: 399 MULTI-FAMILY UNITS AT 1.6 PER UNIT OR 638 SPACES
REQUIRED: 21 MULTI-FAMILY (RENTAL TOWNS) UNITS AT 2.3 SPACES PER UNIT OR 49 SPACES
REQUIRED: 658 SPACES
PROVIDED: 686 SPACES
BREAKDOWN: SURFACE REGULAR= 383 (INC. H/C)
UNATTACHED GARAGE= 10
TANDEM SPACES= 79
INTERIOR BLDG SPACES= 69
STRUCTURED PARKING= 146 (INC. 5 H/C)

NOTE: NO NEW CONSTRUCTION IS PROPOSED FOR LAND BAY A. ALL STRUCTURES ARE EXISTING AND WILL REMAIN.

FINAL DEVELOPMENT PLAN TABULATION FOR LAND BAY B (T.M. 56-2-01-00188)

SITE AREA:	138,931 SF OR 3.18940 AC
PROPOSED MAXIMUM NUMBER OF MULTI-FAMILY DWELLING UNITS:	150
PROPOSED CLUBHOUSE/LEASING OFFICE:	4,500 SQUARE FEET MINIMUM
MAXIMUM NUMBER OF RESIDENTIAL STORIES:	4 STORIES PLUS BASEMENT
MAXIMUM BUILDING HEIGHT	60 FEET
MAXIMUM # OF PARKING GARAGE LEVELS:	7
MAXIMUM HEIGHT OF PARKING GARAGE ABOVE GROUND:	60 FEET
OPEN SPACE REQUIRED	40% (1.28 AC)
OPEN SPACE PROVIDED	44% (1.40 AC)
DEVELOPED RECREATIONAL OPEN SPACE: (INCLUDES AMENITY COURTYARD, CLUBHOUSE, RESIDENTIAL ENTRANCE AND SEATING AREA)	0.37 AC +/-

RESIDENTIAL PARKING SPACES REQUIRED:	240 SPACES
*OFFICE PARKING:	275 SPACES
TOTAL PARKING REQUIRED	515 SPACES
PARKING PROVIDED:	
RESIDENTIAL PARKING:	259 SPACES
(A MINIMUM OF 1 SPACE PER BEDROOM WILL BE PROVIDED)	
*OFFICE PARKING:	275 SPACES
ADDITIONAL RESIDENTIAL PARKING:	100 SPACES
TOTAL PARKING PROVIDED	634 SPACES

LOADING SPACES PROVIDED: 2

SEE NOTE #8 ON SHEET 3.
*NOTE: OFFICE PARKING PROVIDED PURSUANT TO EASEMENT AGREEMENT (DEED BOOK 5748 PAGE 860) WITH GATEWAY PIEDMONT INC. TM #56-2-01-00188. THE NUMBER OF SPACES PROVIDED FOR THE OFFICE WILL EQUAL THE NUMBER OF SPACES DEMOLISHED DURING CONSTRUCTION.

SPECIAL EXCEPTION TABULATION FOR LAND BAY B ONLY

SPECIAL EXCEPTION AREA: 138,931 SF OR 3.18942 AC

*THIS SPECIAL EXCEPTION IS SUBJECT TO PARAGRAPH 6C OF SECTION 6-109 OF THE ZONING ORDINANCE WHICH STATES IN GENERAL THAT THE MAXIMUM TOTAL LAND AREA DEVOTED TO A SECONDARY USE WITHIN A PDH-30 DISTRICT CANNOT EXCEED 200 SQUARE FEET OF COMMERCIAL LAND AREA PER DWELLING UNIT WITHIN A P DISTRICT. 570 DWELLING UNITS ARE PROPOSED PURSUANT TO THIS CDP/FDP; THEREFORE, THE MAXIMUM LAND AREA DESIGNATED FOR THIS USE CANNOT EXCEED 114,000 SF OR 2.62 AC. 24,840 SF IS PROVIDED FOR PARKING FOR THE ADJOINING OFFICE BUILDING IN LAND BAY B.

ADU REQUIREMENT FOR 150 TOTAL MBP UNITS

PLAN RECOMMENDATION = 20-26 DUAC
ACREAGE=23.98 ACRES
EXISTING UNITS=420, 140 MID-RISE UNITS, 280 LOW-RISE UNITS
PROPOSED UNITS=150, ALL MID-RISE UNITS
TOTAL=570 UNITS, 280 LOW RISE, 290 MID-RISE
PROPOSED DENSITY= 23.77 DUAC
10% DENSITY BONUS = 22 - 27.5 DUAC
17% DENSITY BONUS = 23.4 - 28.28 DUAC

LOW-RISE ADU CALCULATION FOR 280 LOW-RISE UNITS
PROPOSED DENSITY - LOW END OF PLAN RECOMMENDATION / HIGH END OF DENSITY BONUS - LOW END OF DENSITY BONUS X 8.38% X # of PROPOSED UNITS

23.77 - 20 / 27.5 - 22 = 3.77 / 5.6 = .666 X 6.25 = 4.26% 280 X 4.26% = 12 ADUS

MID-RISE ADU CALCULATION FOR 290 MID-RISE UNITS
PROPOSED DENSITY - LOW END OF PLAN RECOMMENDATION / HIGH END OF DENSITY BONUS - LOW END OF DENSITY BONUS X 5.0% X # OF PROPOSED UNITS

23.77 - 20 / 28.28 - 20.4 = 3.77 / 7.88 = .644 X 5 = 3.22% 290 X 3.22% = 9 ADUS

TOTAL ADU UNIT COUNT
TOTAL UNITS=150 UNITS
TOTAL MARKET RATE UNITS=129 UNITS
TOTAL ADUS=21 UNITS

ADUS WILL BE LOCATED ON LAND BAY B.

NOTE: APPLICANT RESERVES THE RIGHT TO CONSTRUCT FEWER DWELLING UNITS AND PROPORTIONALLY REDUCE THE NUMBER OF REQUIRED ADUS.

LAND BAYS A & B: CONCEPTUAL DEVELOPMENT PLAN TABULATION

SITE AREA, LAND BAY A:		536,695 SF OR 12.32082 AC
SITE AREA, LAND BAY B:		138,931 SF OR 3.18940 AC
AREA DEDICATED TO BOS-ZONED PDH-20		
GRANTED DENSITY CREDIT DB 20235 PG2134:		326,800 SF OR 7.502030 AC.
PREVIOUS STREET DEDICATION		
WITH DENSITY CREDIT DB 13119 PG1706:		42,354 SF OR 0.97231 AC
TOTAL SITE AREA:		1,044,780 SF OR 23.98483 AC.
PROPOSED ZONING:		
LAND BAYS A & B AND PREVIOUS STREET DEDICATION (16.48253 AC):		PDH-30
AREA DEDICATED TO BOS-ZONED (7.50203 AC):		PDH-20
PROPOSED USE: MULTIFAMILY DWELLINGS AND SECONDARY USE (OFFICE PARKING)		
DENSITY CALCULATIONS FOR LAND BAYS A & B:		
DENSITY PERMITTED: (PDH-30(16.48253 AC)	=	494.47 D.U.'S
DENSITY PERMITTED: (PDH-20)(7.50203 AC)	=	150.04 D.U.'S
TOTAL DENSITY PERMITTED:	=	644.51 D.U.'S
UNITS EXISTING IN LAND BAY A:		420 MULTIFAMILY D.U.'S
UNITS PROPOSED IN LAND BAY B:		150 MULTIFAMILY D.U.'S
TOTAL UNITS PROPOSED:		570 MULTIFAMILY D.U.'S
OVERALL DENSITY:		23.76 D.U.A
OPEN SPACE REQUIRED:		40.0% (9.59 ACRES)
OPEN SPACE PROVIDED:		26.4% (6.35 ACRES)
DEVELOPED RECREATIONAL OPEN SPACE:		2.02 ACRES

**SEE SHEET 3, NOTE 25.H. REGARDING WAIVER OF OPEN SPACE REQUIREMENT.

SEE TABULATIONS THIS SHEET FOR LAND BAY A AND LAND BAY B FOR THE FOLLOWING:
PARKING
ADUS

LEGEND

- PROPERTY LINE
- STREAM BED
- 100 YEAR FLOODPLAIN
- LIMITS OF CLEARING AND GRADING
- SIDEWALK
- SOUND ATTENUATION WALL
- LIMIT OF SPECIAL EXCEPTION
- EXISTING TREES TO REMAIN
- ROW DEDICATION
- RETAINING WALL
- NOISE CONTOUR***

***NOISE CONTOURS SHOWN ON THIS SHEET ARE FROM THE TRAFFIC NOISE ANALYSIS FOR FAIRFAX RIDGE, REPORT #5039, REVISED 2 NOVEMBER 2001, PREPARED BY POLYSONICS CORPORATION. THESE NOISE CONTOURS ARE BASED UPON MEASUREMENT SURVEYS PRIOR TO THE CONSTRUCTION OF THE SOUND WALLS ALONG I-66

Application No. RZ / FDP 2006-PR-027 Staff T.S.
Approved Development Plan
(DP) (FDP) (CDP) (PDP)
SEE PROFFERS DATED 10-31-2011
Date of (BOS) (PC) approval 11-1-2011
Sheet 2 of 29
FDP approved by PC 10-20-2011 no conditions
Concur w/ SEA 2006-P-059 - approved 11-1-2011
w/ SEA conditions 9-22-2011

NORTH
50 0 50 100 200

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COMMONWEALTH OF VIRGINIA
MATTHEW V. CLARK
Lic. No. 0405
9/6/2011
LANDSCAPE ARCHITECT

Fairfax Ridge Land Bays A & B

CDP/FDP

TCR Mid Atlantic Properties, Inc.; Providence Magisterial District; Fairfax County, Virginia

CDP/ FDP/SE Plat

REVISIONS
JUNE 27, 2006
JULY 14, 2006
JUNE 13, 2006
JULY 14, 2006
JULY 28, 2006
AUGUST 31, 2006
AUGUST 31, 2006
DECEMBER 21, 2006
JANUARY 5, 2007
FEBRUARY 5, 2007

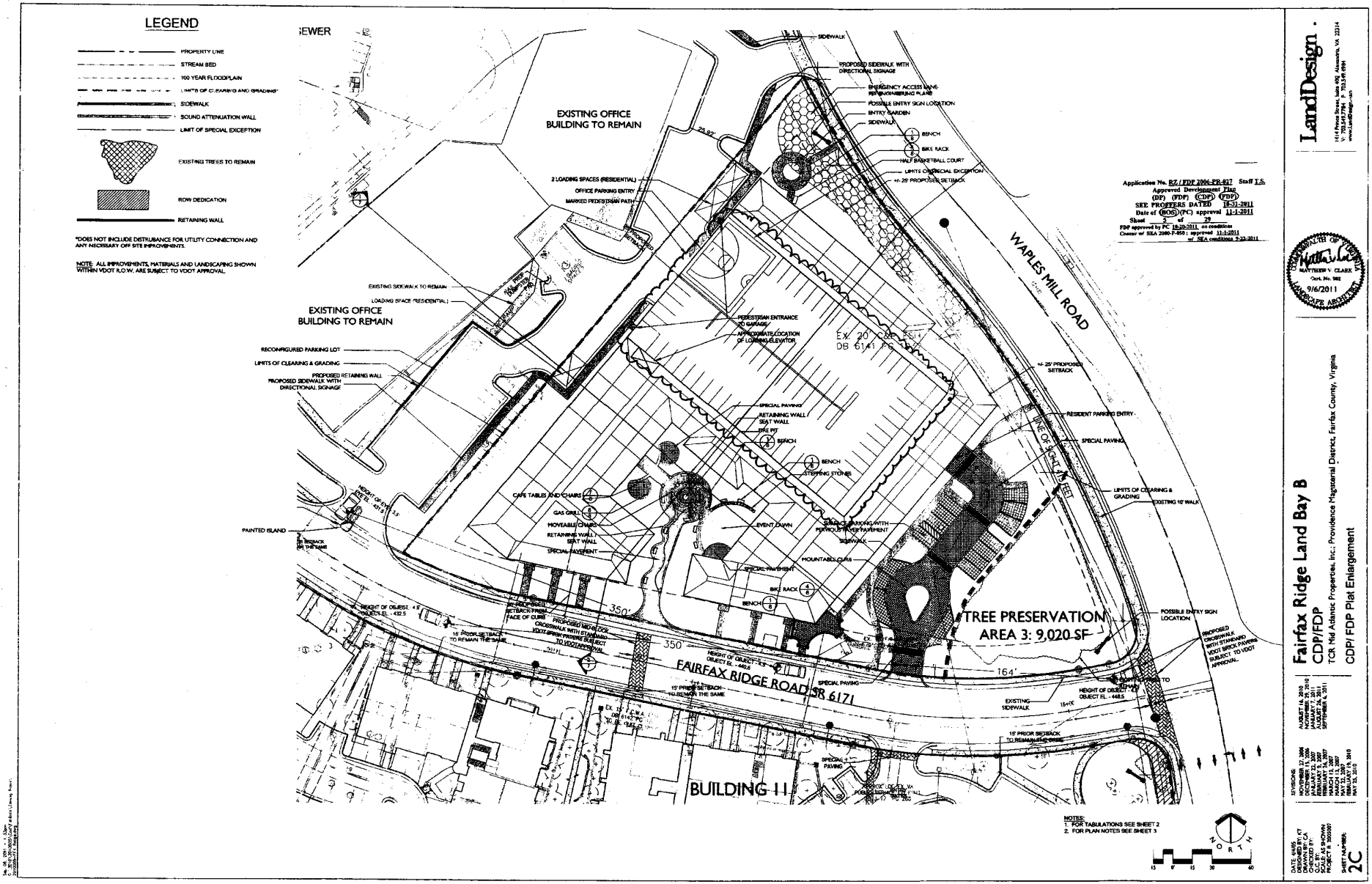
FEBRUARY 26, 2007
MARCH 13, 2007
APRIL 2, 2007
FEBRUARY 15, 2010
MARCH 15, 2010
AUGUST 16, 2010
SEPTEMBER 13, 2010
SEPTEMBER 15, 2010
JANUARY 7, 2011
JANUARY 24, 2011
AUGUST 12, 2011
SEPTEMBER 14, 2011

DATE: 4/4/05
DESIGNED BY: K.T
DRAWN BY: K.T
CHECKED BY:
SCALE: AS SHOWN
PROJECT #: 2006007

SHEET NUMBER: 2

Fairfax Ridge Land Bay A
CDP/FDP
TCR Mid Atlantic Properties, Inc.; Providence Magisterial District, Fairfax County, Virginia
CDP/ FDP/SE Plat Enlargement
LandDesign.
LEGEND
PROPERTY LINE
STREAM BED
100 YEAR FLOODPLAIN
LIMITS OF CLEARING AND GRADING
SIDEWALK
SOUND ATTENUATION WALL
LIMIT OF SPECIAL EXCEPTION
EXISTING TREES TO REMAIN
ROW DEDICATION
RETAINING WALL
NOTE: THIS SHEET IS FOR LAND BAY A ONLY AND IS ALREADY CONSTRUCTED. NO CHANGES ARE PROPOSED.
WAPLES MILL ROAD
MATCHLINE SEE SHEET 2B
BUILDING I
BUILDING II
EXISTING OFFICE BUILDING TO REMAIN
ENTRY SIGN LOCATION
SPECIAL PAVING
STORAGE
EXISTING 6' SIDEWALK
EXISTING CURB & GUTTER
EXISTING STORM SEWER
EXISTING STORM MANHOLE
EXISTING STORM INLET
EXISTING STORM SEWER MANHOLE
EXISTING STORM SEWER INLET
EXISTING STORM SEWER
EXISTING SANITARY SEWER
EXISTING SANITARY SEWER MANHOLE
EXISTING SANITARY SEWER CLEANOUT
EXISTING WATER VALVE
EXISTING WATER METER
EXISTING WATER MANHOLE
EXISTING WATER LINE
EXISTING GAS VALVE
EXISTING GAS METER
EXISTING GAS LINE
EXISTING UTILITY POLE
EXISTING UTILITY POLE W/ LIGHT
EXISTING UTILITY POLE W/ TRANSFORMER
EXISTING UTILITY POLE W/ GUY WIRE
EXISTING UTILITY POLE W/ TRANSFORMER & GUY WIRE
EXISTING UTILITY POLE W/ LIGHT & GUY WIRE
EXISTING UTILITY POLE W/ TRANSFORMER & LIGHT
EXISTING UTILITY POLE W/ TRANSFORMER, LIGHT & GUY WIRE
EXISTING UTILITY POLE W/ TRANSFORMER &

Fairfax Ridge Land Bay A
CDP/FDP
CDP/ FDP/SE Plat Enlargement
TCR Mid Atlantic Properties, Inc., Providence Magisterial District, Fairfax County, Virginia
LandDesign.
2B
LEGEND
EXISTING
LAND BAY A
LAND BAY C CONSIDERED UNDER SEPARATE ZONING APPLICATION: RZ #: 2005-PR-020
SEE SHEET 2C FOR PROPOSED
WAPLES MILL ROAD
MATCHLINE SEE SHEET 2A
NOTE: THIS SHEET IS FOR LAND BAY A ONLY, AND IS ALREADY CONSTRUCTED. NO CHANGES ARE PROPOSED.


LEGEND
PROPERTY LINE
STREAM BED
100 YEAR FLOODPLAIN
LIMITS OF CLEARING AND GRADING*
SIDEWALK
SOUND ATTENUATION WALL
LIMIT OF SPECIAL EXCEPTION
EXISTING TREES TO REMAIN
ROW DEDICATION
RETAINING WALL
*DOES NOT INCLUDE DISTRUBANCE FOR UTILITY CONNECTION AND ANY NECESSARY OFF SITE IMPROVEMENTS.
NOTE: ALL IMPROVEMENTS, MATERIALS AND LANDSCAPING SHOWN WITHIN VDOT R.O.W. ARE SUBJECT TO VDOT APPROVAL
SEWER
EXISTING OFFICE BUILDING TO REMAIN
EXISTING OFFICE BUILDING TO REMAIN
WAPLES MILL ROAD
FAIRFAX RIDGE ROAD SR 6171
BUILDING II
TREE PRESERVATION AREA 3: 9,020 SF
SIDEWALK
PROPOSED SIDEWALK WITH DIRECTIONAL SIGNAGE
EMERGENCY ACCESS LANE PER MINIMUM PUBLIC PLANS
POSSIBLE ENTRY SIGN LOCATION
ENTRY GARDEN
BENCH
BIKE RACK
HALF BASKETBALL COURT
LIMITS OF SPECIAL EXCEPTION
+/- 25' PROPOSED SETBACK
2 LOADING SPACES (RESIDENTIAL)
OFFICE PARKING ENTRY
MARKED PEDESTRIAN PATH
EXISTING SIDEWALK TO REMAIN
LOADING SPACE (RESIDENTIAL)
RECONFIGURED PARKING LOT
LIMITS OF CLEARING & GRADING
PROPOSED RETAINING WALL
PROPOSED SIDEWALK WITH DIRECTIONAL SIGNAGE
PEDESTRIAN ENTRANCE TO GARAGE
APPROXIMATE LOCATION OF LOBBY ELEVATOR
EX. 20' CSE
DB 6141 PG 1351
SPECIAL PAVING
RETAINING WALL
SEAT WALL
FIRE PIT
BENCH
STEPPING STONES
CAFE TABLES AND CHAIRS
GAS GRILL
MOVEABLE CHAIRS
RETAINING WALL / SEAT WALL
SPECIAL PAVEMENT
EVENT LAWN
PARALLEL PARKING WITH PERVIOUS PAVEMENT
SIDEWALK
MOUNTABLE CURB
SPECIAL PAVEMENT
BIKE RACK
BENCH
PAINTED ISLAND
HEIGHT OF OBJECT: 4.5' OBJECT EL. - 432.5
16' PRIOR SETBACK TO REMAIN THE SAME
PROPOSED CROSSWALK WITH STANDARD VDOT BRICK PAVERS SUBJECT TO VDOT APPROVAL
350'
350'
15' PRIOR SETBACK TO REMAIN THE SAME
HEIGHT OF OBJECT: 4.5' OBJECT EL. - 448.5
SPECIAL PAVING
EXISTING SIDEWALK
164'
15' PRIOR SETBACK TO REMAIN THE SAME
SPECIAL PAVING
LINE OF SIGHT 475 FEET
RESIDENT PARKING ENTRY
SPECIAL PAVING
LIMITS OF CLEARING & GRADING
EXISTING 10' WALK
+/- 25' PROPOSED SETBACK
POSSIBLE ENTRY SIGN LOCATION
PROPOSED CROSSWALK WITH STANDARD VDOT BRICK PAVERS SUBJECT TO VDOT APPROVAL
NOTES:
1. FOR TABULATIONS SEE SHEET 2
2. FOR PLAN NOTES SEE SHEET 3
NORTH
Application No. RZ / FDP 2006-PR-027 Staff T.S.
Approved Development Plan
(DP) (FDP) (CDP) (FDP)
SEE PROFFERS DATED 10-31-2011
Date of (BOS) (PC) approval 11-1-2011
Sheet 2 of 29
FDP approved by PC 10-20-2011, as conditions
Concur w/ SEA 2006-P-050 ; approved 11-1-2011
w/ SEA conditions 7-22-2011
COMMONWEALTH OF VIRGINIA
MATTHEW V. CLARK
Cert. No. 982
9/6/2011
LANDSCAPE ARCHITECT
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Fairfax Ridge Land Bay B
CDP/FDP
TGR Mid Atlantic Properties, Inc.; Providence Magisterial District, Fairfax County, Virginia
CDP/ FDP Plat Enlargement
DATE: 6/4/05
DESIGNED BY: KT
DRAWN BY: CA
CHECKED BY:
SCALE: AS SHOWN
PROJECT #: 2005007
SHEET NUMBER:
2C
REVISIONS
NOVEMBER 17, 2006
AUGUST 23, 2007
JANUARY 7, 2011
FEBRUARY 14, 2007
MARCH 13, 2007
MAY 22, 2007
FEBRUARY 17, 2010
MAY 25, 2010
AUGUST 23, 2010
NOVEMBER 15, 2010
JANUARY 7, 2011
AUGUST 5, 2011
SEPTEMBER 6, 2011

NOTES:

1. THE PROPERTY SHOWN HEREON IDENTIFIED BY TAX REFERENCE: TAX MAP 46-4 ((19)) (01) -0101 THRU -0421; TAX MAP 46-4 ((19)) (02) -0101 THRU -0306; TAX MAP 46-4 ((19)) (03) -0101 THRU -0413, TAX MAP 46-4 ((19)) (04) -0101 THRU -0410; TAX MAP 46-4 ((19)) (05) -0101 THRU -0413; TAX MAP 46-4 ((19)) (06) -0101 THRU -0413, TAX MAP 46-4 ((19)) (07) -0101 THRU -0410; TAX MAP 46-4 ((19)) (08) -0101 THRU -0415, TAX MAP 46-4 ((19)) (09) -0101 THRU -0413; TAX MAP 46-4 ((19)) (10) -0101 THRU -0410; TAX MAP 46-4 ((19)) (11) -0101 THRU -0410 AND 56-2-01-0015A ALL CURRENTLY ZONED PDH-30.

2. THE PURPOSE OF THIS APPLICATION IS TO REZONE TAX MAP PARCELS REFERENCED IN NOTE #1 ABOVE OWNED BY FAIRFAX RIDGE LIMITED PARTNERSHIP, FAIRFAX RIDGE DEVELOPMENT, LLC, AND VARIOUS INDIVIDUAL OWNERS FROM PDH-20 TO PDH-30 TO PERMIT MULTIFAMILY DEVELOPMENT. CDP/FDP APPROVAL IS SOUGHT FOR THE ENTIRE APPLICATION AREA. THE SPECIAL EXCEPTION AMENDMENT IS TO ALLOW PARKING FOR AN OFF-SITE COMMERCIAL CENTER/MUSE IN A PDH-30 ZONE. THE EXISTING PARKING LOT WILL BE REPLACED BY A STRUCTURED UNDERGROUND PARKING FACILITY ON PARCEL 16A (LAND BAY E).

3. BOUNDARY INFORMATION PREPARED BY VIKA, INC THROUGH FIELD SURVEY IN MARCH, 2002 (LAND BAYS A AND B). TOPOGRAPHY IS FROM AN AERIAL SURVEY AND IS AT A TWO (2) FOOT CONTOUR INTERVAL. TOPOGRAPHY SHOWN ON LAND BAY A IS PRIOR TO CONSTRUCTION, AS-BUILT TOPOGRAPHY NOT YET AVAILABLE. LANDDESIGN, INC. ASSUMES NO RESPONSIBILITY FOR DESIGN OR CONSTRUCTION CHANGES CAUSED BY INACCURACIES IN THE TOPOGRAPHIC INFORMATION.

4. THE BUILDING FOOTPRINT FOR LANDBAY B REPRESENTED HEREON ARE APPROXIMATE. THE BUILDING FOOTPRINT MAY BE INCREASED OR DECREASED AND/OR THE NUMBER OF RESIDENTIAL UNITS IN EACH BUILDING MAY BE MODIFIED SO LONG AS THE OPEN SPACE PROVIDED IN THE TABULATION AND THE MINIMUM DIMENSIONS TO THE PERIPHERAL LOT LINES AND LANDSCAPING AS SHOWN ON THIS PLAN ARE NOT DIMINISHED. THE APPLICANT RESERVES THE RIGHT TO DEVELOP A LESSER NUMBER OF DWELLING UNITS OR SQUARE FEET THAN THAT NUMBER REPRESENTED IN THE TABULATION AND RESERVES THE RIGHT TO REDUCE THE NUMBER OF PARKING SPACES AND ADUS ACCORDINGLY. ALL BUILDINGS SHOWN ON LANDBAY A ARE EXISTING AND WILL REMAIN. NO NEW CONSTRUCTION IS PROPOSED FOR LAND BAY A.

5. AFFORDABLE DWELLING UNITS WILL BE PROVIDED IN ACCORDANCE WITH ARTICLE 2-800 OF THE ZONING ORDINANCE.

6. PARKING WILL BE PROVIDED IN ACCORDANCE WITH THE PROVISIONS OF ARTICLE 11 OF THE ZONING ORDINANCE. THE NUMBER OF PARKING SPACES PROVIDED MAY BE ADJUSTED BASED ON THE ACTUAL NUMBER OF UNITS CONSTRUCTED. FREESTANDING GARAGES AS SHOWN ON CDP/FDP PLAT MAY OR MAY NOT BE PROVIDED. IF PROVIDED, GARAGES AND ANY TANDEM SPACE BEHIND WILL COUNT AS PART OF THE REQUIRED PARKING SPACES. THE APPLICANT RESERVES THE RIGHT TO PROVIDE MORE THAN THE MINIMUM REQUIRED PROVIDED OPEN SPACE IS NOT DECREASED OR THE PARKING LOCATED CLOSER TO THE PROPERTY LINE. ON SITE PARKING MAY BE LOCATED ON THE SURFACE, BENEATH THE BUILDINGS, IN TANDEM SPACES, WITHIN THE BUILDING FOOTPRINT AND/OR IN PARKING STRUCTURE(S).

7. IN ACCORDANCE WITH PARAGRAPH 6 OF SECTION 16-204 OF THE ZONING ORDINANCE, MINOR MODIFICATIONS TO THE SIZES, DIMENSIONS, FOOTPRINTS AND LOCATIONS OF BUILDINGS, SIDEWALKS, TRAILS AND UTILITIES MAY OCCUR WITH FINAL ENGINEERING AND DESIGN WITHOUT REQUIRING AN AMENDMENT TO THIS CDP/FDP PLAT.

8. THERE ARE EXISTING FLOOD PLAIN, STORM DRAINAGE AND SANITARY SEWER EASEMENTS SHOWN ON THE GRAPHIC. THE RESOURCE PROTECTION AREA (RPA) IS SHOWN HEREON.

9. THE LIMITS OF CLEARING AND GRADING AND THE LANDSCAPED OPEN SPACE AREA REPRESENTED ON THE GRAPHIC ARE PRELIMINARY AND SUBJECT TO MODIFICATION AT THE TIME OF FINAL ENGINEERING AND DESIGN. LANDSCAPING AND TREE COVER CONSISTING OF A COMBINATION OF EVERGREEN AND DECIDUOUS TREES WILL BE PROVIDED IN ACCORDANCE WITH THE APPLICABLE PROVISIONS OF ARTICLE 13 AND IN CONFORMANCE WITH THIS CDP/FDP PLAT.

10. STORM WATER MANAGEMENT (SWM) WILL BE PROVIDED FOR THE SITE IN REGIONAL DRY POND #247 PREVIOUSLY CONSTRUCTED IN THE EQC AREA IN ACCORDANCE WITH THE REQUIREMENTS OF THE FAIRFAX COUNTY REGIONAL STORM WATER MANAGEMENT PLAN PREPARED BY CAMP DRESSER AND MCKEE DATED NOVEMBER 1988. BEST MANAGEMENT PRACTICES (BMP'S) WILL BE PROVIDED IN ACCORDANCE WITH FAIRFAX COUNTY ORDINANCES UNLESS MODIFIED BY PROFFERED CONDITIONS AND/OR WAIVED BY THE DIRECTOR OF DPWES AS ALLOWED WITHIN THE ORDINANCE. THE REGIONAL POND #247 HAS BEEN CONSTRUCTED ON LAND BAY A PURSUANT TO THE APPROVED REGIONAL POND SITE PLAN. THE ADEQUACY OF DOWNSTREAM DRAINAGE IMPROVEMENTS AND CAPACITY OF STORM DRAINAGE PIPES THAT WILL CARRY RUNOFF FROM THE SITE HAS BEEN DEMONSTRATED WITH THE APPROVED PLANS. LANDSCAPING AND AND TREE PRESERVATION AREAS IN AND NEAR THE STORM WATER MANAGEMENT FACILITY HAVE BEEN PROVIDED.

11. THERE ARE NO UTILITY EASEMENTS LOCATED ON THE SUBJECT PROPERTY THAT HAVE A WIDTH OF TWENTY-FIVE FEET OR MORE. EXISTING UTILITY EASEMENTS ARE SHOWN ON THE FDPA.

12. THERE ARE NO KNOWN GRAVES LOCATED ON THE SUBJECT PROPERTY.

13. THE PROPERTY IS LOCATED WITHIN LAND UNIT K WITHIN THE FAIRFAX CENTER AREA OF AREA I.LL. THE PROPOSED DEVELOPMENT COMPLIES WITH THE APPLICABLE DEVELOPMENT CRITERIA WITHIN THE COMPREHENSIVE PLAN.

14. THE PROPOSED DEVELOPMENT ON THE SUBJECT PROPERTY WILL NOT POSE ANY ADVERSE EFFECT ON ADJACENT OR NEIGHBORING PROPERTIES.

15. ADDITIONAL SITE FEATURES SUCH AS GAZEBOS, TRELLISES, ENTRANCE SIGNS, GATEHOUSES, FENCES AND/OR WALLS NOT REPRESENTED HEREON MAY BE PROVIDED IN ACCORDANCE WITH THE ZONING ORDINANCE.

16. THE PROPOSED DEVELOPMENT MAY INCLUDE ACTIVE AND PASSIVE RECREATION FACILITIES SUCH AS SITTING AREAS, SWIMMING POOL, TOT LOT, COMMUNITY CLUBHOUSE, EXERCISE ROOM, PEDESTRIAN AND BICYCLE TRAILS, AND/OR LANDSCAPE GARDENS.

17. SUBJECT TO MARKET CONDITIONS, IT IS CURRENTLY ANTICIPATED THAT CONSTRUCTION OF THE PROPOSED DEVELOPMENT WILL COMMENCE AS SOON AS ALL NECESSARY COUNTY APPROVALS AND PERMITS ARE OBTAINED.

18. THERE ARE NO KNOWN HAZARDOUS OR TOXIC SUBSTANCES STORED ON THE SUBJECT PROPERTY. FURTHER, THE PROPOSED USE WILL NOT GENERATE, UTILIZE, STORE, TREAT OR DISPOSE OF SUCH SUBSTANCES ON THE PROPERTY.

19. THE MAXIMUM RESIDENTIAL BUILDING HEIGHT IS SIXTY FEET (60'). SOME BUILDINGS MAY HAVE ONE LEVEL OF DWELLING UNITS WHICH WILL BE BELOW OR PARTIALLY BELOW FINISHED GRADE, OR TWO TO TWO AND A HALF LEVELS OF PARKING WHICH WILL BE BELOW OR PARTIALLY BELOW FINISHED GRADE.

20. PUBLIC WATER AND SEWER SHALL BE PROVIDED. ALL OTHER PUBLIC UTILITIES SHALL BE PROVIDED TO THE SITE BY EXTENSION OF EXISTING SERVICE IN THE AREA. SOLID WASTE REMOVAL SHALL BE PROVIDED BY PRIVATE CONTRACTOR.

21. IF AN AMENDMENT TO ANY PORTION OF THE FDP OR CDP OR SPECIAL EXCEPTION BECOMES NECESSARY AT A LATER DATE, THE APPLICANT RESERVES THE RIGHT TO SUBMIT ONLY THAT PORTION WHICH IS AFFECTED BY THE AMENDMENT FOR PLANNING COMMISSION REVIEW AND APPROVAL.

22. TITLE REPORTS HAVE BEEN PROVIDED FOR BOTH LAND BAYS A AND B AND HAVE BEEN INCORPORATED INTO THE CERTIFIED PLAT.

23. THE DEVELOPER RESERVES THE RIGHT TO LOCATE TEMPORARY CONSTRUCTION/SALES/LEASING TRAILERS ON THE SITE.

24. THE DEVELOPER RESERVES THE RIGHT TO PROVIDE ACCESS CONTROL FEATURES FOR THE RESIDENTIAL COMPONENT WHICH MAY CONSIST OF ONE OR MORE OF THE FOLLOWING: ENTRY AND EGRESS GATES, GUARDHOUSE(S), PERIPHERAL FENCING AND PEDESTRIAN GATE(S) WITHIN THE CONFINES OF THE GARAGE.

25. THE PROPOSED DEVELOPMENT CONFORMS TO THE PROVISIONS OF ALL APPLICABLE ORDINANCES, REGULATIONS AND ADOPTED STANDARDS WITH THE EXCEPTION OF:

A. A WAIVER OF THE LOADING SPACE REQUIREMENT OF ARTICLE 11 FOR LAND BAY A FOR MULTIFAMILY DWELLINGS IS HEREBY REQUESTED.
B. A MODIFICATION OF TRANSITIONAL SCREENING AND A WAIVER OF THE BARRIER REQUIREMENT ALONG THE R.O.W. OF I-66 UNDER SECTION 13-304 PARAGRAPH 3 OF THE ZONING ORDINANCE.
C. WAIVER OF SERVICE DRIVE REQUIREMENT ALONG I-66 AND ROUTE 50.
D. A WAIVER OF THE ON-SITE STORM WATER MANAGEMENT REQUIREMENT.
E. WAIVER OF THE TRANSITIONAL YARD SCREENING AND BARRIER REQUIREMENTS PURSUANT TO ZONING ORDINANCE SECTION 13-305 PARAGRAPHS (1) AND (5) BETWEEN THE MULTI-FAMILY RESIDENTIAL USES AND OFFICE/COMMERCIAL USES WITHIN THE DEVELOPMENT.
F. A MODIFICATION OF THE INTERIOR PARKING LOT LANDSCAPING REQUIREMENTS OF SECTION 13-202 PARAGRAPH (6) OF THE ZONING ORDINANCE ON THE PARKING STRUCTURE, ABOVE GRADE, TO THAT SHOWN ON WITH THE CDP APPLICATION.
G. MODIFICATION OF SECTION 7-0802.2 OF THE PFM AND SECTION 11.102.12 OF THE ZONING ORDINANCE TO ALLOW FOR THE PROJECTION, BY NO MORE THAN 4'6", OF THE STALL AREA OF STRUCTURAL COLUMNS INTO PARKING STALLS IN PARKING STRUCTURES. SUCH PARKING SPACES SHALL COUNT TOWARD THE NUMBER OF PARKING SPACES REQUIRED BY THE ZONING ORDINANCE.
H. WAIVER OF OPEN SPACE REQUIREMENT (2.0. 6-110).

26. THE EQC LINE DEPICTED ON THESE PLANS WAS ESTABLISHED WITH THE APPROVED REZONING #RZ90-P-040.

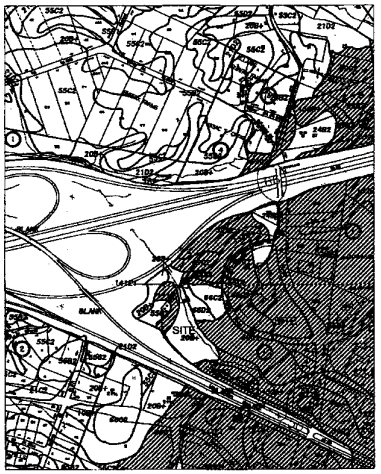
27. THE DEVELOPMENT ON LAND BAY A PURSUANT TO THE APPROVED SITE PLAN IS SUBSTANTIALLY COMPLETE. NO DEVELOPMENT IS PROPOSED FOR LAND BAY A, EXCEPT FOR THAT SHOWN HEREON WHICH IS NECESSARY TO INTERGRATE LAND BAYS A AND B APPROPRIATELY.

28. THE NATURAL FEATURES AND SCENIC ASSETS ON LAND BAY A, TO INCLUDE FLOODPLAINS, WETLANDS, EQC AND WATERCOURSES HAVE BEEN PROTECTED AND PRESERVED, AND A PEDESTRIAN TRAIL PROVIDED, PURSUANT TO THE APPROVED PLANS.

29. LOADING SPACES FOR LAND BAY B WILL BE PROVIDED IN ACCORDANCE WITH THE PROVISIONS OF ARTICLE 11 OF THE ZONING ORDINANCE. THE NUMBER OF SPACES MAY BE ADJUSTED BASED UPON THE ACTUAL GROSS SQUARE FOOTAGE CONSTRUCTED.

30. APPLICANT RESERVES THE RIGHT TO CONSTRUCT FEWER DWELLING UNITS AND PROPORTIONALLY REDUCE THE NUMBER OF REQUIRED ADUS.

31. ALL IMPROVEMENTS, MATERIALS AND LANDSCAPING SHOW WITHIN VDOT R.O.W. IS SUBJECT TO VDOT APPROVAL.



SOILS MAP
Scale: 1"=500'

SOILS LEGEND

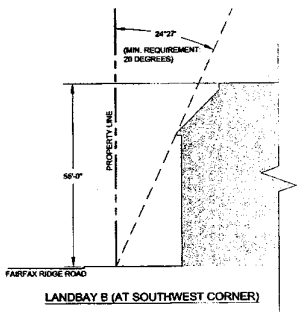
ORANGE SOILS GROUP

20B+	Meadowville Silt Loam
24B	Elioak Silt Loam
52B+	Elbert Silt Loam, Undulating Phase
55C2	Glenelg Silt Loam, Rolling Phase
59B2	Orange Silt Loam, Undulating Phase
59C2	Bremo Orange Silt Loam, Rolling Phase
66C2	Lloyd Loam, Rolling Phase
66D2	Lloyd Loam, Hilly Loam
69C2	Enon Silt Loam, Rolling Phase
141E1	Rocky Land Greenstone, 25%+ slopes with slight erosion.
152B2	Elbert Orange Group, moderate erosion

ANGLE OF BULK PLANE: MULTI-FAMILY BUILDING: PDH30

THE BUILDING(S) IN LANDBAY B WILL COMPLY WITH THE MINIMUM REQUIRED YARD FOR MULTIFAMILY BUILDINGS AT PERIPHERAL BOUNDARIES IN A R-30 ZONE FOR AFFORDABLE DWELLING UNIT DEVELOPMENTS. THESE MINIMUMS REQUIREMENTS ARE LISTED IN THE TABLE BELOW

YARD	ANGLE	DISTANCE
FRONT =	20 DEGREES	NOT LESS THAN 15'
SIDE =	15 DEGREES	NOT LESS THAN 10'
REAR =	15 DEGREES	NOT LESS THAN 15'



LANDBAY B (AT SOUTHWEST CORNER)

NOTE:
THERE IS NO ANGLE OF BULK PLANE REQUIREMENT SPECIFIED FOR THE PDH DISTRICT. THIS GRAPHIC DEPICTION OF THE R-30 DISTRICT REQUIREMENTS IS FOR REFERENCE ONLY IN CONSIDERATION OF THE DESIGN STANDARD SET FORTH IN PAR. 1 OF SECTION 16-102 OF THE ZONING ORDINANCE. ACTUAL BUILDING HEIGHTS AND YARDS ARE AS SHOWN ON THE CDP/FDP.

Application No. RZ / FDP 2006-PR-027 Staff U.S.
Approved Development Plan
(DP) (FDP) (CDP) (FDP)
SEE PROFFERS DATED 10-31-2011
Date of (BOS)(PC) approval 11-1-2011
Sheet 2 of 29
FDP approved by PC 10-20-2011 no conditions
Concur w/ SEA 2006-P-050 ; approved 11-1-2011
w/ SEA conditions 7-22-2011

REVISIONS
MAY 15, 2006
AUGUST 14, 2006
NOVEMBER 15, 2006
JANUARY 7, 2011
AUGUST 31, 2011
DECEMBER 21, 2006
MAY 22, 2007
AUGUST 29, 2011
FEBRUARY 19, 2010

DATE: 4/4/06
DESIGNED BY: KT
DRAWN BY: CA
CHECKED BY:
SCALE: AS SHOWN
PROJECT #: 2005007

SHEET NUMBER:
3

LandDesign.
Landscape Architecture Land Development Transportation
1414 Prince Street, Suite 400 Alexandria, VA 22314
T: 703.549.7784 F: 703.549.0691
www.LandDesign.com

COMMONWEALTH OF VIRGINIA
MATTHEW V. CLARK
Cert. No. 900
9/6/2011
LANDSCAPE ARCHITECT

Fairfax Ridge Land Bays A & B
CDP/FDP
TCR Mid Atlantic Properties, Inc.; Providence Magisterial District, Fairfax County, Virginia

GENERAL NOTES / SOILS MAP / BULK PLANE DIAGRAM

Fairfax Ridge Land Bays A & B

CDP/FDP

TCR Mid Atlantic Properties, Inc. Providence Magisterial District, Fairfax County, Virginia

Landscape Plan

LandDesign.

TREE PRESERVATION AREA

TREE PRESERVATION AREA WITHIN 100 YEAR FLOODPLAIN

EXISTING TREE TO REMAIN

TREE PROVIDING SHADE TO PARKING L

PARKING LOT AREAS TO BE COUNTED

SHEET NUMBER

4

SCALE: AS SHOWN

DESIGNED BY: CA

DRAWN BY: CA

CHK'D BY:

PM/DIRECT #: 3006/007

DATE: 4/4/05

REVISIONS:

4.27.06

MAY 12, 2006

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JUNE 11,

Fairfax Ridge Land Bay A
CDP/FDP
TCR Mid Atlantic Properties, Inc.; Providence Magisterial District, Fairfax County, Virginia
Landscape Plan Enlargement
LandDesign.
1414 Prince St Ste. Suite 400 Alexandria, VA 22314
V. 703.549.7784 F. 703.549.4984
www.LandDesign.com
SHEET NUMBER
4A
PROJECT # 3005007
SCALE: AS SHOWN
DRAWN BY: CK
CHECKED BY:
DATE: 4/4/06
REVISIONS
6-27-06
MAY 25, 2010
NOVEMBER 30 2010
MAY 4, 2011
AUGUST 24, 2011
LEGEND
DECIDUOUS TREE
DECIDUOUS TREE
DECIDUOUS TREE
EVERGREEN TREE
TREE PRESERVATION AREA
TREE PRESERVATION AREA WITHIN 100 YEAR FLOODPLAIN
EXISTING TREE TO REMAIN
TREE PROVIDING SHADE TO PARKING LOT
PARKING LOT AREAS TO BE COUNTED
NOTE: THIS SHEET IS FOR LAND BAY A ONLY AND IS ALREADY CONSTRUCTED. NO CHANGES ARE PROPOSED.
NOTES:
1. FOR ADDITIONAL NOTES SEE SHEET 2
2. FOR PLAN NOTES SEE SHEET 3
3. FOR PLANTING CALCULATIONS SHEE SHEET 4
WAPLES MILL ROAD
MATCHLINE SEE SHEET 4B
BUILDING
EXISTING OFFICE BUILDING TO REMAIN
EXISTING PARKING GARAGE
BAY A
BAY B
BAY C
BAY D
BAY E
BAY F
BAY G
BAY H
BAY I
BAY J
BAY K
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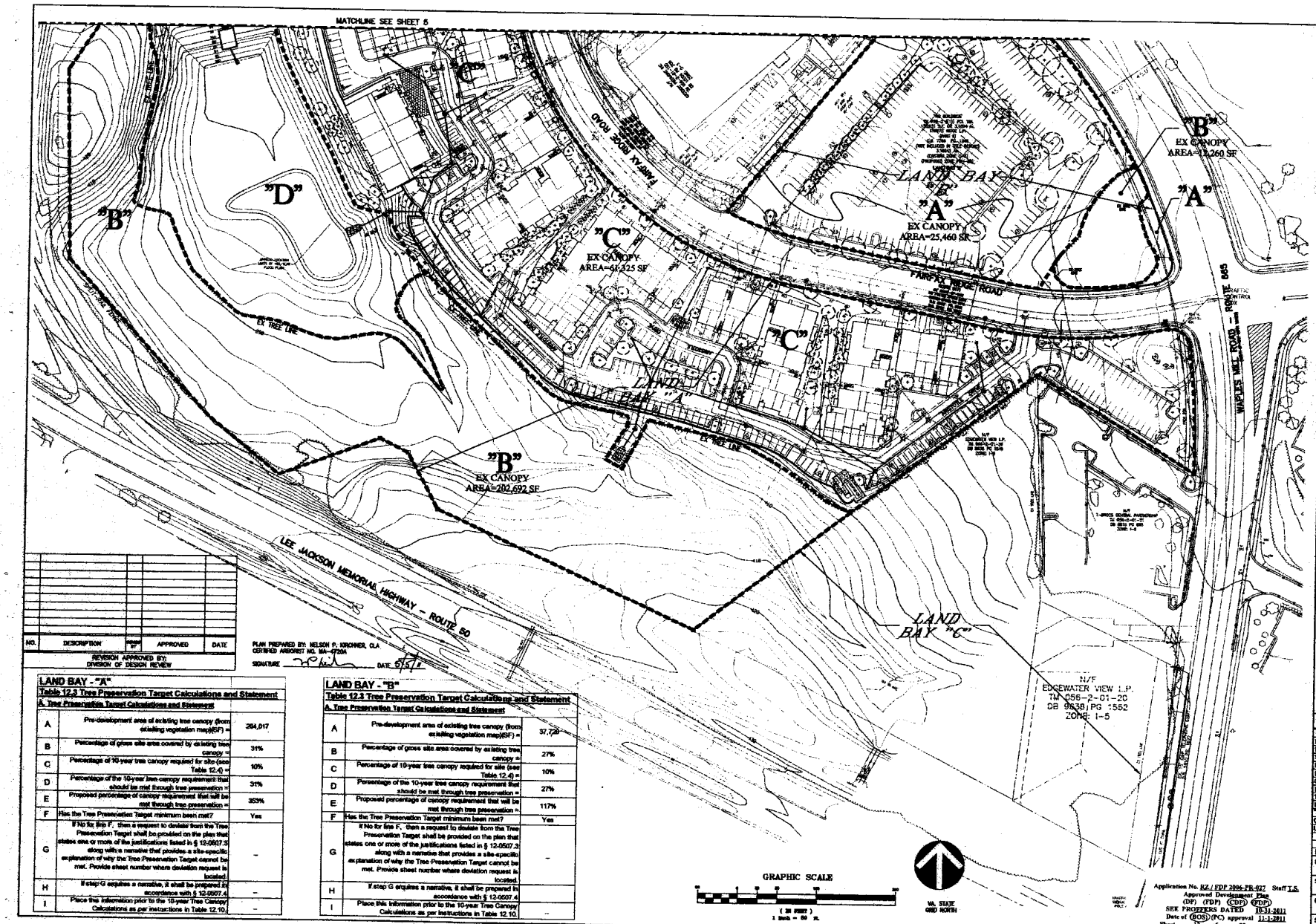
Fairfax Ridge Land Bay A
CDP/FDP
TCR Mid Atlantic Properties, Inc., Providence Magisterial District, Fairfax County, Virginia
Landscape Plan Enlargement
LandDesign
4B
LEGEND
DECIDUOUS TREE
DECIDUOUS TREE
DECIDUOUS TREE
EVERGREEN TREE
TREE PRESERVATION AREA
TREE PRESERVATION AREA WITHIN 100 YEAR FLOODPLAIN
EXISTING TREE TO REMAIN
TREE PLANTING SHADE TO PARKING LOT
PARKING LOT AREAS TO BE COUNTED
NOTE: THIS SHEET IS FOR LAND BAY A ONLY AND IS ALREADY CONSTRUCTED. NO CHANGES ARE PROPOSED.
NOTES:
1. FOR TERMINATION SEE SHEET 7
2. FOR PLANT NOTES SEE SHEET 3
3. FOR PLANTING CALCULATIONS SHEE SHEET 4
MATCH LINE SEE SHEET 4A
SEE SHEET 4C
PROPOSED LAND BAY A
EXISTING LAND BAY A
LAND BAY C CONSIDERED UNDER SEPARATE ZONING APPLICATION: RZ # 2005-PR-020
WARSHILL ROAD
TREE PRESERVATION AREA WITHIN 100 YEAR FLOODPLAIN AREA 2,055 SF
PART OF THIS ADJOINING APPLICATION
PROPOSED TREE PRESERVATION AREA 1,161,642 SF
EXISTING TRAIL TO BE LOCATED TO AVOID ROOT ZONE
EXISTING TRAIL TO REMAIN
EXISTING TRAIL TO BE RELOCATED
WITHIN AREA 7,000 SF
SCALE: 1" = 30'
30 0 30 60

Fairfax Ridge Land Bay B
CDP/FDP
TCR Mid Atlantic Properties, Inc.: Providence Magisterial District, Fairfax County, Virginia
Landscape Plan Enlargement
LandDesign
4C
SHEET NUMBER
PROJECT #
SCALE
DRAWN BY
CHECKED BY
DATE
WAPLES MILL ROAD
FAIRFAX RIDGE ROAD SR 6171
BUILDING II
EXISTING OFFICE BUILDING TO REMAIN
TREE PRESERVATION AREA 3: 9,020 SF
LINE OF SIGHT 415 FEET
LEGEND
DECIDUOUS TREE
EVERGREEN TREE
TREE PRESERVATION AREA WITHIN 100 YEAR FLOODPLAIN
EXISTING TREE TO REMAIN
TREE PROVIDING SHADE TO PARKING LOT
PARKING LOT AREAS TO BE COUNTED
NOTES:
TREES
FOR EXISTING TREES TO REMAIN SEE TREE PROFFERS
FOR ADDITIONAL INFORMATION PURSUANT TO THESE PROFFERS, A CERTIFIED ARBORIST SHALL EVALUATE THE TREES. TREES THAT ARE DEAD OR DYING MAY BE REMOVED IN ACCORDANCE WITH THESE PROFFERS

EXISTING VEGETATION MAP
ALEXAN AT FAIRFAX RIDGE PHASE II
PROVIDENCE DISTRICT
FAIRFAX COUNTY, VIRGINIA
EXISTING VEGETATION COVER TYPES -- LAND BAY "A"
EXISTING VEGETATION COVER TYPES -- LAND BAY "B"
LB-"A" VEGETATION PRIMARY SPECIES
LB-"B" VEGETATION PRIMARY SPECIES
LB-A EVM NARRATIVE
LB-B EVM NARRATIVE
WAPLES MILL ROAD -- ROUTE 665
FAIRFAX RIDGE ROAD
WESTSIDE DR
GRAPHIC SCALE



NO.	DESCRIPTION	DATE BY	APPROVED	DATE

REVISION APPROVED BY:
DIVISION OF DESIGN REVIEW

PLAN PREPARED BY: NELSON P. KROHNER, CLA
CERTIFIED ARBORIST NO. MA-4726A
SIGNATURE _____ DATE 9/5/11

LAND BAY - "A"

Table 12.3 Tree Preservation Target Calculations and Statement

A. Tree Preservation Target Calculations and Statement

A	Pre-development area of existing tree canopy (from existing vegetation map)(SF) =	284,017
B	Percentage of gross site area covered by existing tree canopy =	31%
C	Percentage of 10-year tree canopy required for site (see Table 12.4) =	10%
D	Percentage of the 10-year tree canopy requirement that should be met through tree preservation =	31%
E	Proposed percentage of canopy requirement that will be met through tree preservation =	353%
F	Has the Tree Preservation Target minimum been met?	Yes
G	If No for line F, then a request to deviate from the Tree Preservation Target shall be provided on the plan that states one or more of the justifications listed in § 12-0507.3 along with a narrative that provides a site-specific explanation of why the Tree Preservation Target cannot be met. Provide sheet number where deviation request is located.	-
H	If step G requires a narrative, it shall be prepared in accordance with § 12-0507.4.	-
I	Place this information prior to the 10-year Tree Canopy Calculations as per instructions in Table 12.10.	-

LAND BAY - "B"

Table 12.3 Tree Preservation Target Calculations and Statement

A. Tree Preservation Target Calculations and Statement

A	Pre-development area of existing tree canopy (from existing vegetation map)(SF) =	97,728
B	Percentage of gross site area covered by existing tree canopy =	27%
C	Percentage of 10-year tree canopy required for site (see Table 12.4) =	10%
D	Percentage of the 10-year tree canopy requirement that should be met through tree preservation =	27%
E	Proposed percentage of canopy requirement that will be met through tree preservation =	117%
F	Has the Tree Preservation Target minimum been met?	Yes
G	If No for line F, then a request to deviate from the Tree Preservation Target shall be provided on the plan that states one or more of the justifications listed in § 12-0507.3 along with a narrative that provides a site-specific explanation of why the Tree Preservation Target cannot be met. Provide sheet number where deviation request is located.	-
H	If step G requires a narrative, it shall be prepared in accordance with § 12-0507.4.	-
I	Place this information prior to the 10-year Tree Canopy Calculations as per instructions in Table 12.10.	-

Application No. RZ / FDP 2006-PR-027 Staff T.S.
Approved Development Plan
(DP) (FDP) (CDP) (PDP)
SEE PROFFERS DATED 10-31-2011
Date of (BOS) (PC) approval 11-1-2011
Sheet 22 of 22
FDP approved by PC 10-20-2011, no conditions
Concur w/ SEA 2006-P-005; approved 11-1-2011
w/ SEA conditions 9-22-2011

VIKA REVISIONS
REVISE PROPERTY
LABELS 7-7-2006
REV EX. TREE LINE
11/01/06
REVISIONS 6/20/08
EVAL RESUBMISSION
05/21/2010
FFX CO UPMD CMMT'S
10/15/2010
REVISED PER PARCEL 'C' DEDICATION
03/18/2011
UPMD CMMT'S 8/5/11

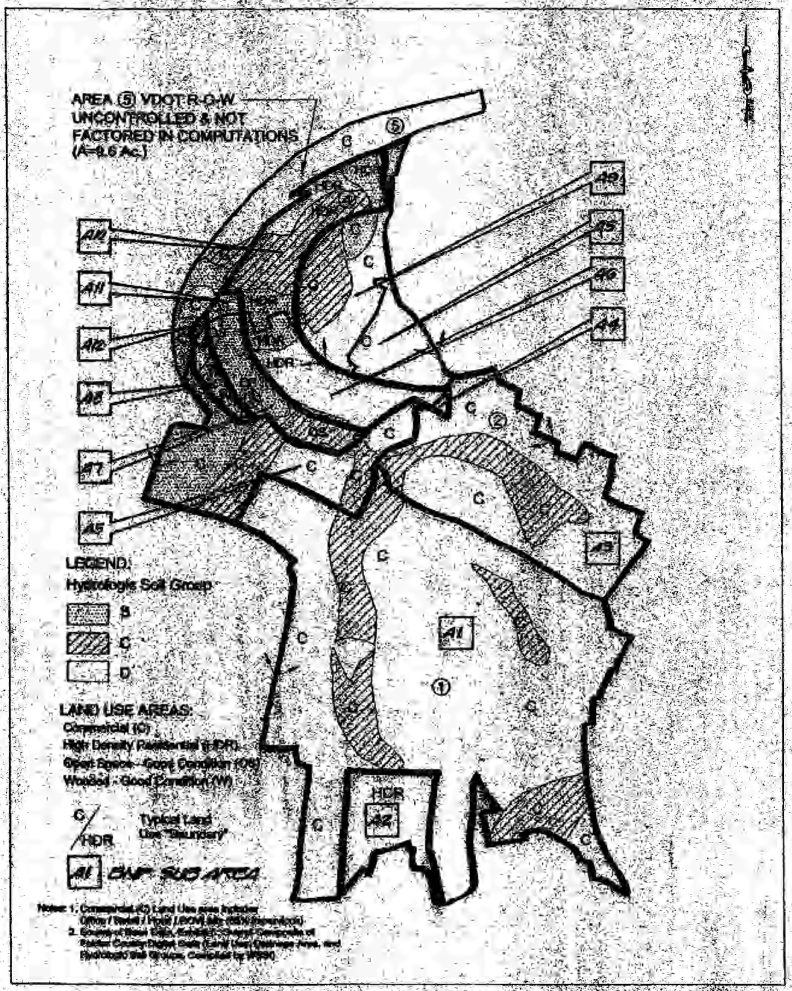
DATE: FEB 2005
DES. MPK
DWN. MPK
SCALE: 1"=60'
PROJECT/FILE NO. 6301
SHEET NO. 5A

VIKA
CIVIL ENGINEERS / LANDSCAPE ARCHITECTS / SURVEYORS / PLANNERS
8180 GREENSBORO DRIVE, SUITE 200, MCLEAN, VIRGINIA 22102
PHONE: (703) 442-7800 FAX: (703) 761-2787
WWW.VIKA.COM

ALEXAN AT
FAIRFAX RIDGE
PHASE II
PROVIDENCE DISTRICT
FAIRFAX COUNTY, VIRGINIA

EXISTING VEGETATION
MAP

J:\Nelson Krohner\Projects\6301\dgn\6301EXVeg.dgn 05/15/2011 04:49 PM EDT



Notes: 1. Commercial (C) Land Use area including Office / Retail / Hotel (.60CN Adj. 65% Impervious)
2. Streets of Town Edge, Avenue - Curbed Composite of Fairfax County Digital Data (Land Use, Drainage Area, and Hydrologic Soil Groups, Collected by VIKA)

MINIMUM STORMWATER INFORMATION FOR REZONING, SPECIAL EXCEPTION, SPECIAL PERMIT AND DEVELOPMENT PLAN APPLICATIONS

The following information is required to be shown or provided in all zoning applications, or a waiver request of the submission requirement with justification must be submitted. While Waivers will be acted upon expeditiously, failure to submit adequate and required stormwater information may result in a delay in processing the application.

This information is required under the following Zoning Ordinance regulations:
Special Permits (9-011 2J & 2L)
Cluster Subdivisions (8-615 7G & 8I)
Development Plans PRC Districts (6-402 3 & 4J)
FDP P Districts Except PRCs (16-402 1F & 1G)
Special Exceptions (9-011 2J & 2L)
Commercial Revitalization Districts (6-622 4F(1)B & (1H))
PRC Plan (6-403 1E & 1K)
Amendments (18-202 10F & 9B)

☑ 1. Plat is at a minimum scale of 1"=50' (unless it is depicted on size sheet which is a minimum scale of 1"=100').

☑ 2. A narrative describing the stormwater management facility(ies) and items of grading and grading accommodate the stormwater management facility(ies), Public Facilities Manual (PFM) best practices and outfall protection, flood protection, dam(s), site outfalls, energy dissipation devices, and erosion stabilization downstream as shown on Sheet L-2.

☑ 3. Provide:

Facility Name Type & No.	On-site area included (ac/sc.)	Off-site area included (acres)	Drainage area (acres)	Pavement total (sf)	Storage Volume (cf)	If pond, dam height (ft)
Totals						

☑ 4. Outfall Narrative and Map. THIS PROJECT IS IN Pond Inlet and outfall channel are shown on Sheet L-2

☐ 5. Multiple dam access roads and surface management (multiples) are shown on Sheet L-2. Type of road (asphalt, concrete, mod surface) marked on the plans L-2 (gravel, grass/grade, etc.)

☑ 6. Landscaping and tree preservation shown on and near the stormwater management facility is shown on Sheet L-2

☑ 7. A "stormwater management narrative" which contains a description of how detention and best management practices requirements will be met is provided on Sheet 6

☑ 8. A description of the existing conditions of each receiving site (outfall channel) downstream from the site to a point which is at least 100 times the site area or which has a drainage area of at least one square mile (640 acres) is provided on Sheet 6 - 8D.

☑ 9. A description of how the public road maintenance, including controlling vegetation areas of the Public Facilities Manual will be satisfied is provided on Sheet 6 - 8D.

☑ 10. Existing topography with maximum contour intervals of two (2) feet and a note as to whether it is an air survey or field run is provided on Sheets L-2, 6 - 5

☐ 11. A submission waiver of requirement for: n/a

☐ 12. Stormwater management is not required because: n/a

Application No. RZ/FDP 2006-PR-027 Staff Use
Approved Development Plan
(DP) (FDP) (CDP) (PRC)
SE PROFFERS DATED 10-31-2011
Date of (BOS)(PC) approval 11-1-2011
Sheet 13 of 22
FDP approved by PC 10-26-2011 as modified.
Concur w/ SEA 2006-P-006 ; approved 11-1-2011
w/ VKA revisions 5-22-2013

STORMWATER MANAGEMENT NARRATIVE

STORMWATER MANAGEMENT FOR THE SUBJECT PROPERTY IS PROVIDED IN REGIONAL STORMWATER MANAGEMENT POND #47.

ADEQUACY OF OUTFALL NARRATIVE

THE PROPOSED OUTFALL FOR THE SUBJECT SITE IS AN UNNAMED TRIBUTARY OF DIFFICULT RUN. THIS TRIBUTARY IS AN EXISTING STREAM, WITH DEFINED BED AND BANKS AND APPEARS TO BE IN SATISFACTORY CONDITION. THIS TRIBUTARY IS LOCATED IMMEDIATELY UPSTREAM OF REGIONAL STORMWATER MANAGEMENT POND NO. 47, WHICH PROVIDES BOTH SWM AND STORMWATER MANAGEMENT FOR THE SUBJECT SITE. THE ADEQUACY OF OUTFALL OF THIS REGIONAL POND WAS DEMONSTRATED WITH PLAN NO. 3803-SP-006.

THIS SHEET FOR INFORMATION ONLY

6 of 6

VIKA

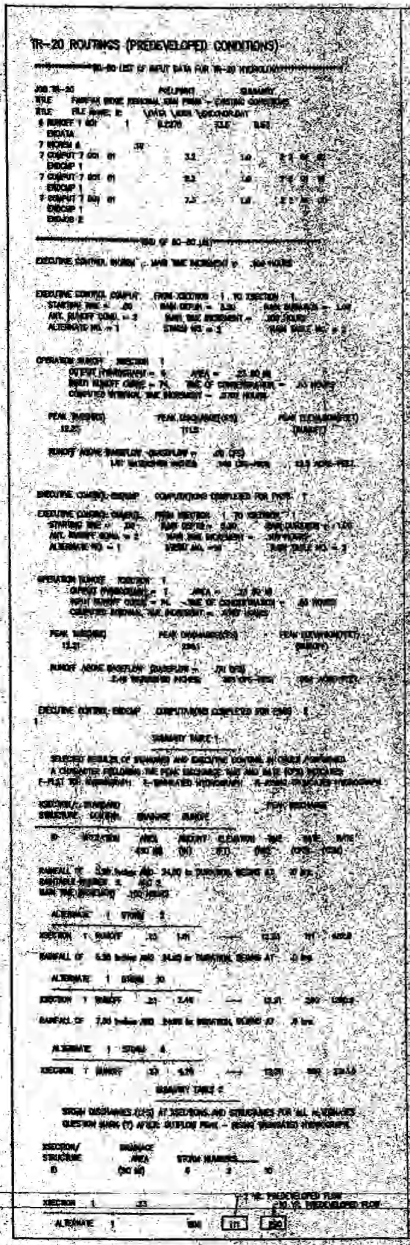
FAIRFAX RIDGE
REGIONAL STORMWATER MANAGEMENT POND #47
PROVIDENCE MAGISTERIAL DISTRICT
FAIRFAX COUNTY, VIRGINIA

SWM MAP

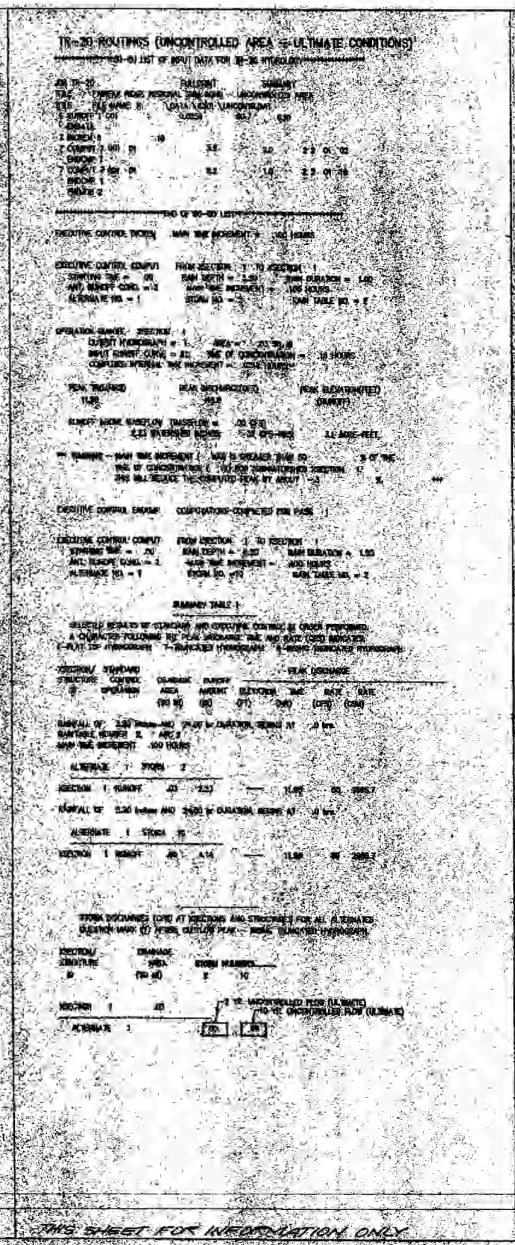
VIKA REVISIONS

DATE: DEC. 2001
DES. EA | DWN. CAD
SCALE: AS SHOWN
PROJECT/FILE NO. 6301
SHEET NO. 10 of 10

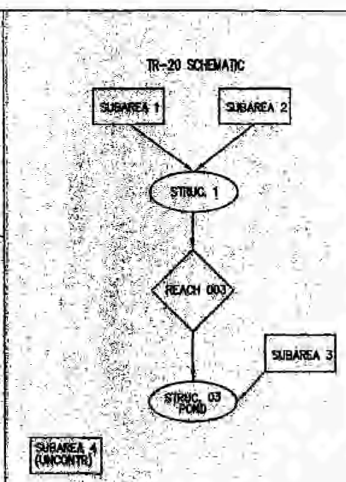
TR-20 ROUTINGS (PREDEVELOPED CONDITIONS)



TR-20 ROUTINGS (UNCONTROLLED AREA = ULTIMATE CONDITIONS)

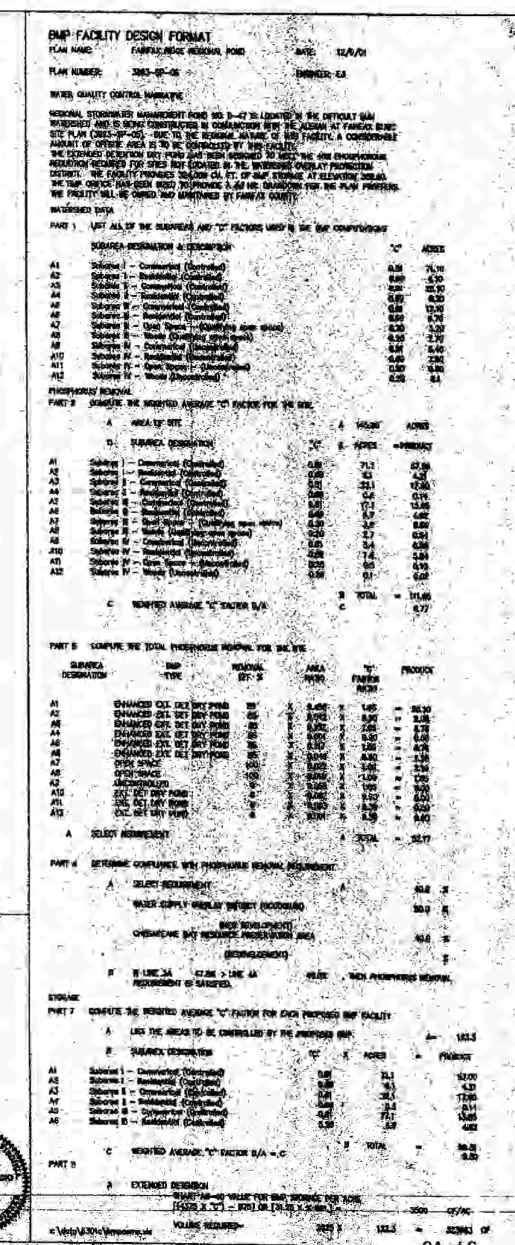


TR-20 SCHEMATIC

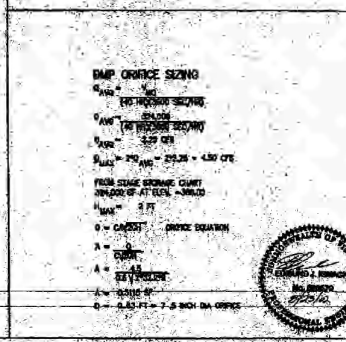


Application No. RZ / FDP 2004-PR-027 6 of 7 Ts
Approved Development Plan
(DP) (FDP) (CDP) (PDP)
SEE PROFFERS DATED 10-31-2011
Date of (BOS) (PC) approval 11-1-2011
Sheet 34 of 38
FDP approved by PC 10-20-2011 w/ conditions
Consent w/ SEA 2004-P-005 approved 11-1-2011
w/ SEA conditions 7-22-2011

BMP FACILITY DESIGN FORMAT



BMP ORIFICE SIZING



POND ROUTINGS (TR-20 COMPUTATIONS) AND BMP COMPUTATIONS

FAIRFAX RIDGE
REGIONAL STORMWATER MANAGEMENT POND
ID-47
PROVIDENCE MAGISTERIAL DISTRICT
FAIRFAX COUNTY, VIRGINIA

VIKA REVISIONS

DATE: DEC. 2011
DES. EJ | DRAWN CAD | CHECKED

SCALE: AS SHOWN

PROJECT/FILE NO. 4301

SHEET NO. 36 of 44

THIS SHEET FOR INFORMATION ONLY

6A of 6

POND ROUTINGS
(TR-20 COMPUTATIONS)
FAIRFAX RIDGE
REGIONAL STORMWATER MANAGEMENT POND
#P-47
PROVIDENCE MAGISTERIAL DISTRICT
FAIRFAX COUNTY, VIRGINIA
VIKA REVISIONS
DESIGNED
DRAWN
CHECKED
APPROVED
DATE
SCALE AS SHOWN
PROJECT NO.
SHEET NO.
6B of 6
THIS SHEET FOR INFORMATION ONLY

HYDROGRAPHS
FAIRFAX RIDGE
REGIONAL STORMWATER MANAGEMENT POND
FAIRFAX COUNTY, VIRGINIA
2 - YEAR HYDROGRAPHS
10 - YEAR HYDROGRAPHS
25 YEAR HYDROGRAPHS
50 YEAR HYDROGRAPHS
100 YEAR HYDROGRAPHS
FOR INFORMATION ONLY
THIS SHEET
6C of 6

DAM BREACH SUMMARY

STORM CAUSING THE DAM OVERTOPPING: 3.5 x 100 YR (SEE THIS SHEET FOR ROUTING)
PDM 3.5x 100 YR EVENT, THE PEAK ELEVATION IS 351.49 FT (1.49 FT ABOVE THE DAM TOP).

MMS SIMPLIFIED DAM-BREAK FORMULA
PEAK FLOW FROM/AT THE POTENTIAL DAM FAILURE:
Qbreak = Qo + 3.1*Bf* ((C/((Vs/Bf) + C/(avg(Qb)))Vs^3)^.5)^2)^.5) (CFS); Qo=(23.4*As)-Qb
As = RESERVOIR SURFACE AREA (ACRES) AT THE MAXIMUM ELEVATION OF POOL LEVEL.

H = ELEVATION (A) OF MAXIMUM POOL LEVEL MINUS (-) FINAL BREACH BOTTOM ELEVATION. THIS IS CALLED "THE HEAD" ON THE BREACH.

Br = AVERAGE FINAL BREACH WIDTH (FT). (3 TIMES EARTH DAM)

tf = TIME OF FAILURE (HABITED). (1/6 EARTH DAM)

Qo = NATURAL (PREBREACH) INFLOW (CFS) AT TIME T (Qo= SPILLWAY FLOW, NATURAL FLOW, DAM/DIVERSION OVERFLOW) (OPTIONAL DATA VALUE, MAY BE SET TO 0)

POND #9-47
(NORTHERN) DAM BREACH

THE CREST OF THE RIDGE AT THE TIME OF THE POTENTIAL DAM FAILURE IS 445.40 FT.
SO THE DEPTH OF THE WATER
H = 445.40 - 370.00 = 75.40 FT.

Br = (3 TO 3 TIMES DAM HEIGHT, FFH = 1605.80) 3 * 25.4 = 76.2

tf = (2 FT/MIN PER FFH = 1605.80) 25.4/2 = 12.70

Qo = 3174 CFS (SEE SHEET 10 x 100 -YR ROUTING THIS SHEET)

THE CORRESPONDING SURFACE AREA AS:
AS = 350.0 FT2 = 5.08 AC.

THEREFORE, THE PEAK FLOW FOR THE POTENTIAL DAM FAILURE IS:

Qbreak = Qo + 3.1*Br* ((C/((Vs/tf) + C/Avg(Qb)))^2)^.5)^2)^.5; Qo=(23.4*As)-Qb

Qbreak = 3174 + 3.1*76.20* ((0.53/((13.70/60) + (0.53/(0+0)))^2)^.5)^2)^.5) (CFS);
Qbreak=(23.4*5.08)-700.80=2.31

Qbreak = 9606 CFS

POND #9-47
SUNNY DAY BREACH

THE DEPTH OF THE WATER AT THE TIME OF THE POTENTIAL DAM FAILURE IS 175.15 FT.
SO THE HEIGHT OF THE WATER
H = 364.20 - 370.00 = 18.85 FT.

Br = (3 TO 3 TIMES DAM HEIGHT, FFH = 1605.80) 3 * 18.80 = 37.70

tf = (2 FT/MIN PER FFH = 1605.80) 18.80/2 = 9.30

Qo = 0.0 CFS

THE CORRESPONDING SURFACE AREA AS
AS = 314,900 FT2 = 2.81 AC

THEREFORE, THE PEAK FLOW FOR THE POTENTIAL DAM FAILURE IS:

Qbreak = Qo + 3.1*Br* ((C/((Vs/tf) + C/(avg(Qb)))^2)^.5)^2)^.5) (CFS); Qo=(23.4*As)-Qb

Qbreak = 0.0 + 3.1*37.6 * ((0.53/((9.30/60) + (0.53/(0+0)))^2)^.5)^2)^.5) (CFS);
Qbreak=(23.4*2.81)-50.8=2.31

Qbreak = 4330 CFS

DAM BREACH NARRATIVE

ANALYSIS CRITERIA AND ASSUMPTIONS:

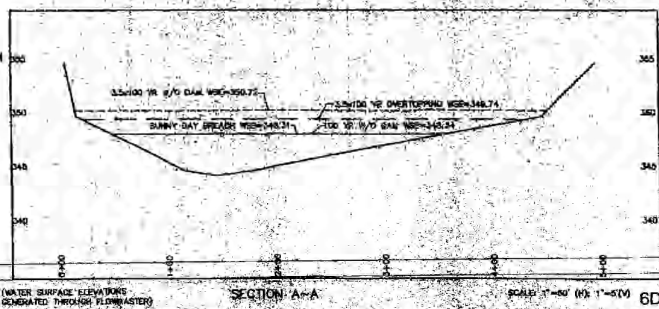
1. THE ANALYSIS HAS BEEN PERFORMED TO ASSESS THE EFFECT OF A DAM FAILURE ON THE EXISTING DOWNSTREAM SYNAPSE(S).
2. THE POTENTIAL FOR DAM FAILURE HAS BEEN ASSESSED FOR BOTH SUNNY DAY AND STORM CONDITIONS.
3. IT WAS DETERMINED THAT THE DAM WOULD OVERTOP DURING THE 3.5 X 100 YEAR EVENT AND THE DEPTH OF THE OVERTOPPING WATER WOULD BE 1.49 FEET. (SEE DAM BREACH SUMMARY ON THIS SHEET)
4. THE NATIONAL WEATHER SERVICE SIMPLIFIED DAM BREACH METHOD WAS USED TO DETERMINE THE PEAK DISCHARGE FROM THE DAM BREACH. (SEE CALCULATIONS THIS SHEET)
5. THE 3.5 X 100 YEAR EVENT WAS THEN ROUTED DOWNSTREAM TO DETERMINE WHETHER THE DAM BREACH FLOOD DEPTH WOULD BE LESS THAN THE NATURAL FLOOD DEPTH THAT WOULD BE EXPERIENCED WITHOUT THE DAM. (SEE SHEET 10)
THE ROUTING RESULTS INDICATED THAT THE DAM BREACH FLOOD DEPTH WOULD ATTENUATE TO A NATURAL FLOOD DEPTH OF THE FLOOD DEPTH THAT WOULD BE EXPERIENCED WITHOUT THE DAM. (SEE SHEET 10)
THUS THE ROUTING RESULTS INDICATED THAT THE DAM BREACH WOULD NOT BE EXPERIENCED IN THE EVENT OF A DAM FAILURE DUE TO THE 3.5 X 100 YEAR EVENT. NO FLOODING OF STRUCTURES WILL OCCUR.
6. THE SHORT-TERM BREACH ANALYSIS WAS CONDUCTED DURING TIMES TO A SUNNY DAY FAILURE. THUS THE DAM BREACH FLOOD DEPTH WOULD ATTENUATE TO A NATURAL FLOOD DEPTH OF THE FLOOD DEPTH THAT WOULD BE EXPERIENCED WITHOUT THE DAM. (SEE SHEET 10)
THUS THE ROUTING RESULTS INDICATED THAT THE DAM BREACH WOULD NOT BE EXPERIENCED IN THE EVENT OF A DAM FAILURE DUE TO THE 3.5 X 100 YEAR EVENT. NO FLOODING OF STRUCTURES WILL OCCUR.
7. PLATE AS-8 OF THE PDM REQUIRES SAFE PASSAGE OF 1.5 X 100 YEAR EVENT. THE SPILLWAY CAPACITY IS THE REQUIREMENT OF INCREASED SPILLWAY WIDTH AND POND VOLUME HAS REQUIRED BY 1.5 X 100 YEAR OF THE PDM.

CONCLUSION

THE OVERTOPPING DEPTH OF WATER IS SIGNIFICANTLY LOWER THAN THE DEPTHS CONSIDERED DAM DAMAGING (1.49 TO 4 FEET) AND THE EVENT REQUIRED TO CAUSE DAM OVERTOPPING (3.5X 100 YEAR STORM) IS EXTREMELY UNLIKELY. THEREFORE, THE PROBABILITY OF THE DAM FAILURE IN THIS CASE IS NEGLIGIBLE. SO THE SUNNY DAY AND OVERTOPPING DAM BREACH ANALYSIS SHOWED NO EXISTING STRUCTURES WERE FLOODED.

FAIRFAX COUNTY TOPOGRAPHIC MAP
SCALE: 1"=800'

Application No. RZ / FDP 2006-PR-027 Staff T.S.
Approved Development Plan (DP) (FDP) (CDP) (PDP)
SEE PROFFERS DATED 10-31-2011
Date of (DOS) (PC) approval 11-1-2011
Sheet 17 of 29
FDP approved by PC 10-26-2011 w/ conditions
Concurrent w/ SEA 2005-PR-015 approved 11-1-2011 w/ SEA conditions 9-21-2011



(WATER SURFACE ELEVATIONS GENERATED THROUGH FLOWMASTER)

SECTION A-A

SCALE: 1"=50' (H); 1"=5'(V)

NO.	DESCRIPTION	BY	APPROVED	DATE

REVISION APPROVED BY:
DIVISION OF DESIGN REVIEW

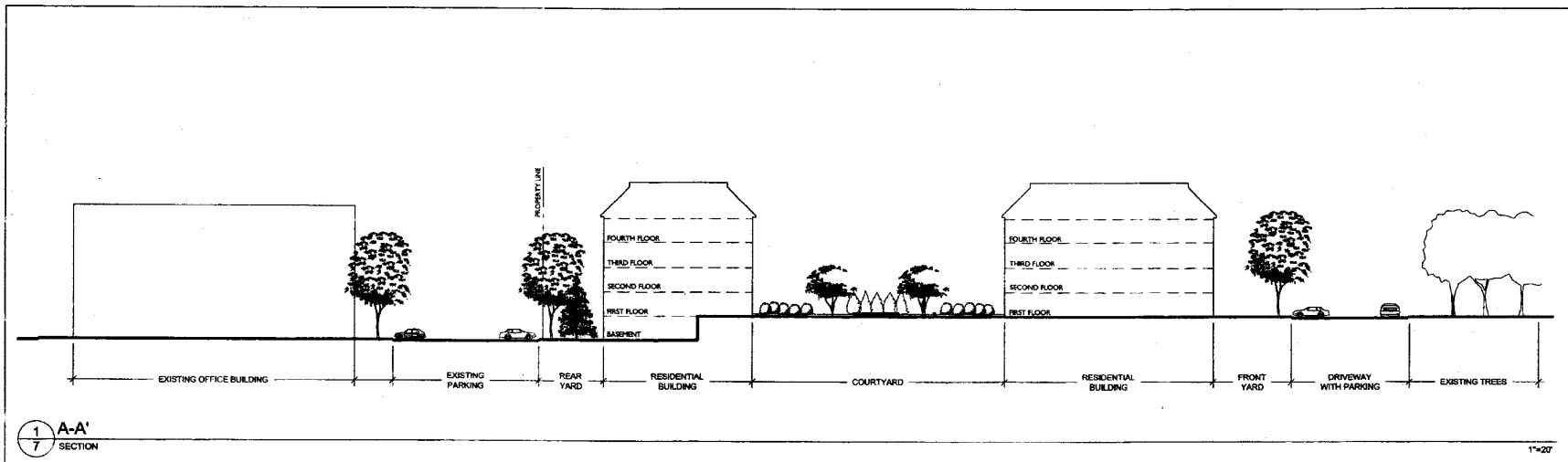
FAIRFAX RIDGE
REGIONAL STORMWATER MANAGEMENT POND
#9-47
PROVIDENCE MAGISTERIAL DISTRICT
FAIRFAX COUNTY, VIRGINIA

DAM BREACH ANALYSIS

VIKA REVISIONS

DATE: DEC. 2021
DES. EJI
DWN. CASD
SCALE: AS SHOWN
PROJECT/FILE NO. 5301
SHEET NO. 6D of 6

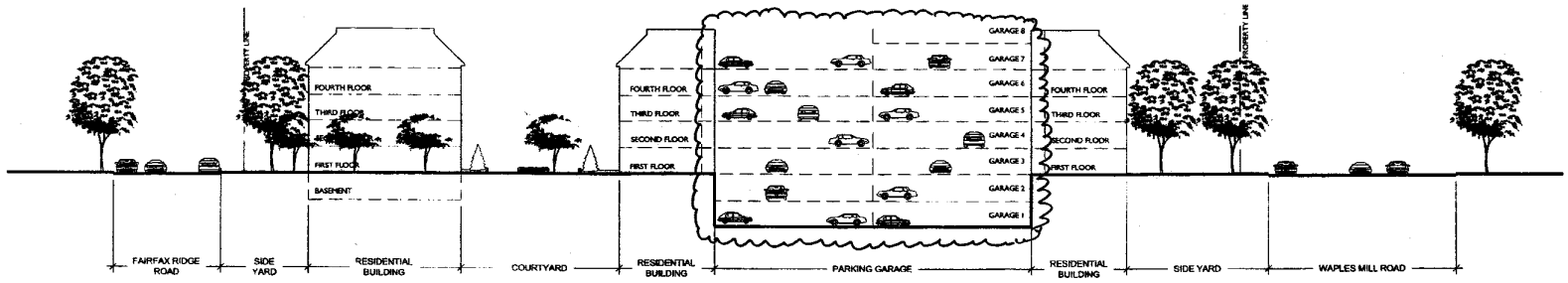
THIS SHEET FOR INFORMATION ONLY



1/7 A-A' SECTION

1"=20'

Application No. RZ / FDP 2006-PR-027 Staff T.S.
Approved Development Plan
(DP) (FDP) (CDP) (PDP)
SEE PROFFERS DATED 10-31-2011
Date of (BOS) (PC) approval 11-1-2011
Sheet 18 of 25
PDP approved by PC 10-26-2011 w/ conditions
Concur w/ SEA 2006-P-009 : approved 11-1-2011
w/ SEA conditions 9-21-2011



2/7 B-B' SECTION

1"=20'

LandDesign

1414 Prince Street, Suite 410 Alexandria, VA 22314
V: 703.549.7784 F: 703.549.4564
www.LandDesign.com

COMMONWEALTH OF VIRGINIA
MATTHEW V. CLARK
Cert. No. 955
LANDSCAPE ARCHITECT
9/6/2011

Fairfax Ridge Land Bays A & B

CDP/FDP

TCR Mid Atlantic Properties, Inc., Providence Magisterial District, Fairfax County, Virginia

Sections

REVISIONS
NOVEMBER 27, 2006
DECEMBER 21, 2006
JANUARY 23, 2007
FEBRUARY 9, 2007
MAY 14, 2010
FEBRUARY 19, 2010
MARCH 5, 2010
AUGUST 16, 2010
NOVEMBER 24, 2010

AUGUST 24, 2011
SEPTEMBER 1, 2011

DATE 4/4/05
DESIGNED BY KT
DRAWN BY TCA
CHECKED BY
SCALE AS SHOWN
PROJECT # 2005007

SHEET NUMBER
7

Fairfax Ridge Land Bay B
CDP/FDP
TCR Mid Atlantic Properties, Inc.: Providence Magisterial District, Fairfax County, Virginia
Site Rendering & Landbay B Enlargement
LandDesign
7A
LAND BAY B ILLUSTRATIVE
1" = 50'
BUILDING ENTRANCE
1" = 20'
LEADWALKS (TYPICAL GRADING AND LAYOUT)
1" = 10'
WAPLES MILL ROAD
FAIRFAX RIDGE ROAD
POSSIBLE ENTRY SIGN LOCATION
ENTRY GARDEN
OFFICE ACCESS TO PARKING GARAGE
RESIDENT ACCESS TO PARKING GARAGE
EXISTING TREES TO REMAIN
POSSIBLE ENTRY SIGN LOCATION
SIDEWALK TO WAPLES MILL ROAD
RESIDENT ENTRY TO PARKING GARAGE
H.C. PARKING SPACES
LANDSCAPE
BIKE RACK
MAIN ENTRANCE
BENCH
SPECIAL PAVING AT ENTRY PLAZA
LANDSCAPE
FAIRFAX RIDGE ROAD
STEPS
COLUMN
WALL
LOW LANDSCAPED ISLAND WITH MOUNTABLE CURB
SERVICE PARKING
STOOP
5' WALK
STEPS
CHEEK WALL
FAIRFAX RIDGE ROAD

Fairfax Ridge Land Bay B
CDP/FDP
TCR Mid Atlantic Properties, Inc.; Providence Magisterial District, Fairfax County, Virginia
Landbay B Enlargements
LandDesign.
7B
AUGUST 24, 2011
ENTRY GARDEN
1 7B PLAN
1"=10'
POSSIBLE ENTRY SIGN LOCATION
SIDEWALK
WAPLES MILL ROAD
ENTRY GARDEN
BENCH (TYP)
BIKE RACK
EVERGREEN SCREEN
SPECIAL PAVING
CAFE TABLES AND CHAIRS
GAS GRILL
BENCH
FOUNTAIN
FIRE PIT
MOVEABLE CHAIRS
RETAINING WALL/SEAT WALL
ORNAMENTAL TREES
STEPPING STONES
EVENT LAWN
LOW PLANTINGS
AMENITY COURTYARD ENLARGEMENT
2 7B PLAN
1"=10'
SPECIAL PAVING
CAFE TABLES AND CHAIRS
GAS GRILL
LOW PLANTINGS
ORNAMENTAL TREES
GLASS WASHED PAVERS
RETAINING WALL/SEAT WALL
BENCH
SIDEWALK
SPECIAL PAVING PATIO OFF CLUB
FAIRFAX RIDGE ROAD
NORTH

DATE: 4/1/5
DESIGNED BY: KT
DRAWN BY: CA
CHECKED BY: CJC BY
SCALE: AS SHOWN
PROJECT #: 2006307

REVISIONS
DECEMBER 12, 2006
JANUARY 12, 2007
FEBRUARY 7, 2007
MAY 23, 2007
REVISED 1 9, 2010
MAY 25, 2010
AUGUST 16, 2010
SEPTEMBER 13, 2010
NOVEMBER 23, 2010
JANUARY 7, 2011
AUGUST 24, 2011
SEPTEMBER 6, 2011

SHEET NUMBER
7C

Application No. RZ / FDP 2006-PR-027 Staff T.S.
Approved Dev. Conditions (CDP) (FDP)
(RZ) (FDP) (CDP) (FDP)
SEE PROFFERS DATED 11-3-2011
Date of (BOS) (PC) approval 11-3-2011
Sheet 7C of 7 Sheets
PDH Amended by PC Res. 2011 - Resolution
Cancel w/ SEA 2006-PR-030 approved 11-3-2011
Cancel w/ RZ/FDP 2006-PR-027 approved 11-3-2011

Fairfax Ridge Land Bay B

CDP/FDP

TCR Mid Atlantic Properties, Inc.; Providence Magisterial District, Fairfax County, Virginia

Architectural Elevations

LandDesign.
1414 Prince Street, Suite 400 Alexandria, VA 22314
V: 703.549.7784 F: 703.549.7786
www.LandDesign.com

DATE ISSUED
DESIGNED BY: KT
CO-DESIGNED BY:
DRAWN BY: CA
QC'd BY:
PROJECT #: 2005007

REVISIONS
FEBRUARY 19, 2010
MAY 25, 2010
AUGUST 16, 2010
SEPTEMBER 13, 2010
NOVEMBER 24, 2010
AUGUST 24, 2011

SHEET NUMBER
7D

Fairfax Ridge Land Bay B

CDP/FDP

TCR Mid Atlantic Properties, Inc.: Providence Magisterial District, Fairfax County, Virginia

Shadow Studies

LandDesign.

1414 Prince Street, Suite 410, Alexandria, VA 22314
V 703.549.7784 F 703.549.4565
www.LandDesign.com

Application No. RZ / FDP 2006-PR-027 Sheet 7D
Approved Development Plan
(DP) (DDP) (CDP) (FDP) 1/31/2011
SEE PROFFERS DATED 1/31/2011
Sheet 22 of 22 Sheets
FDP approved by PC 12-8-2011 as modified
Consent w/ PCA 2005-PR-027 approved 7-11-2011
w/ ZCA amended 7-11-2011

Fairfax Ridge Land Bay B
CDP/FDP
TCR Mid Atlantic Properties, Inc.; Providence Magisterial District, Fairfax County, Virginia
SIGHT DISTANCE PROFILES

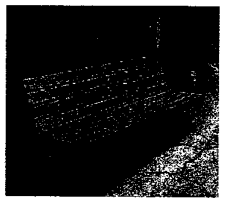
LandDesign.
1414 Prince Street, Suite 400, Alexandria, VA 22314
P: 703.549.7784 F: 703.549.4854
www.LandDesign.com

REVISIONS
AUGUST 24, 2011

DATE 1/7/2011
DESIGNED BY: CT
DRAWN BY: CA
CHECKED BY:
SCALE: AS SHOWN
PROJECT # 2000007

SHEET NUMBER
7E

Application No. RZ / FDP 2006-FR-027 Staff T.S.
Approved Development Plan
(DP) (FDP) (CDP) (PRC)
Previous Plan Approved 1-13-2011
SE# (DP) (FDP) Approved 1-13-2011
Date of (BOS) (PC) approval 1-13-2011
Sheet 21 of 29
Cbf approved by PC 2-23-2011 to conform
Cbf approved by BOS 3-14-2011 to conform
w/ BOS conditions 2-23-2011

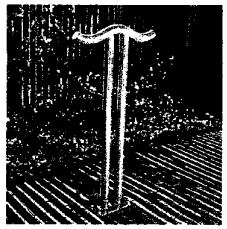


STYLE: HOMESTEAD SERIES
MODEL:28
SLATS: 3" X 4", "CHERRY" REINFORCED, RECYCLED PLASTIC SLATS
FRAME: BLACK POWDER COAT
STANDARD SURFACE MOUNT WITH TAMPER PROOF BOLTS.

MANUFACTURER:
VICTOR STANLEY, INC.
P.O. BOX 330
DUNKIRK, MARYLAND 20754
TEL: 301-855-8300
FAX: 410-257-7579

NOTES:
1. OR APPROVED EQUAL
2. INSTALL PER MANUFACTURER'S INSTRUCTIONS.

1/8 BENCH — 05A-33
1/8 PICTORIAL — NTS

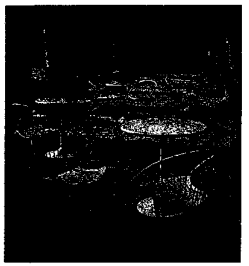


MODEL:PI
DIMENSIONS: 5'X21.5'X43"
COLOR: BLACK POWDERCOAT

MANUFACTURER:
LANDSCAPE FORMS
431 LAWNDALE AVENUE
KALAMAZOO, MI 49001
800-521-2546

NOTES:
1. OR APPROVED EQUAL
2. BIKE RACK TO BE SURFACE MOUNTED PER MANUFACTURER'S INSTRUCTIONS

4/8 BIKE RACK — 10C-006
4/8 PICTORIAL — NTS



MANUFACTURER:
LANDSCAPE FORMS, INC.
431 LAWNDALE AVENUE
KALAMAZOO, MI 49048
800-430-5209 PH.
269-381-3455 FAX
WWW.LANDSCAPEFORMS.COM

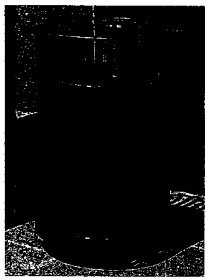
TABLE:
COLLECTION NAME: PARK CENTRE
TABLE TOP WITH SINGLE EMBEDDED SUPPORT
MODEL: 30" CIRCULAR
STEEL POWDERCOAT FINISH

CHAIRS:
COLLECTION NAME: CATENA
STEEL POWDERCOAT FINISH

REP:
BARBARA NOLAN, INC.
PH (703) 648-0848
FAX (703) 648-0849

NOTES:
1. OR APPROVED EQUAL
2. INSTALL PER MANUFACTURER'S INSTRUCTIONS

7/8 CAFE TABLE AND CHAIRS — 05H-061
7/8 PICTORIAL — NTS



STYLE:
IRONSITES MODEL NUMBER S-42 (36 GAL.)
FRAME COLOR: BLACK

MANUFACTURER:
VICTOR STANLEY, INC.
P.O. BOX 330
DUNKIRK, MARYLAND 20754
TEL: 301-855-8300
FAX: 410-257-7579

NOTES:
1. OR APPROVED EQUAL
2. RECEPTACLE TO BE MOUNTED IN GROUND PER MANUFACTURER'S INSTRUCTIONS.

2/8 WASTE RECEPTACLE — 05F-023
2/8 NTS

MANUFACTURER:
VICTOR STANLEY, INC.
P.O. BOX 330
DUNKIRK, MARYLAND 20754
TEL: 301-855-8300
FAX: 410-257-7579

STYLE: HOMESTEAD SERIES
MODEL: ST-6
SLATS: 2" X 4", "CHERRY" REINFORCED, RECYCLED PLASTIC
FRAME: BLACK POWDER COAT STANDARD

NOTES:
1. OR APPROVED EQUAL
2. INSTALL PER MANUFACTURER'S INSTRUCTIONS.
3. SURFACE MOUNT WITH TAMPER PROOF BOLTS.
4. EXTEND TABLE TOP FOR ADA ACCESSIBILITY.

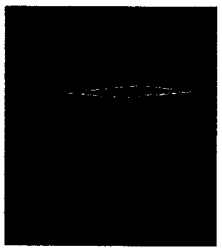
5/8 PICNIC TABLE — 05G-055
5/8 PICTURE — NTS

MODEL: A30
30,000 BTU INPUT
ELECTRONIC IGNITION
330 SQUARE INCH COOKING AREA
121 SQUARE INCH WARMING RACK

MANUFACTURER
AD CORPORATION PGS PRODUCTS DIVISION
2641 DL BRIDGE AVENUE
IRVINE, CA 92623-6097
PH: 949-474-3070

NOTES:
1. PROVIDE CONNECTION TO BUILDING PROPANE SYSTEM
2. INSTALL PER MANUFACTURER'S INSTRUCTIONS

8/8 GAS GRILL — 05L-044
8/8 PICTORAL — NTS



LUMINAIRE MODEL: FORM TEN SQUARE FORM AREA LIGHTING ENTH ARM MOUNT

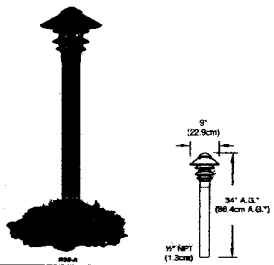
POLE MODEL: CA4-ST8 (CRUCIFORM ALUMINUM WITH STEEL BASE TENON)

COLOR: BLACK

MANUFACTURED BY:
GARDCO LIGHTING
1911 CLOVES BARGER ROAD
SAN MARCOS, TX 78666
512-753-1000

NOTES:
1. OR APPROVED EQUAL.
2. THE HEIGHT OF THE POLES AND FIXTURES (INCLUDING MOUNTING BASE, IF ANY SHALL NOT EXCEED THE HEIGHT OF THE BUILDINGS OR 25 FEET, WHICHEVER IS LESS.
3. ALL PARKING LOT LIGHTING SHALL CONSIST OF FULL CUT-OFF FIXTURES.
4. FOR USE IN PARKING LOTS AND AREAS REQUIRING CONTROL OF LIGHT SPILL OVER.

3/8 PARKING LOT/DECK LIGHT — 05B-624
3/8 PICTORIAL — NTS



PATHLYTE
MODEL: 7500-A
COLOR: BLACK
OR APPROVED EQUAL

COORDINATE LOCATIONS WITH LOCATIONS SHOWN ON PLAN.

ALL JUNCTION BOXES TO BE BELOW GRADE.

PATH LIGHT

MANUFACTURED BY:
HADCO
100 CRAFTWAY
LITTLESTOWN, PA 17340
717-359-7131

6/8 PATH LIGHT — 05B-625
6/8 PICTORAL — NTS

Application No. RZ / FDP 2006-PR-027 Staff T.S.
Approved Development Plan
(DP) (PDP) (CDP) (FDP)
SEE PROFFERS DATED 10-31-2011
Date of (BOS)/(PC) approval 11-1-2011
Sheet 24 of 28
FDP approved by PC 10-26-2011 no conditions
Concur w/ SEA 2006-P-050 ; approved 11-1-2011
w/ SEA conditions 9-22-2011

DATE MARK
DESIGNED BY: KT
DRAWN BY: CA
CHECKED BY: DC
Q.C. BY:
PROJECT MANAGER: T. BROWN
PROJECT #: 2006007

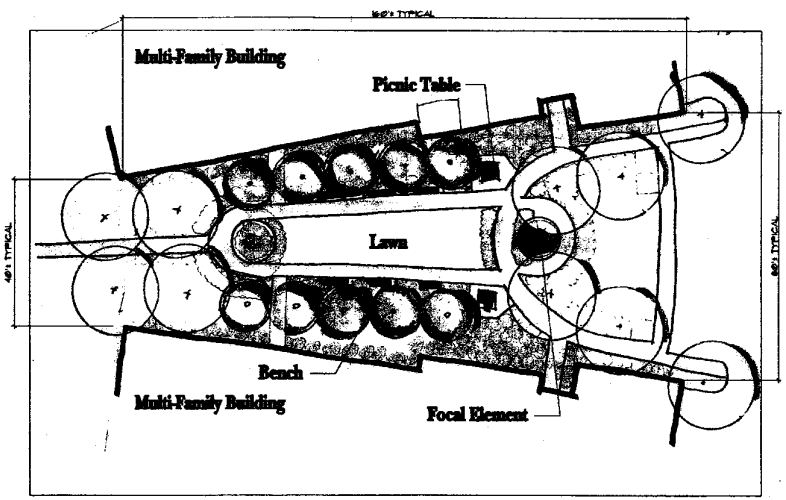
SUBMISSION
ORIGINAL: JANUARY 23, 2006
RESUBMITTAL: JANUARY 22, 2007
RESUBMITTAL: MAY 23, 2007
RESUBMITTAL: FEBRUARY 19, 2010
RESUBMITTAL: MAY 14, 2010
AUGUST 16, 2010
RESUBMITTAL: OCTOBER 15, 2010
NOVEMBER 15, 2010
AUGUST 26, 2011

SHEET NUMBER: 8

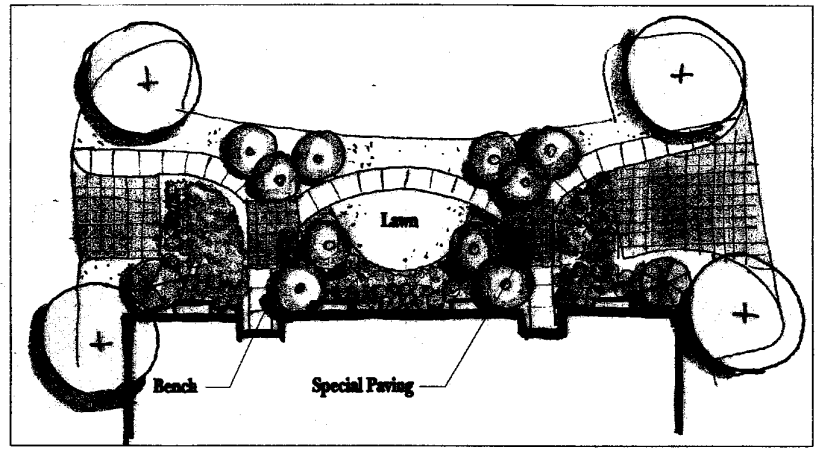
LandDesign
1414 Prince Street, Suite 400 Alexandria, VA 22314
Ph: 703.549.7784
www.LandDesign.com

COMMONWEALTH OF VIRGINIA
MATTHEW V. CLARK
Cert. No. 885
9/6/2011
LANDSCAPE ARCHITECT

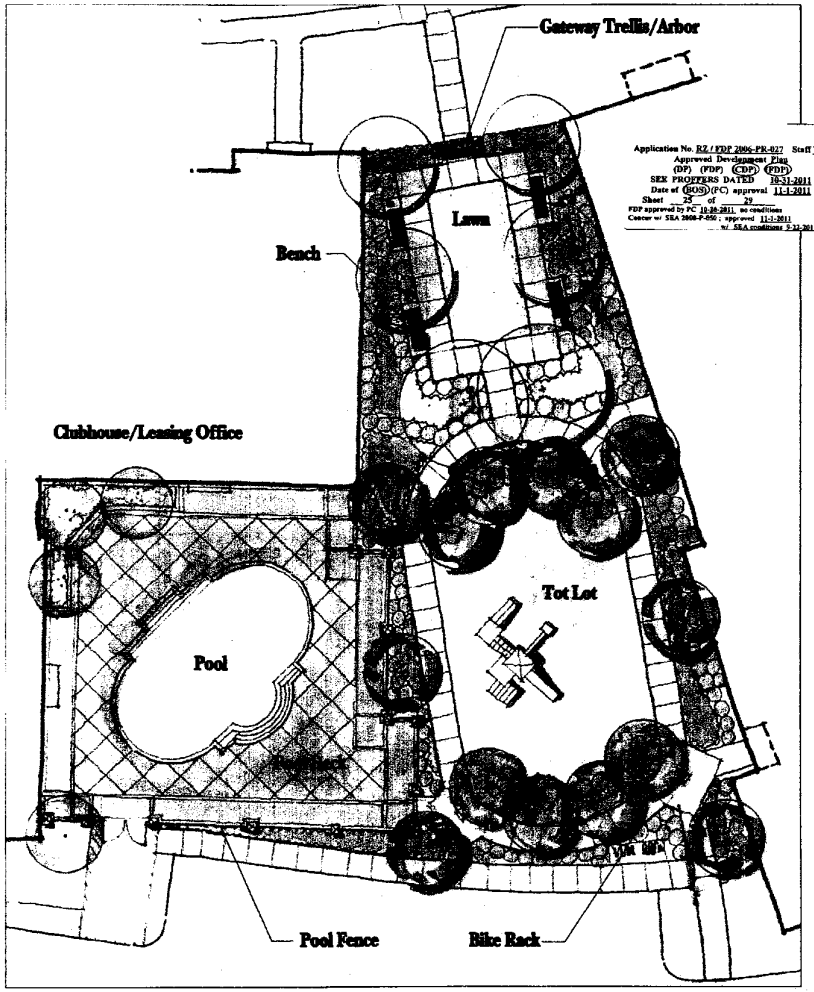
Fairfax Ridge Land Bay B
CDP/FDP
TCR, Mid Atlantic Properties, Inc.; Providence Magisterial District, Fairfax County, Virginia
Site Details



1/5 TYPICAL COURTYARD CONCEPT
PLAN
NOT TO SCALE



2/5 SMALL BUILDING COURTYARD
PLAN
NOT TO SCALE



3/5 POOL AND TOTLOT COURTYARD
PLAN
NOT TO SCALE

NOTE: THIS SHEET INCLUDED FOR INFORMATION ONLY. THIS CDP/FDP WAS APPROVED BY THE PLANNING COMMISSION ON MAY 7, 2001. NO CHANGES ARE PROPOSED.

NOTE:
LANDSCAPING SHOWN ON THIS SHEET IS PRELIMINARY. IT REPRESENTS THE QUANTITY AND THE LEVEL OF QUALITY OF LANDSCAPE MATERIAL THAT IS PROPOSED. THE ACTUAL LOCATIONS, TYPES AND AMOUNTS OF VEGETATION AND FURNITURE WILL BE DETERMINED PURSUANT TO MORE DETAILED LANDSCAPE PLANS TO BE PREPARED AND SUBMITTED IN CONJUNCTION WITH THE SITE PLAN.

COMMONWEALTH OF VIRGINIA
MATTHEW V. CLARK
Cert. No. 663
9/6/2011
LANDSCAPE ARCHITECT

Application No. RZ / FDP 2000-PR-027 Staff T.S.
Approved Development Plan
(DP) (FDP) (CDP) (FDP)
SEE PROFFERS DATED 10-31-2011
Date of (BOS) (PC) approval 11-1-2011
Sheet 28 of 29
FDP approved by PC 10-26-2011, no conditions
Concur w/ SEA 2000-P-050 ; approved 11-1-2011
w/ SEA conditions 9-22-2011

LandDesign, Inc.
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Tel: 703/549-7784 Fax: 703/549-1994

Fairfax Ridge
Limited Partnership

Fairfax Ridge
CDP/FDP 2000-PR-056/SE 00-P-050
Providence Magisterial District
Fairfax County, Virginia

Courtyard and Pool Concepts

REVISIONS
3/4/09 BY COUNTY COMMENTS
3/16/09 BY ADDITIONAL INFORMATION
4/15/09 BY COUNTY COMMENTS

DATE: 2/9/09
DES. BK | DWN. MW
SCALE: AS SHOWN
PROJECT/FILE NO. 2000DP076
SHEET NO. 9 OF 10

NOTE: THIS SHEET INCLUDED FOR INFORMATION ONLY. THIS CDP/FDP WAS APPROVED BY THE PLANNING COMMISSION ON MAY 7, 2001. NO CHANGES ARE PROPOSED.

1/1 ELEVATION — Fairfax Ridge Road - Partial Street Elevation

NTS

2/1 ELEVATION — Overlook Street - Partial Street Elevation

NTS

Application No. RZ / FDP 2006-PR-027 Staff I.S.
Approved Development Plan
(DP) (FDP) (CDP) (PDP)
SEE PROFFERS DATED 10-31-2011
Date of (BOS)(PC) approval 11-1-2011
Sheet 2E of 39
FDP approved by PC 10-20-2011 no conditions
Concur w/ SEA 2000-P-050 ; approved 11-1-2011
w/ BOS conditions 9-22-2011

NOTE:
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NOTE:
THE BUILDING ELEVATIONS ON THIS SHEET ARE PRELIMINARY. THEY ARE PRESENTED TO ILLUSTRATE THE GENERAL CHARACTER AND ARCHITECTURAL THEME OF THE PROPOSED BUILDINGS. THE ELEVATIONS WILL BE REFINED AND SUBJECT TO MINOR MODIFICATIONS WITH FINAL ARCHITECTURE, ENGINEERING AND DESIGN.

COMMONWEALTH OF VIRGINIA
MATTHEW V. CLARK
Cert. No. 865
9/6/2011
LANDSCAPE ARCHITECT

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Alexandria, VA 22314-2815
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Fairfax Ridge
Limited Partnership

Fairfax Ridge
CDP/FDP 2000-PR-050/SE 00-P-050
Providence Magisterial District
Fairfax County, Virginia

Conceptual Architectural Elevation/ Site Section

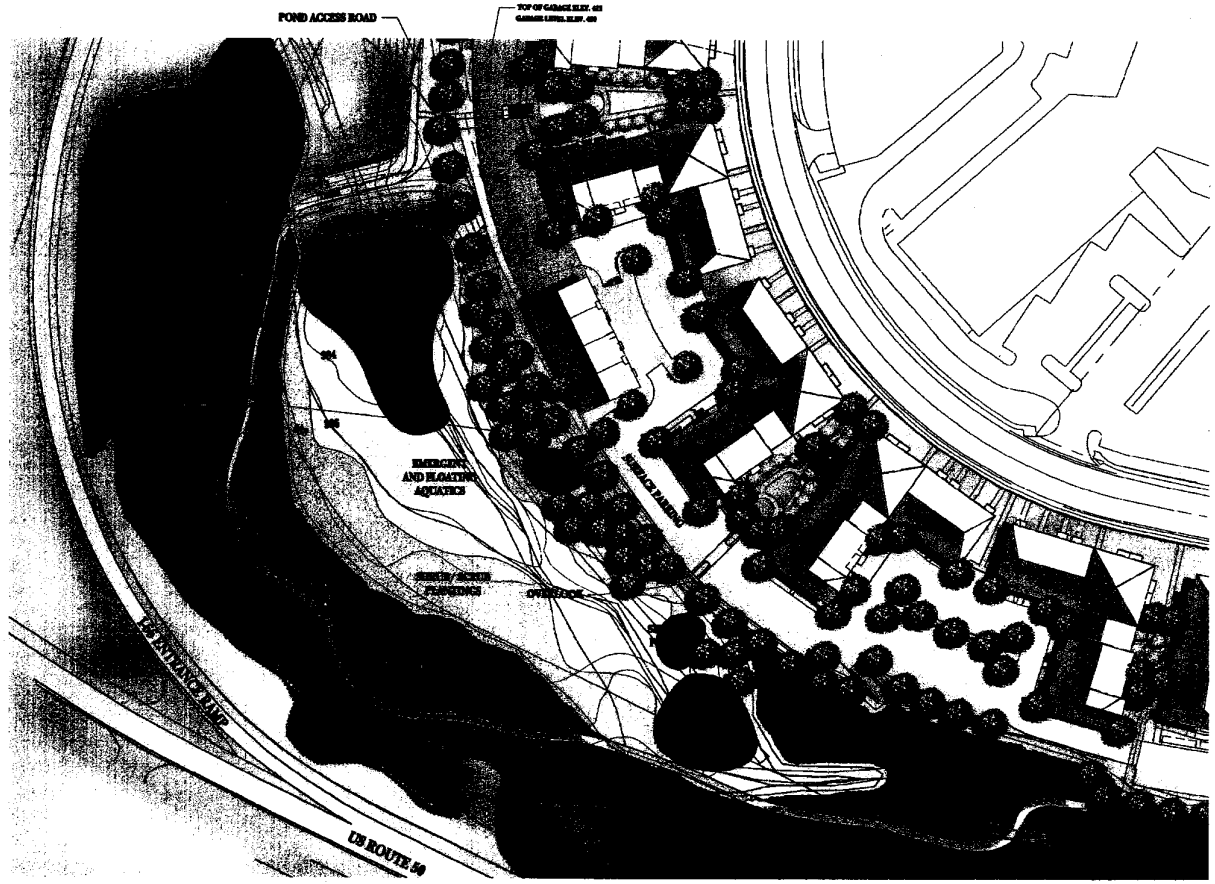
REVISIONS
4/6/01 COUNTY COMMENTS
8/6/01 ADDITIONAL INFORMATION
4/6/01 COUNTY COMMENTS

DATE: 2/6/01
DES. BK
DWN. TM
SCALE: 1/2000
PROJECT/FILE NO. 2000018
SHEET NO. 1 OF 10

SHEET 10

501

NOTE: THIS SHEET INCLUDED FOR INFORMATION ONLY. THIS CDP/FDP WAS APPROVED BY THE PLANNING COMMISSION ON MAY 7, 2001. NO CHANGES ARE PROPOSED.



1/8 CONCEPTUAL POND DESIGN PLAN

NOT TO SCALE

SCALE: 1"=50'

0 25 50 100

DETENTION POND PLANT LIST

THE PLANTS SELECTED BELOW ARE REPRESENTATIVE OF THE TYPES OF PLANTS TO BE INSTALLED. ACTUAL FINAL SELECTION WILL DEPEND UPON SITE SPECIFIC OPPORTUNITIES AND CONSTRAINTS INCLUDING ASPECT, ORIENTATION, USE, SOIL CONDITIONS AND PLANTING AREAS.

WET FOREST/TREE LAYER (ELEVATION 305-392 +/-
ACER RUBRUM - RED MAPLE
FRAXINUS PENNSYLVANICA - GREEN ASH
QUERCUS PHELLOS - WILLOW OAK
QUERCUS PALUSTRIS - PIN OAK
PLANTANUS OCCIDENTALIS--AMERICAN SYCAMORE
LIQUIDAMBAR STYRACIFLUA--SWEET GUM
TAXODIUM DISTICHUM--BALD CYPRESS

SHRUB SCRUB (ELEVATION 306-385 +/-
CORNUS AYTOUM--SILKY DOGWOOD
ITEA VIRGINICA--VIRGINIA SWEETSPIRE
ALNUS SERRULATA--SMOOTH ALDER
ILEX VERTICILLATA--COTTON WINTERBERRY
VIBURNUM DENTATUM--SOUTHERN ARROWWOOD
BETULA NIGRA--RIVER BIRCH
CORNUS SERICEA--RED OSIER DOGWOOD

EMERGENT AND FLOATING AQUATICS
NYMPHAEA--FRAGRANT WATERLILY
IRIS VERSICOLOR--BLUE IRIS
IRIS PSEUDACORUS--YELLOW IRIS
ACORUS CALAMUS--SWEET FLAG
HIBISCUS MOSCHEUTOS--MARSH HIBISCUS
SCIRPUS VALIDUS--SOFT STEM BULL RUSH
SCIRPUS AMERICANUS--OLNEY'S BULL RUSH
PONTEDERIA CORDATA--PICKEREL WEED

Application No. RZ / FDP 2006-PR-027 Staff T-S
Approved Development Plan
(DP) (FDP) (CDP) (PDP)
SEE PROFFERS DATED 10-31-2011
Date of (BOS) (PC) approval 11-1-2011
Sheet 27 of 29
PDP approved by PC 10-20-2011, no conditions
Concur w/ SEA 2000-P-050; approved 11-1-2011 w/ SEA conditions 9-12-2011

2 YEAR POND
(ELEVATION 302) - 5 ACRES

10 YEAR POND
(ELEVATION 304) - 5.5 ACRES

100 YEAR POND
(ELEVATION 308) - 6.1 ACRES

NOTE:
1. LANDSCAPING SHOWN ON THIS SHEET IS PRELIMINARY, IT REPRESENTS THE QUANTITY AND THE LEVEL OF QUALITY OF LANDSCAPE MATERIAL THAT IS PROPOSED. THE ACTUAL LOCATIONS, TYPES AND AMOUNTS OF VEGETATION WILL BE DETERMINED PURSUANT TO TCPE DETAILED LANDSCAPE PLANS TO BE PREPARED AND SUBMITTED IN CONJUNCTION WITH THE SITE PLAN.

2. EXISTING TREES TO BE MAINTAINED PER THE PROFFERS FOR THIS REGIONAL DETENTION POND ALONG THE WESTERN AND SOUTHERN SIDES.

3. THE STORM WATER POND ELEVATIONS, DESIGN AND PLANTING LOCATIONS ARE SUBJECT TO CHANGE BASED UPON FINAL ENGINEERING AND REVIEW BY DPWES.

COMMONWEALTH OF VIRGINIA
MATTHEW V. CLARK
Cert. No. 002
LANDSCAPE ARCHITECT
9/6/2011

LandDesign, Inc.
Landscape Architecture Land Planning
Urban Design Transportation Engineering
Alexandria, VA 22314-1588

Fairfax Ridge
Limited Partnership

Fairfax Ridge
CDP/FDP 2000-PR-050/SE 00-P-050
Providence Magisterial District
Fairfax County, Virginia

Regional Detention Pond
#D - 47 Plan

REVISIONS
3/16/01
ADDITIONAL INFO
FAIRFAX COUNTY COMMENTS

DATE: 3/16/2001
DES. BK | DWN. TSU
SCALE: 1"=50'
PROJECT/FILE NO. 2000-0050
SHEET NO. 9 OF 10

SHEET 11

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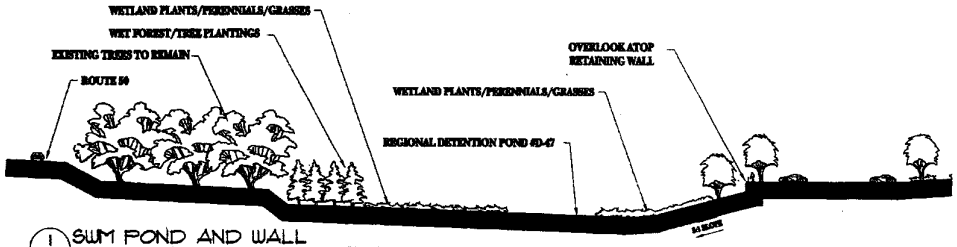
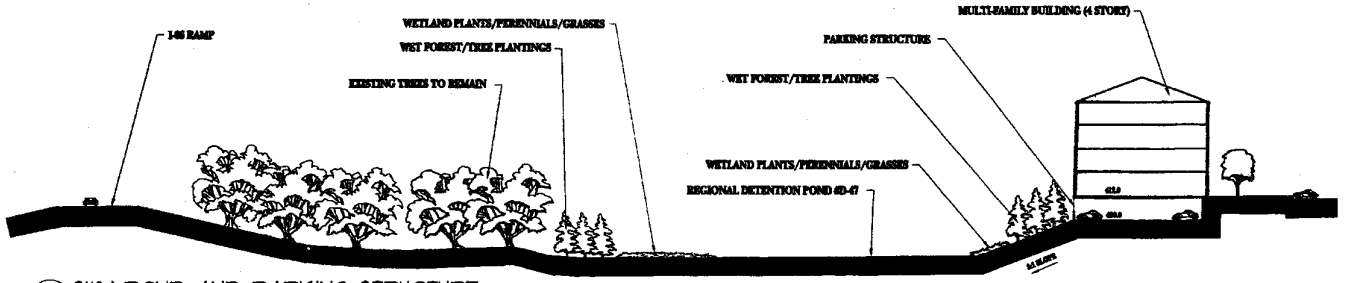
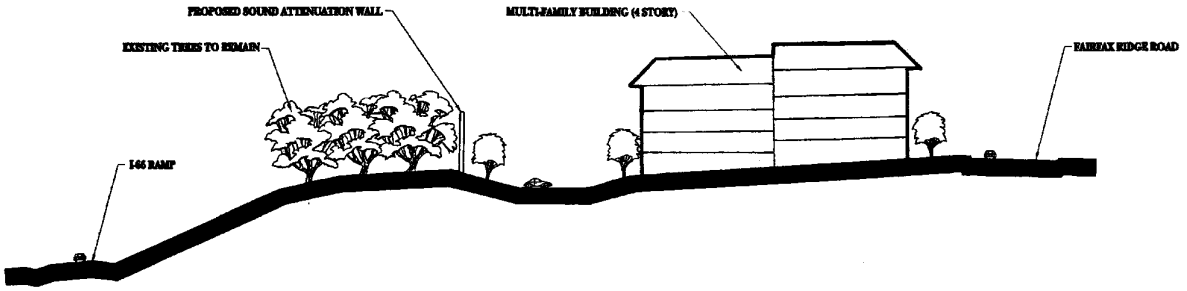


1/9 SWM POND AND WALL
CROSS SECTION 1" = 25'



2/9 SWM POND AND PARKING STRUCTURE
CROSS SECTION 1" = 25'



3/9 PROPOSED SOUND ATTENUATION WALL
CROSS SECTION 1" = 25'

Application No. RZ / FDP 2004-PR-027 Staff T.S.
Approved Development Plan
(DP) (PDP) (CDP) (FDP)
SEE PROFFERS DATED 10-31-2011
Date of (BOS) (PC) approval 11-1-2011
Sheet 28 of 29
FDP approved by PC 10-20-2011 no conditions
Concur w/ SEA 2000-P-050 : approved 11-1-2011
w/ SEA conditions 9-21-2011

MATTHEW V. CLARK
Cert. No. 902
9/6/2011
LANDSCAPE ARCHITECT

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LandDesign, Inc.
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Fairfax Ridge
Limited Partnership

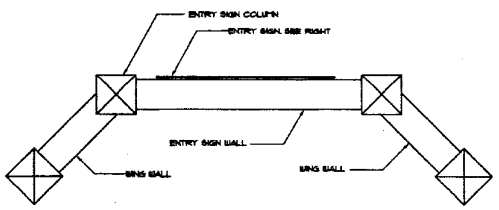
Fairfax Ridge
CDP/FDP 2000-PR-050/SE 00-P-050
Providence Magisterial District
Fairfax County, Virginia

Regional Detention Pond #D - 47 Cross Section

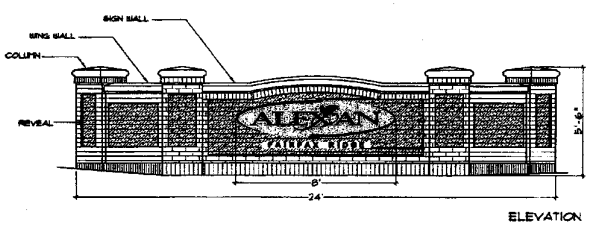
REVISIONS
3/16/01 ADDITIONAL INFORMATION
4/3/01 COUNTY COMMENTS

DATE: 2/9/01
DES. BK | DWN. PW
SCALE: 1"=25'
PROJECT/FILE NO. 2000P050
SHEET NO. 9 OF 10

SHEET 12



PLAN



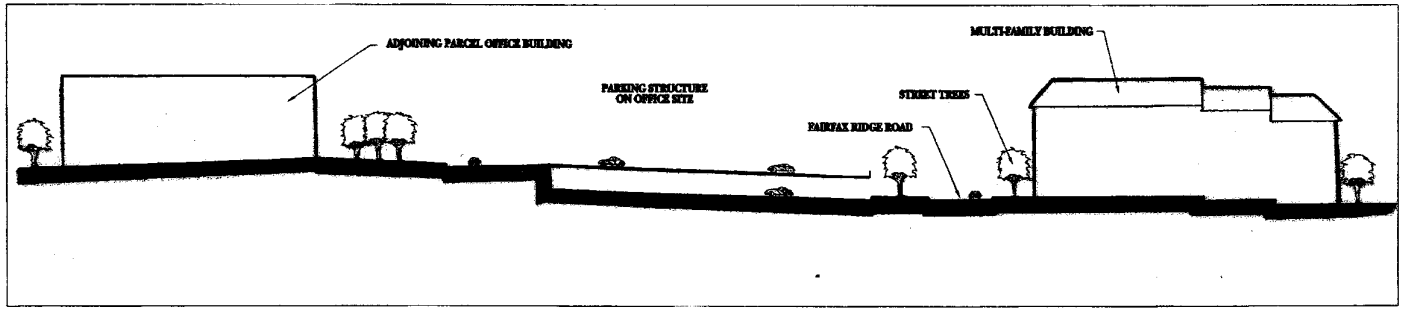
ELEVATION

NOTE:
THIS SIGN MONUMENT IS FOR ILLUSTRATIVE PURPOSES ONLY. THE FINAL DESIGN OF THE MONUMENT WILL BE EQUAL IN CHARACTER AND QUALITY.

NOTE: THIS SHEET INCLUDED FOR INFORMATION ONLY. THIS CDP/FDP WAS APPROVED BY THE PLANNING COMMISSION ON MAY 7, 2001. NO CHANGES ARE PROPOSED.

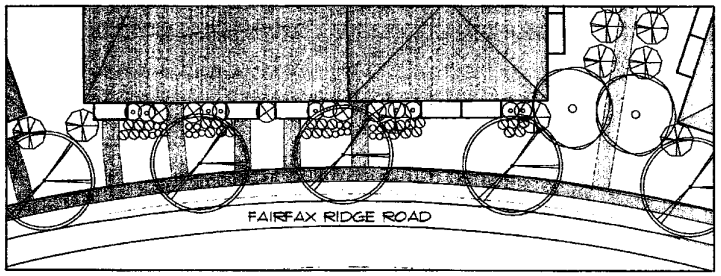
1/10 ENTRY SIGN AND MONUMENT
PLAN/ELEVATION

Ø1A-342
3/8"=1'-Ø"



2/10 CONCEPTUAL ARCHITECTURE - SITE SECTION
SECTION

SCALE: 1"=25'
0 12.5 25 50



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LEGEND

- EXISTING 8" CALIPER LARGE DECIDUOUS TREE
- LARGE DECIDUOUS TREE, MIN. 3-1/2" CALIPER
- LARGE DECIDUOUS TREE, MIN. 2-1/2" CALIPER
- ORNAMENTAL/FLOWERING TREE (SMALL OR MEDIUM DECIDUOUS TREE), MIN. 1" CALIPER
- COMPACT OR SMALL EVERGREEN TREE, MIN. 6' - 8' HEIGHT
- LARGE SHRUBS, MIN. 36"-36" HT.
- MEDIUM SHRUBS, MIN. 18"-24" HT.
- SMALL SHRUBS AND GROUNDCOVERS, SIZES VARY: 4" TO 1 GALLON POTS
- EXISTING TREES TO REMAIN

3/10 TYPICAL STREETSCAPE PLAN
PLAN

3/4"=1'-Ø"

Application No. RZ / FDP 2006-PR-027 Staff T.S.
Approved Development Plan
(DP) (PDF) (CDP) (FDP)
SEE PROFFERS DATED 10-31-2011
Date of (BOS) (PC) approval 11-1-2011
Sheet 25 of 25
PDP approved by PC 10-20-2011 no conditions
Concur w/ SEA 2000-P-050 ; approved 11-3-2011
w/ SEA conditions 9-22-2011

COMMONWEALTH OF VIRGINIA
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Fairfax Ridge
Limited Partnership

Fairfax Ridge
CDP/FDP 2000-PR-066/SE 00-P-050
Providence Magisterial District
Fairfax County, Virginia

Streetscape Plan

REVISIONS
2/NOV/01 COUNTY COMMENTS
3/MAR/01 COUNTY COMMENTS
5/MAY/01 ADDITIONAL INFO
6/MAY/01 COUNTY COMMENTS

DATE: 9/5/2000
DES. KT DWN. PW
SCALE: AS SHOWN
PROJECT/FILE NO. 2000-00
SHEET NO. 10 OF 10

SHEET 13

5504

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ATTORNEYS AT LAW

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TODD A. SINKINS*
MARK A. MOORSTEIN*
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ALISON R. MULLINS*+
MARIAM W. TADROS*
JOSEPH J. SHANNON+
MARGUERITE L. SELTON+

* ALSO ADMITTED IN DC
+ ALSO ADMITTED IN MARYLAND
▪ ALSO ADMITTED IN WEST VIRGINIA
• ALSO ADMITTED TO PATENT BAR
◆ NOT ADMITTED TO PRACTICE IN VIRGINIA; ADMITTED ONLY IN MD AND DC

July 31, 2014

VIA HAND DELIVERY
Leslie B. Johnson
Zoning Administrator
Department of Planning and Zoning
12055 Government Center Parkway
Fairfax, Virginia 22035-5505

Re: Request for Clarification of Proffers in connection with Rezoning Application RZ 2006-PR-027

Dear Ms. Johnson:

This firm represents Fairfax Ridge Condominium Unit Owners Association ("Fairfax Ridge" or "Land Bay A") in connection with the rezoning application (RZ 2006-PR-027) submitted by TCR Mid Atlantic Properties (TCR). A dispute has arisen between Fairfax Ridge and TCR regarding the applicant's current plans for Fairfax Ridge's access to parking, approved in proffers by the Board of Supervisors on October 31, 2011. Therefore, pursuant to Va. Code Ann. §15.2-2299, we are writing to request your interpretation of the approved proffers, which have been attached hereto as Exhibit 1.

Specifically at issue is TCR's compliance with Paragraph 16(B), which states:

> The Applicant shall pursue an agreement with the owner of the property identified as Tax Map 46-4 ((1)) 15B and 56-2 ((1)), 15C and 15D to allow parking on these properties by the residents of Land Bay A on weekends and during the week after typical working hours. The agreement shall also allow residents of Land Bay B to park in designated

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Department of Planning & Zoning
JUL 31 2014
Zoning Evaluation Division

> commercial parking spaces on Land Bay B on weekends and during the week after typical working hours. In the alternative, the Applicant shall construct one hundred (100) generally contiguous additional parking spaces within the parking garage located on Land Bay B that will be available for use by the residents of Land Bay A on an unrestricted basis at no cost…

(As Modified).

TCR has not secured an agreement with the owners of properties on Tax Map Parcels 46-4 ((1)) 15(B), and 56-2 ((1)), 15C and D for residents of Land Bay A to park on weekends and during the week after working hours, as outlined in the proffers. Since TCR has not secured a parking agreement, Fairfax Ridge takes the position that the proffers trigger the language that "[i]n the alternative," TCR is required to construct 100 parking spaces available for use by Land A residents on an unrestricted basis within the parking garage currently being constructed on Land Bay B.

TCR erroneously takes the position that the sentence starting with "In the alternative" is likewise limited to weekdays after work and weekends. TCR has advised Fairfax Ridge that the 100 parking spaces within the garage on Land Bay B will be shared with tenants of adjacent properties and, therefore, residents of Land Bay A are restricted only to after-hours parking. However, the plain language of the proffers, which requires TCR to make available 100 spaces on an unrestricted basis, cannot support such an interpretation.

Accordingly, we request the Zoning Administrator's interpretation of this issue. Thank you for your consideration and attention.

Sincerely,

REES BROOME, PC

By: _____
Mark A. Moorstein

K:\34\34035\0004\140722 Request to Zoning Administrator (4) Redline.docx

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Department of Planning & Zoning
JUL 31 2014
Zoning Evaluation Division

ATTACHMENT 8

Lynne J. Strobel
(703) 528-4700 Ext. 5418
lstrobel@thelandlawyers.com

WALSH COLUCCI
LUBELEY & WALSH PC

RECEIVED
Department of Planning & Zoning

AUG 25 2014

Zoning Evaluation Division

August 22, 2014

Via E-Mail and Overnight Delivery

Barbara C. Berlin, Director
Zoning Evaluation Division
Fairfax County Department of Planning & Zoning
12055 Government Center Parkway, Suite 801
Fairfax, Virginia 22035

Re: RZ/FDP 2006-PR-027
Pending Interpretation Request
Applicants: TCR MidAtlantic Properties, Inc. and Fairfax Ridge Condominium Unit Owners Association

Dear Ms. Berlin:

This firm represents the successor to TCR MidAtlantic Properties, Inc. (TCR) a Co-Applicant with Fairfax Ridge Condominium Unit Owners Association (the "Association") in the application identified as RZ/FDP 2006-PR-027 (the "Rezoning"). At the time of the Rezoning, TCR owned the property identified among the tax assessment records as 56-2 ((1)) 18A (referred to as "Land Bay B") and the Association represented the owners of property identified among the tax assessment records as 46-4 ((19)) All Parcels and 56-2 ((27)) All Number Parcels (referred to as "Land Bay A"). I have attached an exhibit that identifies Land Bay A and Land Bay B for your convenient reference. Your office is in receipt of a request for a determination of the proffers dated October 31, 2011 accepted by the Board of Supervisors in conjunction with the approval of the Rezoning. Specifically, Mark Moorstein, on behalf of the Association, submitted a request for interpretation of Proffer 16.B.

In order to understand why Proffer 16.B. was offered, it is important to understand the problem that it was intended to solve. At the time of the Rezoning, Land Bay A was already developed with condominium units and Land Bay B was developed as a surface parking lot that benefitted an adjacent office park. Physically, Land Bay A and Land Bay B are located on opposite sides of Fairfax Ridge Road. The Rezoning proposed the development of Land B with 150 multi-family residential dwelling units with no physical modifications to Land Bay A. In multiple discussions of the proposed development on Land Bay B with the Association, the Association identified a lack of available parking for Land Bay A residents on weeknights and weekends as a concern. While Land Bay A is developed in accordance with Zoning Ordinance requirements, some of the parking is not conveniently located in proximity to residential units

and the three bedroom units on Land Bay A generate a greater parking demand than originally contemplated. As a result, Land Bay A residents were parking on Fairfax Ridge Road, the public street that separates Land Bay A from Land Bay B, and within the office park parking lot and on Land Bay B without permission. The Association requested TCR to provide parking to solve the existing parking problem for Land Bay A residents on weeknights and weekends. There is no reference in the staff report published in conjunction with the Rezoning, or in the proffers, to weekday parking for Land Bay A residents during business hours as that concern was not identified during the processing of the Rezoning.

As a result of the identified parking shortage on weeknights and weekends, TCR agreed to Proffer 16.B. which in its first sentence states the following: "The Applicant shall pursue an agreement with the owner of the property identified as tax map 46-4 ((1)) 15B and 56-2 ((1)) 15C and 15D to allow parking on these properties by the residents of Land Bay A on weekends and during the week after typical working hours." This proffer clearly contemplates one solution to the specific parking problem experienced by Land Bay A residents on weeknights when returning home from work and on weekends to accommodate visitors and guests. This solution contemplated granting permission for what some Land Bay A residents were already doing (that is, parking on the office property without permission). During the proffer discussion, after TCR agreed to pursue this solution with the office park owner, the Association asked for further assurances if the owner did not agree to share its existing parking.

In response to the Association's request, TCR expanded its commitment and the third sentence of the proffer states: "In the alternative, the Applicant shall construct one hundred (100) generally contiguous additional parking spaces within the parking garage located on Land Bay B that will be available for use by the residents of Land Bay A on an unrestricted basis at no cost, including no cost for maintenance." This offer was to ensure that 100 parking spaces were available for use, during peak parking demand, but did not go further to state that the parking spaces would be available twenty-four (24) hours a day. If sharing was contemplated with the office park owner for surface parking spaces, it is counter intuitive that the same sharing would not occur with the office park owner in the garage. Proffer 16.B. specifically relates to providing parking on weeknights and weekends and to conclude that the solution is different between surface and garage parking spaces does not make sense.

The Association is taking the position that the 100 parking spaces in the garage on Land Bay B are to be for the "exclusive" use of the Land Bay A residents, twenty-four (24) hours a day, seven (7) days a week. However, there is absolutely no reference in the proffer, or in the staff report to any exclusivity of use. Proffer 16.B. uses the term "unrestricted" which means that access is unimpeded, or, in other words, no gates or physical barriers would be installed that would deter use. The term "unrestricted" also means that the parking spaces would not be regulated so that the Association could allow its residents to park on a first come/first serve basis or assign the parking spaces within its discretion, which may include duration limitations and/or fees.

The staff report prepared in conjunction with the Rezoning supports the proposition of shared parking regardless of its location. In a chart set forth on page 3 of the staff report, it states a total of 634 parking spaces to be provided. There is a footnote which states as follows: "if shared parking is achieved with the adjacent office, the 100 additional spaces would be deleted." As shared parking was obtained with the adjacent office owner, which allows Land Bay A residents the right to use 100 parking spaces on weeknights and on weekends, the 100 additional parking spaces are not needed. This is consistent with the tabulations on the proffered conceptual/final development plan that make a distinction between required residential and office parking and 100 additional residential parking spaces. The additional parking spaces would only be required if shared parking was not achieved.

In support of the positions set forth above, it should be noted that compliance with proffer 16.B. was a condition of site plan approval. The condition was deemed satisfied and the site plan approved. A deliberate evaluation of the proffer and its satisfaction by Fairfax County is evidenced in the e-mail chain attached hereto. In order to obtain site plan approval, the developer provided to Fairfax County a copy of its agreement with the office park owner, which was set forth as an Amended and Restated Reciprocal Easement and Parking Agreement that is recorded in Deed Book 23511 at page 811 (the "REA"). A copy of the agreement is attached. Fairfax County concluded that the conditions of Proffer 16.B. were satisfied and the site plan was approved. Subsequently, building permits were issued and construction has commenced and is ongoing. In addition, the cost of constructing garage parking intuitively supports a shared parking arrangement. The cost of constructing a garage parking space when compared to constructing a surface parking space requires a reasonable person to conclude that, if the surface spaces were contemplated to be shared, the garage parking spaces would be similarly shared. Lastly, garage parking spaces are typically an amenity that is paid for, unlike a surface parking space. Given its value, offering garage parking is not logical unless it is shared.

As an additional consideration, the first sentence of Proffer 16.B. references the office park owner allowing shared parking on its properties. The office park owner is the owner of property identified among the tax assessment records as 46-4 ((1)) 15B and 56-2 ((1)) 15C and 15D. The office park owner has the right to use the 275 parking spaces that are located on Land Bay B by virtue of the REA, recorded in Deed Book 23511 at Page 811. This right to the 275 parking spaces is an integral part of the property rights that accrue to the benefit of the office park owner. Therefore, the use of 275 parking spaces in the garage on Land Bay B is a property right for the benefit of the adjacent office park owner, and is therefore consistent with the requirements of the first sentence of Proffer 16.B. The Applicant did in fact pursue an agreement with the office park owner to allow parking by residents of Land Bay A on weekends and during the week after typical working hours as stated in the proffer. This agreement was achieved and in fact memorialized in the REA. In short, Proffer 16.B. has been complied with, both in letter and spirit.

Should you have any questions regarding the above, or require additional information, please do not hesitate to contact me. It is clear that the word "unrestricted" is different from "exclusive" when describing access. In addition, the parking spaces provided solve a very specific problem related to a lack of available parking for Land Bay A residents on weekends

and weeknights. I would appreciate your consideration of this letter in conjunction with the issuance of your determination.

Very truly yours,

WALSH, COLUCCI, LUBELEY & WALSH, P.C.

Lynne J. Strobel

LJS/kae
Enclosures
cc: Stephen Gardner
Sean Caldwell
Amirali Nasserian
Tom Colucci
{A0621507.DOCX / 1 Berlin Ltr re: Pending Interpretation Request 000096 000048}

County of Fairfax, Virginia

To protect and enrich the quality of life for the people, neighborhoods and diverse communities of Fairfax County

October 2, 2014

Mark A. Moorstein, Esq.
Rees Broome, PC
7430 Heritage Village Plaza, Suite 202
Gainesville, VA 20155

Re: RZ 2006-PR-027 & FDP 2006-PR-027, TCR Mid Atlantic Properties, Inc.; Tax Map 56-2 ((1)) 18A ("Land Bay B"): Parking

Dear Mr. Moorstein:

The following determination is in response to your letter of July 31, 2014, copy attached, requesting an interpretation of the proffers and Conceptual Development Plan (CDP) accepted by the Board of Supervisors, and of the Final Development Plan (FDP) and development conditions approved by the Planning Commission, in conjunction with the above-referenced applications. This letter also acknowledges receipt of a memorandum dated August 22, 2014 by Lynne Strobel, attorney for TCR Mid Atlantic Properties, Inc., responding to the interpretation request, and of your September 16, 2014 letter, submitted in response to the August 22, 2014 memorandum. Copies of both are attached. As I understand it, you are asking for clarification of Proffer 16.B. regarding the rezoning Applicant's commitment to provide parking spaces for the benefit of the residents of Fairfax Ridge Land Bay A.

The 23.01 acre site subject to this interpretation is designated as Fairfax Ridge Land Bay B and is located at the northwest quadrant of Waples Mill Road and Fairfax Ridge Road. RZ 2006-PR-027 was submitted jointly by TCR Mid Atlantic Properties, Inc. and the Fairfax Ridge Condominium Unit Owners Association to rezone 23.01 acres from the PDH-20 to the PDH-30 zoning district and was approved by the Board of Supervisors on November 1, 2011, subject to proffers. The Planning Commission approved FDP 2006-PR-027 on October 20, 2011, subject to development conditions, and subject to final approval of the rezoning by the Board of Supervisors. Collectively, these applications permitted the development of 150 multi-family units within a single, 4-story building with structured parking. In conjunction with these approvals, SEA 00-P-050 was approved to provide for commercial parking (a maximum of 275 spaces) within a residential district for the benefit of the adjacent office use located on Tax Map No. 46-4 ((1)) 15B and 56-1 ((1)) 15C and 15D. This SEA application provided for the relocation of the adjacent office user's existing surface parking spaces into the proposed parking garage.

This request has been submitted on behalf of the Fairfax Ridge Condominium Unit Owners Association, the governing Homeowners Association for Fairfax Ridge Land Bay A (the

Department of Planning and Zoning
Zoning Evaluation Division
12055 Government Center Parkway, Suite 801
Fairfax, Virginia 22035-5509
Phone 703 324-1290
FAX 703 324-3924
www.fairfaxcounty.gov/dpz/

"HOA"). Fairfax Ridge Land Bay A is located opposite Land Bay B, extending along the outer perimeter of Fairfax Ridge Road, and is currently developed with 420 multi-family units in a series of garden-style buildings. The HOA was required by covenant to consent and participate as a co-applicant in the processing of RZ 2006-PR-027 and is also included as a signatory on the executed proffers. The tax map parcels that constitute both Land Bay A and Land Bay B are defined jointly in the preamble of the executed proffers as the subject "Property."

You have asked for clarification of Proffer 16.B. regarding the availability of additional parking spaces to be provided for the benefit of Land Bay A (i.e. the Fairfax Ridge Condominium Owners Association). Proffer 16.B. stipulates the following:

> The Applicant shall pursue an agreement with the owner of the property identified as Tax Map 46-4 ((1)) 15B and 56-2 ((1)), 15C, and 15D to allow parking on these properties by the residents of Land Bay A on weekends and during the week after typical working hours. The agreement shall also allow residents of Land Bay B to park in designated commercial parking spaces on Land Bay B on weekends and during the week after typical working hours. In the alternative, the Applicant shall construct one hundred (100) generally contiguous additional parking spaces within the parking garage located on Land Bay B that will be available for use by the residents of Land Bay A on an unrestricted basis at no cost, including no cost for maintenance. The parking spaces shall be located in proximity to one of the entrances into the parking garage located on Land Bay B. Said parking shall be clearly delineated and parking management shall include the issuance of a distinguishable parking decal to residents of Land Bay A so that their vehicle may be readily identified. The location of parking for the residents of Land Bay A, either by an agreement on property identified as Tax Map 46-4 ((1)) 15B and 56-2 ((1)) 15C and 15D or within the parking garage located on Land Bay B, shall be determined by the Applicant at time of site plan or within one year of the approval of this application, whichever is earlier. Whether located on property identified as Tax Map 46-4 ((1)) 15B and 56-2 ((1)) 15C and 15D or within the parking garage located on Land Bay B, the parking spaces shall be subject to a recorded access easement.

As stated in Proffer 16(B), the Applicant, TCR Mid Atlantic Properties, Inc. (the "Applicant") is obligated to provide additional parking spaces for the use of residents of Land Bay A. Proffer 16.B. provides two options by which this commitment can be implemented. The first option allows, in relevant part, the Applicant to pursue an agreement with the adjacent office user (Tax Map 46-4 ((1)) 15B and 56-2 ((1)) 15C and 15D) by which an unspecified number of spaces on the adjacent office user's property would be available for use by the residents of Land Bay A on weekends and during the week after typical working hours. The second alternative option stipulates that the Applicant shall construct 100 generally contiguous additional parking spaces for use by the residents of Land Bay A within the garage to be constructed on Land Bay B. The

proffer further stipulates that these spaces were to be provided on an unrestricted basis and at no cost.

The building design and notations included on the CDP/FDP include provisions for the 100 spaces within the new Land Bay B garage. Sheet 2 of the CDP/FDP notes 634 parking spaces are to be provided, 259 spaces noted as "residential parking," 275 spaces noted as "office parking," and 100 spaces noted as "additional residential parking." Sheet 7 includes a cross section of the site and notes an 8-level parking garage, comprised of six levels above grade and two levels below grade. The CDP/FDP evinces the Applicant's alternative to provide 100 additional parking spaces within the garage for use by the residents of Land Bay A.

A site plan (3993-SP-008-2) for the Applicant's residential development was approved by the Department of Public Works and Environmental Services (DPWES) on February 10, 2014. Sheet 2 of the approved site plan notes 521 parking spaces to be provided, 246 spaces noted as "residential parking spaces required for Land Bay 'B'" and 275 spaces noted as "office parking required." Sheets 7, 8, 8A, 9 and a cross section on Sheet 24A note a seven level garage, comprised of six levels above grade and one level below grade. Sheet 61A included a parking management plan depicting how the spaces would be allocated among the various users. The parking management plan contains discrepancies regarding where the proffered 100 spaces for Land Bay A residents will be located (the notations state the 100 spaces will be provided on the adjacent office land), and the number of spaces to be provided (the notations state 100 spaces, but only 50 spaces are noted on levels 3 and 4 of the new Land Bay B garage). The proffer compliance statement submitted as part of the site plan indicated approval of the site plan was contingent upon the owner of Fairfax Ridge Land Bay B pursuing, executing, and recording a shared parking agreement with the owner of the adjacent office site to allow the residents of Land Bay A to park on their property.

The site plan was approved; however, an agreement to provide shared parking for the residents of Land Bay A on the adjacent office site was not reached. As part of the site plan, an Amended and Restated Reciprocal Easement and Parking Agreement ("REA") with the adjacent office user was recorded for the new Land Bay B garage. A parking management plan was attached to the recorded REA, and it provides that 100 spaces would be shared between office uses and the residents of Land Bay A. The parking management plan also restricts parking by the residents of Land Bay A during the hours of 7:30 a.m. and 6:30 p.m. on weekdays, during which time the resident vehicles will be subject to towing. The County was not a signatory to this document.

The Applicant also entered into a Deed of Access Easement with the HOA ("Access Easement"), which provides that the HOA shall have access to and the right to use 100 parking spaces within the garage to be located on Land Bay B, subject to rules and regulations instituted by the

Applicant, including the right to set time limits. Again, the County was not a signatory to this document.

A review of the zoning background indicates that if the Applicant had entered into a shared parking agreement with the adjacent office user, additional parking spaces were to be provided on the adjoining office user's property (Tax Map 46-4 ((1)) 15B and 56-2 ((1)) 15C and 15D). Those spaces were to be shared between the office uses and the residents of Land Bay A. Conversely, there is no reference within the background materials that the 100 parking spaces to be provided as an alternative within the garage on Land Bay B were to be shared. In fact, Proffer 16.B. explicitly requires the Applicant, under the second option, to construct 100 *additional* parking spaces within the garage to be provided on an "unrestricted basis." The use of the word "unrestricted" means that the garage parking spaces must be provided to the residents of Land Bay A with no limitations with regard to time of day, day of the week, or duration. The disaggregation of the parking (with the number of spaces explicitly specified for each of the users) and the building design as noted on the CDP/FDP do not substantiate shared parking as the intent, as expressed by the two alternatives proffered.

Based on the above, it is my determination that the 100 parking spaces, noted by Proffer 16.B. as one of two alternatives to providing additional parking for the benefit of Land Bay A residents, shall be provided for use by the residents of Land Bay A with no limitations regarding time of day, day of the week, or duration. It is also my determination that the site plan approved on February 10, 2014, which depicts 100 of the 275 office parking spaces to be shared with the residents of Land Bay A, is not in substantial conformance with the proffers, CDP/FDP, and development conditions. Finally, it is my determination that the restrictions prohibiting parking by Land Bay A residents during certain times of the day, and during certain days of the week, as noted in the recorded REA, and as indicated in the recorded Access Easement, intended to administer Proffer 16.B., are not in substantial conformance with the proffers, CDP/FDP, and development conditions. In order to comply with Proffer 16.B., the Applicant shall provide the 100 additional garage parking spaces without limitations, or alternatively, shall diligently pursue and execute a shared parking agreement with the owner of Tax Map 46-4 ((1)) 15B and 56-2 ((1)) 15C and 15D. Lack of full compliance with Proffer 16.B. may lead to enforcement action and cause for cessation of construction activities on the site until full compliance is achieved.

This determination has been made in my capacity as the duly authorized agent of the Zoning Administrator and addresses only the issue discussed herein. If you have any questions regarding this interpretation, please feel free to contact Stephen Gardner at (703) 324-1290.

Sincerely,

Barbara C. Berlin

Barbara C. Berlin, AICP, Director
Zoning Evaluation Division, DPZ

N:\Fairfax Ridge Land Bay B_PI 14 08 043\DETERMINATION LTR.Docx

Attachments: A/S

cc: Linda Q. Smyth, Supervisor, Providence District
Kenneth Lawrence, Planning Commissioner, Providence District
Elizabeth D. Teare, Deputy County Attorney
Leslie Johnson, Zoning Administrator, ZAD, DPZ
Diane Johnson-Quinn, Deputy Zoning Administrator, Permit Review Branch, ZAD, DPZ
Ken Williams, Plan Control, Land Development Services, DPWES
Angela Rodeheaver, Section Chief for Site Analysis, DOT
Kevin Guinaw, Chief, Special Projects/Applications Management Branch, ZED, DPZ
Lynne J. Strobel, Walsh Colucci Lubeley & Walsh PC, Attorney for TCR Mid Atlantic Properties, Inc., 2200 Clarendon Blvd., 13th Floor, Arlington, VA 22201-3359
File: RZ 2006-PR-027, FDP 2006-PR-027 & PI 14 08 043, Imaging

ATTACHMENT 10

County of Fairfax, Virginia

To protect and enrich the quality of life for the people, neighborhoods and diverse communities of Fairfax County

October 2, 2014

Lynne J. Strobel
Walsh Colucci Lubeley & Walsh PC
Courthouse Plaza
2200 Clarendon Blvd., 13th Floor
Arlington, VA 22201-3359

Re: RZ 2006-PR-027 & FDP 2006-PR-027, TCR Mid Atlantic Properties, Inc.; Tax Map 56-2 ((1)) 18A ("Land Bay B"); Parking

Dear Ms. Strobel:

Attached you will please find a copy of the response to a request for determination submitted by the Fairfax Ridge Condominium Unit Owners Association regarding your client's compliance with RZ/FDP 2006-PR-027 Proffer 16.B., which is a commitment to provide parking for the benefit of the residents of Fairfax Ridge Land Bay A. Please provide a written response within 15 days of the date of this letter outlining how your client will comply with Proffer 16.B.

Sincerely,

Barbara C. Berlin, AICP, Director
Zoning Evaluation Division, DPZ

cc: Elizabeth D. Teare, Deputy County Attorney
Leslie Johnson, Zoning Administrator, ZAD, DPZ
Kevin Guinaw, Chief, Special Projects/Applications Management Branch, ZED, DPZ

Department of Planning and Zoning
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Excellence * Innovation * Stewardship
Integrity * Teamwork* Public Service

County of Fairfax, Virginia

To protect and enrich the quality of life for the people, neighborhoods and diverse communities of Fairfax County

October 2, 2014

Mark A. Moorstein, Esq.
Rees Broome, PC
7430 Heritage Village Plaza, Suite 202
Gainesville, VA 20155

Re: RZ 2006-PR-027 & FDP 2006-PR-027, TCR Mid Atlantic Properties, Inc.; Tax Map 56-2 ((1)) 18A ("Land Bay B"): Parking

Dear Mr. Moorstein:

The following determination is in response to your letter of July 31, 2014, copy attached, requesting an interpretation of the proffers and Conceptual Development Plan (CDP) accepted by the Board of Supervisors, and of the Final Development Plan (FDP) and development conditions approved by the Planning Commission, in conjunction with the above-referenced applications. This letter also acknowledges receipt of a memorandum dated August 22, 2014 by Lynne Strobel, attorney for TCR Mid Atlantic Properties, Inc., responding to the interpretation request, and of your September 16, 2014 letter, submitted in response to the August 22, 2014 memorandum. Copies of both are attached. As I understand it, you are asking for clarification of Proffer 16.B. regarding the rezoning Applicant's commitment to provide parking spaces for the benefit of the residents of Fairfax Ridge Land Bay A.

The 23.01 acre site subject to this interpretation is designated as Fairfax Ridge Land Bay B and is located at the northwest quadrant of Waples Mill Road and Fairfax Ridge Road. RZ 2006-PR-027 was submitted jointly by TCR Mid Atlantic Properties, Inc. and the Fairfax Ridge Condominium Unit Owners Association to rezone 23.01 acres from the PDH-20 to the PDH-30 zoning district and was approved by the Board of Supervisors on November 1, 2011, subject to proffers. The Planning Commission approved FDP 2006-PR-027 on October 20, 2011, subject to development conditions, and subject to final approval of the rezoning by the Board of Supervisors. Collectively, these applications permitted the development of 150 multi-family units within a single, 4-story building with structured parking. In conjunction with these approvals, SEA 00-P-050 was approved to provide for commercial parking (a maximum of 275 spaces) within a residential district for the benefit of the adjacent office use located on Tax Map No. 46-4 ((1)) 15B and 56-1 ((1)) 15C and 15D. This SEA application provided for the relocation of the adjacent office user's existing surface parking spaces into the proposed parking garage.

This request has been submitted on behalf of the Fairfax Ridge Condominium Unit Owners Association, the governing Homeowners Association for Fairfax Ridge Land Bay A (the

Department of Planning and Zoning
Zoning Evaluation Division
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Fairfax, Virginia 22035-5509
Phone 703 324-1290
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DEPARTMENT OF PLANNING & ZONING

"HOA"). Fairfax Ridge Land Bay A is located opposite Land Bay B, extending along the outer perimeter of Fairfax Ridge Road, and is currently developed with 420 multi-family units in a series of garden-style buildings. The HOA was required by covenant to consent and participate as a co-applicant in the processing of RZ 2006-PR-027 and is also included as a signatory on the executed proffers. The tax map parcels that constitute both Land Bay A and Land Bay B are defined jointly in the preamble of the executed proffers as the subject "Property."

You have asked for clarification of Proffer 16.B. regarding the availability of additional parking spaces to be provided for the benefit of Land Bay A (i.e. the Fairfax Ridge Condominium Owners Association). Proffer 16.B. stipulates the following:

> The Applicant shall pursue an agreement with the owner of the property identified as Tax Map 46-4 ((1)) 15B and 56-2 ((1)), 15C, and 15D to allow parking on these properties by the residents of Land Bay A on weekends and during the week after typical working hours. The agreement shall also allow residents of Land Bay B to park in designated commercial parking spaces on Land Bay B on weekends and during the week after typical working hours. In the alternative, the Applicant shall construct one hundred (100) generally contiguous additional parking spaces within the parking garage located on Land Bay B that will be available for use by the residents of Land Bay A on an unrestricted basis at no cost, including no cost for maintenance. The parking spaces shall be located in proximity to one of the entrances into the parking garage located on Land Bay B. Said parking shall be clearly delineated and parking management shall include the issuance of a distinguishable parking decal to residents of Land Bay A so that their vehicle may be readily identified. The location of parking for the residents of Land Bay A, either by an agreement on property identified as Tax Map 46-4 ((1)) 15B and 56-2 ((1)) 15C and 15D or within the parking garage located on Land Bay B, shall be determined by the Applicant at time of site plan or within one year of the approval of this application, whichever is earlier. Whether located on property identified as Tax Map 46-4 ((1)) 15B and 56-2 ((1)) 15C and 15D or within the parking garage located on Land Bay B, the parking spaces shall be subject to a recorded access easement.

As stated in Proffer 16(B), the Applicant, TCR Mid Atlantic Properties, Inc. (the "Applicant") is obligated to provide additional parking spaces for the use of residents of Land Bay A. Proffer 16.B. provides two options by which this commitment can be implemented. The first option allows, in relevant part, the Applicant to pursue an agreement with the adjacent office user (Tax Map 46-4 ((1)) 15B and 56-2 ((1)) 15C and 15D) by which an unspecified number of spaces on the adjacent office user's property would be available for use by the residents of Land Bay A on weekends and during the week after typical working hours. The second alternative option stipulates that the Applicant shall construct 100 generally contiguous additional parking spaces for use by the residents of Land Bay A within the garage to be constructed on Land Bay B. The

proffer further stipulates that these spaces were to be provided on an unrestricted basis and at no cost.

The building design and notations included on the CDP/FDP include provisions for the 100 spaces within the new Land Bay B garage. Sheet 2 of the CDP/FDP notes 634 parking spaces are to be provided, 259 spaces noted as "residential parking," 275 spaces noted as "office parking," and 100 spaces noted as "additional residential parking." Sheet 7 includes a cross section of the site and notes an 8-level parking garage, comprised of six levels above grade and two levels below grade. The CDP/FDP evinces the Applicant's alternative to provide 100 additional parking spaces within the garage for use by the residents of Land Bay A.

A site plan (3993-SP-008-2) for the Applicant's residential development was approved by the Department of Public Works and Environmental Services (DPWES) on February 10, 2014. Sheet 2 of the approved site plan notes 521 parking spaces to be provided, 246 spaces noted as "residential parking spaces required for Land Bay 'B'" and 275 spaces noted as "office parking required." Sheets 7, 8, 8A, 9 and a cross section on Sheet 24A note a seven level garage, comprised of six levels above grade and one level below grade. Sheet 61A included a parking management plan depicting how the spaces would be allocated among the various users. The parking management plan contains discrepancies regarding where the proffered 100 spaces for Land Bay A residents will be located (the notations state the 100 spaces will be provided on the adjacent office land), and the number of spaces to be provided (the notations state 100 spaces, but only 50 spaces are noted on levels 3 and 4 of the new Land Bay B garage). The proffer compliance statement submitted as part of the site plan indicated approval of the site plan was contingent upon the owner of Fairfax Ridge Land Bay B pursuing, executing, and recording a shared parking agreement with the owner of the adjacent office site to allow the residents of Land Bay A to park on their property.

The site plan was approved; however, an agreement to provide shared parking for the residents of Land Bay A on the adjacent office site was not reached. As part of the site plan, an Amended and Restated Reciprocal Easement and Parking Agreement ("REA") with the adjacent office user was recorded for the new Land Bay B garage. A parking management plan was attached to the recorded REA, and it provides that 100 spaces would be shared between office uses and the residents of Land Bay A. The parking management plan also restricts parking by the residents of Land Bay A during the hours of 7:30 a.m. and 6:30 p.m. on weekdays, during which time the resident vehicles will be subject to towing. The County was not a signatory to this document.

The Applicant also entered into a Deed of Access Easement with the HOA ("Access Easement"), which provides that the HOA shall have access to and the right to use 100 parking spaces within the garage to be located on Land Bay B, subject to rules and regulations instituted by the

Applicant, including the right to set time limits. Again, the County was not a signatory to this document.

A review of the zoning background indicates that if the Applicant had entered into a shared parking agreement with the adjacent office user, additional parking spaces were to be provided on the adjoining office user's property (Tax Map 46-4 ((1)) 15B and 56-2 ((1)) 15C and 15D). Those spaces were to be shared between the office uses and the residents of Land Bay A. Conversely, there is no reference within the background materials that the 100 parking spaces to be provided as an alternative within the garage on Land Bay B were to be shared. In fact, Proffer 16.B. explicitly requires the Applicant, under the second option, to construct 100 *additional* parking spaces within the garage to be provided on an "unrestricted basis." The use of the word "unrestricted" means that the garage parking spaces must be provided to the residents of Land Bay A with no limitations with regard to time of day, day of the week, or duration. The disaggregation of the parking (with the number of spaces explicitly specified for each of the users) and the building design as noted on the CDP/FDP do not substantiate shared parking as the intent, as expressed by the two alternatives proffered.

Based on the above, it is my determination that the 100 parking spaces, noted by Proffer 16.B. as one of two alternatives to providing additional parking for the benefit of Land Bay A residents, shall be provided for use by the residents of Land Bay A with no limitations regarding time of day, day of the week, or duration. It is also my determination that the site plan approved on February 10, 2014, which depicts 100 of the 275 office parking spaces to be shared with the residents of Land Bay A, is not in substantial conformance with the proffers, CDP/FDP, and development conditions. Finally, it is my determination that the restrictions prohibiting parking by Land Bay A residents during certain times of the day, and during certain days of the week, as noted in the recorded REA, and as indicated in the recorded Access Easement, intended to administer Proffer 16.B., are not in substantial conformance with the proffers, CDP/FDP, and development conditions. In order to comply with Proffer 16.B., the Applicant shall provide the 100 additional garage parking spaces without limitations, or alternatively, shall diligently pursue and execute a shared parking agreement with the owner of Tax Map 46-4 ((1)) 15B and 56-2 ((1)) 15C and 15D. Lack of full compliance with Proffer 16.B. may lead to enforcement action and cause for cessation of construction activities on the site until full compliance is achieved.

This determination has been made in my capacity as the duly authorized agent of the Zoning Administrator and addresses only the issue discussed herein. If you have any questions regarding this interpretation, please feel free to contact Stephen Gardner at (703) 324-1290.

Sincerely,

Barbara C. Berlin

Barbara C. Berlin, AICP, Director
Zoning Evaluation Division, DPZ

N:\Fairfax Ridge Land Bay B_PI 14 08 043\DETERMINATION LTR.Docx

Attachments: A/S

cc: Linda Q. Smyth, Supervisor, Providence District
Kenneth Lawrence, Planning Commissioner, Providence District
Elizabeth D. Teare, Deputy County Attorney
Leslie Johnson, Zoning Administrator, ZAD, DPZ
Diane Johnson-Quinn, Deputy Zoning Administrator, Permit Review Branch, ZAD, DPZ
Ken Williams, Plan Control, Land Development Services, DPWES
Angela Rodeheaver, Section Chief for Site Analysis, DOT
Kevin Guinaw, Chief, Special Projects/Applications Management Branch, ZED, DPZ
Lynne J. Strobel, Walsh Colucci Lubeley & Walsh PC, Attorney for TCR Mid Atlantic Properties, Inc., 2200 Clarendon Blvd., 13th Floor, Arlington, VA 22201-3359
File: RZ 2006-PR-027, FDP 2006-PR-027 & PI 14 08 043, Imaging

Lynne J. Strobel
(703) 528-4700 Ext. 5418
lstrobel@thelandlawyers.com

WALSH COLUCCI
LUBELEY & WALSH PC

October 17, 2014

Via E-Mail and U.S. Mail

Barbara C. Berlin, Director
Zoning Evaluation Division
Fairfax County Department of Planning & Zoning
12055 Government Center Parkway, Suite 801
Fairfax, Virginia 22035

Re: RZ/FDP 2006-PR-027
Interpretation dated October 2, 2014
Applicants: TCR MidAtlantic Properties, Inc. and Fairfax Ridge Condominium Unit Owners Association

Dear Ms. Berlin:

I am in receipt of your letter dated October 2, 2014 rendering a determination in response to a letter dated July 31, 2014 submitted by Mark A. Moorstein. Your letter included a cover letter requesting a written response within 15 days of the date of the letter outlining how the Applicant will comply with Proffer 16.B. associated with the referenced rezoning. Please accept this letter as the requested written response from TCR MidAtlantic Properties, Inc. ("TCR").

TCR intends to diligently pursue a number of remedial actions concurrently. These actions will include, but not be limited, to the following:

- TCR will appeal your determination dated October 2, 2014. TCR disagrees with the conclusions rendered in the determination and intends to pursue all administrative and legal remedies including an appeal to the Fairfax County Board of Supervisors and Zoning Administrator, and subsequently to the Circuit Court, if necessary.

- Corrective actions will be taken to ensure that the information on the approved site plan is consistent with TCR's interpretation of the proffers.

- TCR will submit a proffered condition amendment application to the Fairfax County Zoning Evaluation Division to modify Proffer 16.B.

- TCR will continue a dialogue with the Fairfax Ridge Condominium Unit Owners Association regarding Proffer 16.B. and the proposed proffered condition amendment.

- TCR will continue to pursue an agreement with the adjacent property owner for shared parking spaces (during the week after typical working hours) on property identified as Tax Map 46-4 ((1)) 15B and 56-2 ((1)) 15C and 15D.

Should you have any questions regarding this letter, or require additional information, please do not hesitate to contact me.

Very truly yours,

WALSH, COLUCCI, LUBELEY & WALSH, P.C.

Lynne J. Strobel

cc: Sean Caldwell
Amirali Nasserian
Elizabeth Teare
Laura Gori
Leslie Johnson
Kevin Guinaw
Stephen Gardner
Mark Moorstein
Kimberley O'Halloran-Perez
Thomas J. Colucci

{A0629196.DOCX / 1 Ltr to Berlin re: Interpretation dated October 2, 2014 000096 000048}

ATTACHMENT 12

Lynne J. Strobel
(703) 528-4700 Ext. 5418
lstrobel@thelandlawyers.com

WALSH COLUCCI
LUBELEY & WALSH PC

October 31, 2014

Via E-Mail and Hand Delivery

Leslie B. Johnson, Zoning Administrator
Zoning Administration Division
Fairfax County Department of Planning & Zoning
12055 Government Center Parkway, Suite 807
Fairfax, Virginia 22035

Catherine A. Chianese
Clerk to the Board of Supervisors
Office of the Clerk to the Board of Supervisors
12000 Government Center Parkway, Suite 533
Fairfax, Virginia 22035

Re: Appeal of Determination dated October 2, 2014
RZ/FDP 2006-PR-027
Tax Map Reference: 56-2 ((1)) 18A
Appellant: WM/Olayan Holdings LLC, a Delaware limited liability company, as successor in interest to TCR Mid Atlantic Properties, Inc.

Dear Ms. Johnson and Ms. Chianese:

Barbara Berlin issued a determination dated October 2, 2014, (the "Determination"), interpreting the proffers associated with RZ/FDP 2006-PR-027 (the "Rezoning").[1] The Determination concludes that the Appellant is not in compliance with the requirements of Proffer 16.B accepted in connection with that Rezoning.

Please accept this statement and attached application on behalf of the Appellant as grounds for its appeal of that Determination, in accordance with Zoning Ordinance § 18-204 and applicable State code requirements, including, but not limited to, Va. Code Ann. § 15.2-2311. We also request a public hearing before the Fairfax County Board of Supervisors in connection with this appeal.

When the Rezoning was approved, the TCR Mid Atlantic Properties, Inc. ("TCR") and the Fairfax Ridge Condominium Unit Owners Association (the "Association") were Co-Applicants. At that time TCR owned property identified among the Fairfax County tax assessment records as 56-2 ((1)) 18A (the "Subject Property"). This property is also referred to in

[1] A copy of the Determination is attached as Exhibit A.

the Rezoning as "Land Bay B." The Subject Property was subsequently conveyed to the Appellant. The Association, as Co-Applicant, represented the owners of property identified among the tax assessment records as 46-4 ((19)) All Parcels, and 56-2 ((27)) All Numbered Parcels. These properties were collectively referred to as "Land Bay A." Land Bays A and B are physically located on opposite sides of Fairfax Ridge Road. I have attached as Exhibit B a graphic that identifies these Land Bays for your reference.

During the processing of the Rezoning, TCR negotiated proffers with Fairfax County, and with the Association. At the time, Land Bay A was already developed with condominium units, and Land Bay B was a surface parking lot that benefited an adjacent office park identified among the Fairfax County tax assessment records as 46-4 ((1)) 15B and 56-2 ((1)) 15C and 15D (the "Office Park"). The Rezoning proposed the development of Land Bay B with 150 multi-family residential dwelling units, with no physical modifications to Land Bay A. During TCR's multiple discussions with the Association regarding the proposed development on Land Bay B, the Association identified a lack of available parking for Land Bay A residents on weeknights and weekends. Although parking was provided on Land Bay A in accordance with applicable Zoning Ordinance requirements, some of that parking is inconveniently located for the residential units, and the three (3) bedroom units on Land Bay A generate a greater parking demand than originally contemplated. As a result, Land Bay A residents had taken to parking on the public street that separates Land Bay A from Land Bay B, Fairfax Ridge Road, in the parking lot of the Office Park, and on Land Bay B. Parking in the Office Park's lot and on Land Bay B was without permission of those landowners. When the Office Park owner enforced its property rights and prohibited parking on its property without permission, the demand for parking increased. Therefore, the Association asked TCR to provide parking to solve the existing parking problem for Land Bay A residents, on weeknights and weekends. (Parking during the week day, when many Fairfax County residents are working, was not identified as a problem).

In response to the identified parking shortage, the Appellant drafted Proffer 16.B. Initially, that Proffer simply said: "The Applicant shall pursue an agreement with the owner of the property identified as tax map 46-4 ((1)) 15B and 56-2 ((1)) 15C and 15D to allow parking on these properties by the residents of Land Bay A on weekends and during the week after typical working hours." (Emphasis supplied). The properties to which those tax map numbers refer are the Office Park and the Proffer contemplated mitigation of a specific parking problem experienced by Land Bay A residents on weeknights and on weekends by pursuing the right to share surface parking with the Office Park during those times. It contemplated the legalization of what some Land Bay A residents were already doing illegally.

The Association raised a concern that the parking issue would not be addressed if TCR was unsuccessful in obtaining an agreement with the Office Park's owner, and so it asked for further assurances that some relief parking would be provided even if the Office Park owner would not agree to share its existing spaces.

In response, TCR expanded its Proffer commitment by including a third sentence added to the language above that says in relevant part: "In the alternative, the Applicant shall construct one hundred (100) generally contiguous additional parking spaces within the parking garage located on Land Bay B that will be available for use by the residents of Land Bay A on an

unrestricted basis at no cost, including no cost for maintenance." The Appellant thereafter satisfied this Proffer by providing one hundred parking spaces in the parking garage on Land Bay B. In its view, these parking spaces are limited to use on weeknights and weekends to address the identified parking concern.

Although the affected parties clearly intended that the additional parking would be available to mitigate the specific problem detailed above, however, the Determination has concluded in material part that the one hundred parking spaces provided in accordance with Proffer 16.B. – as one of two alternatives to provide additional parking for the benefit of Land Bay A residents – must be provided for use by the residents of Land Bay A without limitation as to time of day, day of week, or duration. In short, the County has determined that the Appellant was obligated to build exclusive parking for the adjacent property. The Appellant disagrees with this conclusion and contends that the Determination is in error and should be set aside or reversed.

Most fundamentally, the Determination incorrectly reads the words "on an unrestricted basis" exceptionally broadly, and by doing so changes the intentional use both of the words employed, and the purpose for which the Proffer was written. The term "unrestricted basis" was manifestly to ensure that one hundred parking spaces were available without restriction, but only for use during peak parking demand – for the sole end of mitigating the concern that the Association identified during the Rezoning. "Unrestricted" thus means that access is to be unimpeded, or, in other words, that no gates or physical barriers may be installed that would deter or preclude the use for which the Proffer was written in the first, and only, place. In addition, the term "unrestricted" was intended to allow the Association, and not the Appellant, to regulate use of the parking to which it had its limited right. The Association would not be prevented from itself issuing regulations that would, for example, permit its residents to park on a first come/first serve basis, or to assign the parking spaces in its discretion, and which could include limitations on duration and/or the imposition of fees.

The Proffer did not use, as it could have, the term "exclusive" to describe the rights that the Association obtained. Nor does it say that the parking spaces are to be available 24 hours a day. Indeed, sharing with the Office Park owner of its surface parking spaces solely for "residents of Land Bay A on weekends and during the week after typical working hours" was contemplated (as the first part of the Proffer plainly provides) is inconsistent with the Determination's conclusion that parking in the garage is free for use at any time. It is wholly counterintuitive to conclude that similarly limited sharing of available parking was not the contemplated use of the Land Bay B garage parking as it would have been had the Appellant been able to secure an agreement to the use of existing surface parking. Proffer 16.B. was thus drafted, and agreed to by all involved, to solve Land Bay A's weeknight and weekend problem and nothing else.

Moreover, it simply does not make sense to conclude that parking in the garage was to be of a fundamentally different character from the sharing of surface parking spaces in the Office Park, given the high cost of constructing structured garage parking. At no point during the Rezoning can anyone have thought that the Appellant was simply agreeing to build one hundred additional parking for residents of Land Bay A to have and to hold exclusively. The cost of

constructing a garage parking space compared to constructing a surface parking space (which was plainly an alternative) is different by orders of magnitude. A reasonable understanding of what the Proffers mean supports the Appellant's contention that if the surface spaces were to be shared, the garage parking spaces would be similarly shared and on the same terms. This is further supported by typical practices for such shared parking, including the fact that garage parking spaces are usually an amenity that must be paid for in order to offset the high costs of construction, whereas surface parking space usually are not. Given the cost and value of garage parking, it cannot be reasonably concluded that the Appellant would simply offer extra garage parking to non-residents.

Furthermore, the Appellant was required to preserve 275 parking spaces on Land Bay B for the benefit of the Office Park as part of the development of the Subject Property. This is detailed in an agreement incorporated into an Amended and Restated Reciprocal Easement and Parking Agreement recorded in Deed Book 23511 at Page 811 (the "REA"). While the Office Park owner was unwilling to enter into an agreement to share its existing surface parking space, it was willing to share 100 of the 275 parking spaces the Appellant provided in the Land Bay B garage. The Appellant would not have been willing to so agree if it, or anyone else, understood the Proffer to make those 100 spaces additional and exclusive parking for Land Bay A. The only reasonable interpretation of the words, in the context of the proffer itself and the circumstances leading to its acceptance, is that Land Bay A residents were to have unrestricted access to shared additional parking – on weeknights and weekends.

We must further observe that the Staff Report prepared for the Rezoning supports the proposition that the parties intended shared parking in this fashion, whether surface or structured, and recognized that shared parking would be achieved by either of the two mechanisms established in the Proffer. A chart on page 3 of the Report states that a total of 634 parking spaces are to be provided. A footnote to this says that: "If shared parking is achieved with the adjacent office, the one hundred (100) additional spaces [in the garage] would be deleted." Because the right to shared parking in the garage was duly obtained from the adjacent Office Park owner, allowing Land Bay A residents the right to use those parking spaces on weeknights and weekends, one hundred additional parking spaces in the garage are not needed or required. This is consistent with the tabulations on the proffered/conceptual final development plan, which makes a clear distinction between required residential and office parking, and the one hundred parking spaces that are in contention here. The additional parking spaces would only be required if shared parking had not been achieved. There is no reference in the Staff Report, or in the proffers, to weekday parking for Land Bay A residents during business hours, for that concern was never identified during the processing of the Rezoning.

It should also be noted that compliance with Proffer 16.B. was a condition of site plan approval, and that condition was determined to have been satisfied, without an additional one hundred spaces set aside in the garage for Land Bay A residents. The site plan was duly approved.[2] That the County undertook a deliberate evaluation of the requirements of the Proffer

[2] The Determination does identify an error on Sheet 61A of the site plan that does not affect the substance of this appeal. The Appellant will correct the site plan to identify clearly the

and its satisfaction by the submitted Plan is evidenced in the e-mail chain attached hereto as Exhibit C. In order to obtain site plan approval the Appellant provided Fairfax County a copy of the REA with the office park owner. The County had to determine at the time that the conditions of Proffer 16.B. had been satisfied. Building permits were then issued and construction commenced and is ongoing.[3]

As yet another consideration, the first sentence of Proffer 16.B. expressly references as a first option the prospect that the Office Park owner might indeed allow shared surface parking on its property. Consistently with this option, and as is set out in the REA, the Office Park owner has the right to use the 275 parking spaces in the Land Bay B garage. This right is an integral part of the property rights that accrue to the benefit of the Office Park owner, deriving directly from the detailed and thoughtful process that resulted in the Rezoning. The use of 275 parking spaces in the garage on Land Bay B is a now property right accruing to the Office Park owner, and is consistent with the requirements of the first sentence of Proffer 16.B.

The Appellant did in the end obtain a separate agreement with the Office Park owner to allow parking by residents of Land Bay A on weekends and during the week after typical working hours, in the parking garage and as provided in the proffer, and this agreement was memorialized in the REA as to those garage spaces. In short, Proffer 16.B. has been complied with, both in letter and spirit, and to determine as the County has done that the Appellant unknowingly built general and unrestricted parking for Land Bay A is neither fair, nor reasonable, nor accurate.[4]

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one hundred generally contiguous parking spaces available for Land Bay A residents in the garage and not in the Office Park. The reference to parking on the Office Park was an oversight. As noted above in detail, the Appellant intended to, and will, provide one hundred parking spaces for the use of Land Bay A residents, also shared with the Office Park owner, in the garage.

[3] When a site plan is approved, and a proffered condition has been satisfied, there has necessarily been a zoning determination made at the time of approval. After 60 days, this determination becomes final and binding under Va. Code Ann. § 15.2-2311(C), and the Determination may not seek to undo or reverse what has already been decided complies with the Proffer. The prior decision governs.

[4] It cannot be ignored that if the Determination is correct the structured parking lot on the Subject Property is too small (and cannot be retrofitted at this point). The garage cannot accommodate the parking required for the Land Bay B residents, the Office Park, and one hundred spaces for Land Bay A. At least one practical effect of the Determination is to put the Appellant in potential breach of its agreement with the Office Park, and it is disingenuous for the County now to say that it was not a party to that agreement, after it approved the plans and issued the permits for the garage in the plain understanding, and indeed upon the conclusion, that the garage was built in conformance with the needs that it was obligated to meet.

For the reasons stated, the Appellant asserts that the Determination is in error and requests that it be set aside or reversed. It erroneously equates the word "unrestricted" with "exclusive" with respect to access to parking. The parking spaces were provided to solve an identified problem to which the Determination is effectively unrelated. Finally, the cost of constructing garage parking supports the proposition that this was intended as a shared parking arrangement to resolve a singular problem and not as a promise to build Land Bay A parking garage spaces for its unfettered use.

Please contact me should you have any questions regarding this appeal or if I can provide you with additional information. I ask that a public hearing before the Board of Supervisors be scheduled at your earliest convenience. I reserve the right to enter additional materials into the record during the processing of this appeal and prior to and during the public hearing.

As always, I appreciate your cooperation and assistance.

Very truly yours,

WALSH, COLUCCI, LUBELEY & WALSH, P.C.

Lynne J. Strobel /kac

Lynne J. Strobel

LJS/kae
Enclosures
cc: Sean Caldwell
Amirali Nasserian
Thomas J. Colucci
{A0631309.DOCX / 1 BZA Statement - 10.31.14 000096 000078}

Please type or Print in Black Ink

FAIRFAX COUNTY RECEIVED
OCT 31 2014
DIVISION OF ZONING ADMINISTRATION

COMMONWEALTH OF VIRGINIA
COUNTY OF FAIRFAX
APPLICATION FOR APPEAL

APPLICATION NO. A-RZ 2006-PR-027
(Assigned by Staff)

NAME OF APPELLANT: WM/Olayan Holdings LLC, a Delaware limited liability company, as successor in interest to TCR Mid Atlantic Properties, Inc.

NATURE OF THE APPEAL:

Appeal of Determination dated October 2, 2014 that concludes that the requirements of Proffer 16.B. associated with RZ 2006-PR-027 have not been met.

DATE OF ORDER, REQUIREMENT, DECISION, DETERMINATION OR NOTICE OF VIOLATION WHICH IS SUBJECT TO THE APPEAL October 2, 2014

HOW IS THE APPELLANT AN AGGRIEVED PERSON?:

The Appellant is the owner and developer of the property subject to the RZ 2006-PR-027 and Proffer 16.B.

IF APPEAL RELATES TO A SPECIFIC PROPERTY, PROVIDE THE FOLLOWING INFORMATION:

POSTAL ADDRESS OF PROPERTY: 3887 Fairfax Ridge Road, Fairfax, Virginia 22030

TAX MAP DESCRIPTION: 56-2 ((1)) 18A

The undersigned has or has not (circle one) the authority to allow and does or does not (circle one) authorize Fairfax County staff representatives on official business to enter on the subject property as necessary to process the application.

Lynne J. Strobel, Agent — Walsh, Colucci, Lubeley & Walsh, P.C.
Type or Print Name of Appellant or Agent

Signature of Appellant or Agent

2200 Clarendon Boulevard, Suite 1300, Arlington, Virginia 22201
Address

703-528-4700
Telephone No. Home Work

Please provide name and phone number of contact person if different from above.

DO NOT WRITE IN THIS SPACE

Subdivision Name:

Total Area (Acres/Square Feet):

Present Zoning:

Supervisor District:

Date application received: Application Fee Paid: $ 600.00

Date application accepted:

1/96

EXHIBIT A

ATTACHMENT 13

County of Fairfax, Virginia

To protect and enrich the quality of life for the people, neighborhoods and diverse communities of Fairfax County

NOTICE OF VIOLATION
Fairfax County Zoning Ordinance

DATE OF ISSUANCE:	May 11, 2015
METHOD OF SERVICE:	OFFICE OF THE SHERIFF
LEGAL NOTICE ISSUED TO:	WM/Olayan Holdings, LLC
ADDRESS:	3887 Fairfax Ridge Road Fairfax, VA 22030
LOCATION OF VIOLATION:	3887 Fairfax Ridge Road Fairfax Ridge, Land Bay B
TAX MAP REF:	Zoning Map No. 056-2((01)) 0018A
ZONING DISTRICT:	PDH-30 RZ/FDP 2006-PR-027

Dear Property Owner:

The above-referenced property was the subject of Rezoning RZ/FDP 2006-PR-027 approved by the Board of Supervisors on November 1, 2011, and subject to the associated proffered conditions accepted by the Board. A true and accurate copy of the proffers for RZ/FDP 2006-PR-027 is attached hereto and incorporated herein by reference. Per the October 2, 2014, letter issued by my agent, Barbara C. Berlin, Director, Zoning Evaluation Division, Fairfax County Department of Planning and Zoning, WM/Olayan Holdings, LLC ("Owner"), is in violation of Proffered Condition 16B of RZ/FDP 2006-PR-027 for the reasons set forth in that letter. A copy of the October 2, 2014, letter is attached hereto and incorporated herein by reference.

In accordance with Par. 3 of Sect. 18-204 of the Fairfax County Zoning Ordinance, proffered conditions become part of the zoning regulations applicable to the property. Specifically, this provision states:

> Such proffered conditions shall become a part of the zoning regulations applicable to the property in question, unless subsequently changed by an amendment to the Zoning Map, and such conditions shall be in addition to the specific regulations set forth in this Ordinance for the zoning district in question.

Zoning investigations and inspections of the above-referenced property have revealed that the Owner continues to violate Proffered Condition 16B. An inspection of the subject property on May 7, 2015, revealed that when the Owner recently opened the garage for parking, it restricted Land Bay A residents' right to park in the garage to evenings and weekends in violation of Proffered Condition 16B. Garage Spaces 1 through 175 are marked for office use and spaces 176 through 275 are marked for shared use. Moreover, the Owner has not taken any action to reallocate parking within the garage to make one hundred (100) parking spaces available to Land Bay A residents on an unrestricted basis.

Therefore, by failing to be in substantial conformance with Proffered Condition 16B of RZ/FDP 2006-PR-027, you are in violation of Par. 1 of Sect. 18-901 of the Fairfax County Zoning Ordinance, which states:

> Any building erected or improvements constructed contrary to any of the provisions of this Ordinance and any use of any building or land which is conducted, operated, or maintained contrary to any of the provisions of this Ordinance or contrary to any detailed statement or plan approved under the provisions of this Ordinance shall be and the same is hereby declared to be unlawful.

As a result of this non-compliance, Non-Residential Use Permit No. 151100195 is hereby revoked. Pursuant to Zoning Ordinance § 18-204(9), no further permits shall be issued for this property until such time as it is fully in compliance with the referenced proffered conditions.

You are, hereby, directed to clear this violation immediately upon receipt of this notice by taking the following action:

- Comply, on a permanent basis, with all of the proffered conditions of RZ/FDP 2006-PR-027, including, but not limited to the following:
- Provide one hundred (100) generally contiguous parking spaces within the parking garage located on Land Bay B that will be available for use by the residents of Land Bay A on an unrestricted basis at no cost as required by Proffered Condition 16B. These 100 parking spaces must be provided to the residents of Land Bay A with no limitations with regard to time of day, day of the week, or duration.
- Revise the parking tabulation and parking management plan on your site plan (3993-SP-008-2) to demonstrate that 100 unrestricted parking spaces will be provided for Land Bay A residents and to reduce, if necessary, the number of parking

spaces allocated to the office use and/or Land Bay B residential use, except that in no circumstances shall such revision reduce Land Bay B's residential parking spaces below the required parking rate.

You have the right to appeal this Notice of Violation regarding noncompliance with proffered conditions within thirty (30) days of the date of this letter in accordance with Sec. 15.2-2301 of the Code of Virginia. Should you choose to appeal, a notice of appeal must be filed with the Clerk to the Board of Supervisors and a notice of appeal and filing fee must be filed with the Zoning Administrator in accordance with Par. 10 of Sect. 18-204 of the Fairfax County Zoning Ordinance. Such notice shall be a written statement specifying the grounds on which aggrieved, the basis for the appeal, and a $600.00 filing fee. Once an appeal application is accepted, it will be scheduled for consideration and decision by the Board of Supervisors.

Failure to comply with this notice shall result in the initiation of appropriate legal action to gain compliance. Should you have any questions regarding this notice or need additional information, please do not hesitate to contact me at (703) 324-1314 or Kevin Guinaw at 703-324-1290.

Sincerely,

Leslie B. Johnson
Zoning Administrator

cc: Lynne J. Strobel, Esq., Walsh Colucci Lubeley & Walsh, 2200 Clarendon Blvd, Suite 1300, Arlington, VA 22201-3359

ATTACHMENT 14

Lynne J. Strobel
(703) 528-4700 Ext. 5418
lstrobel@thelandlawyers.com

WALSH COLUCCI
LUBELEY & WALSH PC

May 21, 2015

Via E-Mail and Hand Delivery

Leslie B. Johnson, Zoning Administrator
Zoning Administration Division
Fairfax County Department of Planning & Zoning
12055 Government Center Parkway, Suite 807
Fairfax, Virginia 22035

Catherine A. Chianese
Clerk to the Board of Supervisors
Office of the Clerk to the Board of Supervisors
12000 Government Center Parkway, Suite 533
Fairfax, Virginia 22035

Re: Appeal of Notice of Violation dated May 11, 2015
RZ/FDP 2006-PR-027
Tax Map Reference: 56-2 ((1)) 18A (the "Subject Property")
Appellant: WM/Olayan Holdings LLC, a Delaware limited liability company, as successor in interest to TCR Mid Atlantic Properties, Inc.

Dear Ms. Johnson and Ms. Chianese:

I am in receipt of a Notice of Violation dated May 11, 2015 (the "Notice"), issued by Leslie B. Johnson, Zoning Administrator, asserting a violation of proffers associated with RZ/FDP 2006-PR-027 (the "Rezoning"). A copy of the Notice is attached as Exhibit A.

The Notice claims that the Appellant is not in compliance with the requirements of Proffer 16.B. accepted in conjunction with the Rezoning, and states that as a result of the asserted non-compliance a non-residential use permit (Non-RUP), referenced as No. 151100195, has been revoked and that no further permits shall be issued for construction until full compliance with the proffers is achieved. Please accept this statement and attached application on behalf of the Appellant as grounds for an appeal of the Notice in accordance with Zoning Ordinance § 18-204 and applicable State Code requirements, including, but not limited to, Virginia Code § 15.2-2311. I hereby request a public hearing before the Fairfax County Board of Supervisors in connection with this appeal.

The proffer compliance issue underlying the Notice was the subject of a determination issued by Barbara Berlin, Director of the Zoning Evaluation Division, by letter dated October 2, 2014 (the "Determination"). The Appellant fundamentally disagrees with the Determination, as

evidenced by an appeal that was properly filed and submitted on October 31, 2014 (the "Appeal"). A copy of the Appeal is attached as Exhibit B and incorporated herein by reference. No hearing has yet been scheduled on the Appeal, although it was filed more than six months ago.

After the issuance of the Determination and before the Appeal, the Appellant met with Ms. Berlin and other staff members and was explicitly encouraged to resolve the issues alleged in the Determination by the submission of a proffered condition amendment (PCA) application. In good faith, and with staff's understanding, such an application was prepared by this Appellant and submitted to the Zoning Evaluation Division on January 29, 2015. Submission materials included an application fee in the amount of $13,640.00, which was accepted by Fairfax County. The application was assigned the number PCA 2006-PR-027 and accepted by the Zoning Evaluation Division by letter dated February 25, 2015. A copy of the issued letter is attached as Exhibit C. As required by this letter, appropriate notice was delivered to all land owners subject to the existing proffered conditions for RZ 2006-PR-027. The PCA application is under evaluation and has been scheduled for a public hearing before the Fairfax County Planning Commission on September 10, 2015.

The Appeal related that the Appellant received site plan approval for the construction of improvements on the Subject Property, consisting of a multi-family residential building and a parking garage. Permits were issued in accordance with the approved site plan, and construction commenced. Work has continued in good faith for the last seven months since the issuance of the Determination and the filing of the Appeal. Fairfax County officials have conducted inspections in the normal course of business without reference to the current complaint, and a Non-RUP was issued for the parking garage on April 20, 2015.

The issuance of the Notice is premature and invalid, and indeed extraordinary given that the Appellant has diligently pursued the very legislative remedies for the issues cited in the Notice that the Fairfax County staff itself encouraged the Appellant to pursue, and that permits have continued to be issued subsequent to the Determination. It is both logical and imminently fair to think that a decision should be made on the pending Appeal and the PCA, before the County summarily undertakes other enforcement efforts that would cease to be required or even lawful if the Appeal or PCA are determined in the Appellant's favor.

Since the filing of the Appeal, as Fairfax County continued to issue permits and inspect the construction, the Appellant has made a very substantial investment and construction has been ongoing on the Subject Property. To revoke a previously issued Non-RUP, and to refuse to issue the critical construction permits to one who has done what has been demanded of it, materially damages the Appellant financially and in a way that would not have been possible except for the County's actions. It is only the County's persistent efforts to force the Appellant to do something that, in the course of events, it may never be required to do, that has caused this harm. This is true even though there has been no suggestion, nor can there be given the work done and the inspections performed, that there are any public or safety risks associated with the construction.

Because the Appeal and PCA are as yet undecided, the Appellant hereby respectfully requests that the Non-RUP No. 151100195 be reinstated and that permits be issued until a decision is made on the Appeal, or a decision is rendered on the PCA that makes the Determination moot.

The Appellant asserts that the Notice is in error. Even if the Notice was with merit, which the Appellant denies, the County is attempting to enforce the Determination which may not even be upheld, or that may become irrelevant. Therefore, the Appellant respectfully requests that the Notice be rescinded so that the Appellant may avail itself of the remedies presently available to it. The Appellant should be allowed to proceed consistently with Fairfax County's own actions for the last seven months until the necessary decisions have been made.

Please contact me should you have any questions regarding this appeal, or if I can provide you with additional information. Should the Notice not be rescinded, I ask that a public hearing before the Board of Supervisors be scheduled at your earliest convenience. I reserve the right to enter additional materials into the record during the processing of this appeal and prior to and during the public hearing.

As always, I appreciate your cooperation and assistance.

Very truly yours,

WALSH, COLUCCI, LUBELEY & WALSH, P.C.

Lynne J. Strobel

LJS/kae
Enclosures
cc: Sean Caldwell
Amirali Nasserian
Thomas J. Colucci
John Foote
{A0663824.DOCX / 1 Statement - 05.21.15 000096 000078}

Please type or
Print in Black Ink

COMMONWEALTH OF VIRGINIA
COUNTY OF FAIRFAX
APPLICATION FOR APPEAL

FAIRFAX COUNTY
RECEIVED
MAY 21 2015
DIVISION OF
ZONING ADMINISTRATION

APPLICATION NO. A-TRZ 2006-PR-027-1
(Assigned by Staff)

NAME OF APPELLANT: WM/Olayan Holdings LLC, a Delaware limited liability company, as successor in interest to TCR Mid Atlantic Properties, Inc.

NATURE OF THE APPEAL:

Appeal of Notice of Violation dated May 11, 2015 claiming that the requirements of Proffer 16.B. associated with RZ 2006-PR-027 have not been met and that as a result of the asserted non-compliance a revocation of an issued non-residential use permit and refusal to issue additional permits for construction.

DATE OF ORDER, REQUIREMENT, DECISION, DETERMINATION OR NOTICE OF VIOLATION WHICH IS SUBJECT TO THE APPEAL May 11, 2015

HOW IS THE APPELLANT AN AGGRIEVED PERSON?:

The Appellant is the owner and developer of the property subject to the RZ 2006-PR-027 and Proffer 16.B.

IF APPEAL RELATES TO A SPECIFIC PROPERTY, PROVIDE THE FOLLOWING INFORMATION:

POSTAL ADDRESS OF PROPERTY: 3887 Fairfax Ridge Road, Fairfax, Virginia 22030

TAX MAP DESCRIPTION: 56-2 ((1)) 18A

The undersigned has or has not (circle one) the authority to allow and does or does not (circle one) authorize Fairfax County staff representatives on official business to enter on the subject property as necessary to process the application.

Lynne J. Strobel, Agent — Walsh, Colucci, Lubeley & Walsh, P.C.
Type or Print Name of Appellant or Agent

Lynne J. Strobel
Signature of Appellant or Agent

2200 Clarendon Boulevard, Suite 1300, Arlington, Virginia 22201
Address

703-528-4700
Telephone No. Home Work

Please provide name and phone number of contact person if different from above.

DO NOT WRITE IN THIS SPACE

Subdivision Name:

Total Area (Acres/Square Feet):

Present Zoning:

Supervisor District:

Date application received: Application Fee Paid: $

Date application accepted:

1/96

ATTACHMENT 15

Lynne J. Strobel
(703) 528-4700 Ext. 5418
lstrobel@arl.thelandlawyers.com

WALSH COLUCCI
LUBELEY EMRICH
& WALSH PC

April 18, 2011

Via E-Mail

Lisandra Santiago, Esq.
Rees Broome, PC
8133 Leesburg Pike, 9th Floor
Vienna, Virginia 22182

Re: RZ FDP 2006-PR-027 concurrent with SE 00-P-050
RZ/FDP Applicants: TCR Mid Atlantic Properties, Inc. and Fairfax Ridge Condominium Unit Owners Association
SEA Applicant: TCR Mid Atlantic Properties, Inc.

Dear Ms. Santiago:

I appreciated the opportunity to discuss the pending applications and the Applicants' most recent proposal to provide parking that will benefit the residents of Fairfax Ridge.

Sean Caldwell, who represents TCR Mid Atlantic Properties, Inc., will continue to pursue the use of parking spaces on the office property located on the east side of Fairfax Ridge Road. If Mr. Caldwell is successful, the agreement will allow parking on the office property by Fairfax Ridge residents on weekends and during the week after typical working hours. An agreement has not yet been finalized with the office property owner, and Mr. Caldwell wishes to move forward with the pending applications. Therefore, in the alternative, Mr. Caldwell proposes to construct fifty (50) additional parking spaces within the parking garage of the new residential building that will be available on an unrestricted basis for use by Fairfax Ridge residents. The greatest advantage to these parking spaces is that they will be available at any time of day, seven (7) days a week. This proposal is reflected in the most recent proffers submitted to Fairfax County dated March 31, 2011, a copy of which is enclosed. For your convenient reference, I have underlined all revisions to the previous proffers submitted to Fairfax County and provided to Kim O'Halloran.

I did speak to Mr. Caldwell about the community's interest in increasing the number of parking spaces, if provided in the garage, to seventy-five (75). As I expected, the cost of structured parking is considerable, and Mr. Caldwell is uncertain if he can provide more than fifty (50) spaces. He will agree that the provision of fifty (50) parking spaces is a minimum and, should the layout of the parking garage at time of final site plan allow for any additional parking spaces, these additional parking spaces will be made available to the Fairfax Ridge community. The community also requested that Mr. Caldwell delineate the parking spaces that are presently used by residents along Fairfax Ridge Road. While Mr. Caldwell is willing to stripe out the parking spaces, any proposed stripping will be required to comply with the Public Facilities

Manual standards for parking space dimensions and fire hydrant setbacks. It is our experience that these standards will actually reduce the number of parking spaces that are currently available on Fairfax Ridge Road. If the delineation of parking spaces on Fairfax Ridge Road continues to be an improvement that the community desires, please advise me and this commitment will be incorporated into the proffers.

Lastly, I am forwarding an email from Land Design, Inc. Please follow the instructions to download a copy of the revised conceptual/final development plan. Due to the number of plan sheets, I believe that this is the easiest method of transmission. As the ownership of the stormwater management pond has been transferred to Fairfax County for use and maintenance, Supervisor Smyth has requested that it be removed from the area of the application property. TCR Mid Atlantic Properties, Inc. has accommodated this request. While this modification has resulted in some minor adjustments to the notes and tabulations, the proposed development remains the same.

Should you have any questions regarding the above or the attached, please do not hesitate to contact me. The pending applications have not yet been scheduled for a hearing date before the Planning Commission. Once a hearing date is established, I will forward that information to you.

I look forward to the opportunity to work together.

Very truly yours,

WALSH, COLUCCI, LUBELEY, EMRICH & WALSH, P.C.

Lynne J. Strobel

LJS/kae
Attachments
cc: Sean Caldwell (w/attachments)
Martin D. Walsh
{A0218752.DOC / 1 Santiago ltr 000096 000048}

DRAFT PROFFERS
TCR MID ATLANTIC PROPERTIES, INC.

RZ 2006-PR-027

March 31, 2011

Pursuant to Section 15.2-2303(a), *Code of Virginia*, 1950 as amended and subject to the Board of Supervisors approving a rezoning to the PDH-30 District, for property identified as Tax Map 46-4 ((19)) All Parcels and 56-2 ((27)) All Numbered Parcels (hereinafter referred to as "Land Bay A") and Tax Map 56-2 ((1)) 18A (hereinafter referred to as "Land Bay B"), with both Land Bay A and Land Bay B being referred to as the "Property", the Applicant and the owner proffer for themselves, their successors and assigns the following conditions, which if approved, supersede all previously approved proffers for the Property:

1. Development Plan.

   A. Development of the Property shall be in substantial conformance with the Conceptual Development Plan/Final Development Plan (CDP/FDP) prepared by Land Design, Inc., consisting of twenty-nine (29) sheets, dated April 4, 2005, as revised through March 18, 2011.

   B. Notwithstanding that the CDP/FDP is presented on twenty-nine (29) sheets, it shall be understood that the proffered portion of the CDP shall be the entire plan shown on Sheets 2, 2A, 2B, and 2C relative to the points of access, the maximum number and type of dwelling units, the amount and location of open space, the location of the limits of clearing and grading, and the general location and arrangement of the buildings and parking garages. The Applicant has the option to request a FDPA for elements other than the CDP elements from the Planning Commission for all or a portion of the CDP/FDP in accordance with the provisions set forth in Section 16-402 of the Zoning Ordinance with respect to the remaining elements.

   C. Pursuant to Paragraph 4 of Section 16-403 of the Zoning Ordinance, minor modifications from the Final Development Plan (FDP) may be permitted as determined by the Zoning Administrator. The Applicant shall have the flexibility to modify the layouts shown on the FDP without requiring approval of an amended FDP provided such changes are in substantial conformance with the FDP as determined by the Zoning Administrator and do not increase the total number of dwelling units, increase building height, increase surface parking, decrease the amount of open space; decrease the setback from the peripheries; or reduce open space or landscaping.

   D. The CDP/FDP provides for commercial parking on Land Bay B serving office buildings on adjacent parcels identified as Tax Map 46-4 ((1)) 15B and 56-2 ((1)) 15C, 15D, which is subject to Special Exception approval as a secondary use in a PDH District, in accordance with Par. 6C of Sect. 6-106 of the Ordinance. These

parking spaces are not required parking spaces for the uses located on the Property or on the adjacent parcels. The site plan submitted for Land Bay B shall include a parking plan, which shall provide for separate commercial and residential structured parking entrances. The parking plan shall include a color designation of spaces assigned to the office building located on the adjacent parcels and for the residents of Land Bay B. Should the commercial parking no longer be required by the adjacent owner, the special exception for commercial parking in a residential district shall be abandoned and the parking spaces shall support residential uses. The garage design shall not preclude convenient pedestrian access from residential units to designated residential parking, nor from designated office parking to designated residential parking.

2. Transportation

A. Waples Mill Road

(1) The Applicant shall complete a signal warrant study at the time of site plan for Land Bay B and, if warranted, as determined by VDOT, shall install a traffic signal, with pedestrian heads, at the intersection of Fairfax Ridge Road North and Waples Mill Road, prior to the issuance of the final RUP for Land Bay B.

(2) At time of site plan approval for Land Bay B, and subject to VDOT approval, the Applicant shall modify the existing traffic signal located at the intersection of Waples Mill Road and Fairfax Ridge Road/Pender Drive to include a designated left turn arrow (phase) from northbound Waples Mill Road onto Fairfax Ridge Road South.

(3) Subject to the approval of the Fairfax County Department of Transportation (FCDOT) and VDOT, the Applicant shall diligently pursue approval and install a right-out access from that property identified as 56-2 ((1)) 15C to Waples Mill Road. Said access shall be completed prior to the issuance of the first Residential Use Permit (RUP) for Land Bay B. Should a right-out access not be approved by FCDOT and VDOT, the Applicant shall have no further obligations in accordance with this proffer.

B. Fairfax Ridge Road. Subject to receipt of necessary easements at no monetary cost to the Applicant, the Applicant shall construct a commercial entrance on that property identified as 56-2 ((1)) 15C that serves the uses on Tax Map 46-4 ((1)) 15B and 56-2 ((1)) 15C, 15D on Parcel 15C. The entrance shall be unrestricted for turns in to Parcel 15C, and restricted to right only for turns out of Parcel 15C. Either pavement stripping or a curb island, as approved by VDOT, shall be installed to prevent this turning movement. If the necessary easements are not granted, an administrative approval of a minor modification in accordance with Section 16-403 of the Zoning Ordinance, or an amendment to the CDP/FDP, and the associated special exception, will be necessary to provide alternative access.

Should the Applicant request a minor modification in accordance with Section 16-403 of the Zoning Ordinance, a copy of the request shall be mailed by certified mail to the owner of that property identified as 56-2 ((1)) 15C concurrent with submission to the Director of the Zoning Evaluation Division. Said entrance shall be constructed prior to the issuance of a building permit for the residential building on Land Bay B.

C. Fairfax Center Area Road Fund. At time of site plan approval for Land Bay B, the Applicant shall provide a contribution for Land Bay B to the Fairfax Center Area Road Fund consistent with the Procedural Guidelines adopted by the Board of Supervisors on November 22, 1982, as may be revised. In accordance with the Fairfax Center Road Fund Policy, the Applicant shall receive credit against the Fairfax Center Road Fund contribution for those improvements that are creditable expenses.

D. Density Credit. Advanced density credit shall be reserved as may be permitted by the provisions of Paragraph 5 of Section 2-308 of the Fairfax County Zoning Ordinance for all eligible dedications described herein, or as may be required by Fairfax County or VDOT at time of site plan approval.

E. Should any of the transportation improvements described herein be delayed due to circumstances beyond the Applicant's control, later dates for compliance may be permitted as determined appropriate by the Zoning Administrator.

3. Landscape Plan. A landscape plan that shows, at a minimum, landscaping in conformance with the landscape design shown on Sheets 4, 4A, 4B, 4C and 13 of the CDP/FDP shall be submitted prior to the first submission of the site plan for Land Bay B. The landscape plan shall include detailed streetscape, courtyard and open space landscaping. Said plan shall be coordinated with and approved by the Urban Forester. Unless already planted, street trees along Waples Mill Road and Fairfax Ridge Road shall be a minimum of 3½ inch caliper at the time of planting. Street trees along the eastern side of Fairfax Ridge Road (that portion abutting Land Bay B) shall be a minimum of 4.0 inch caliper at the time of planting. All street trees shall be located so as not to interfere with required sight distance. The Applicant shall provide maintenance and replacement of landscaping as necessary.

4. Tree Preservation.

A. The Applicant shall submit a Tree Preservation Plan and Narrative as part of the first and all subsequent site plan submissions for Land Bay B. The preservation plan and narrative shall be prepared by a Certified Arborist or a Registered Consulting Arborist, and shall be subject to the review and approval of the Urban Forest Management Division, DPWES.

The tree preservation plan shall include a tree inventory that identifies the location, species, critical root zone, size, crown spread and condition analysis

percentage rating for all individual trees to be preserved, as well as all on and off-site trees, living or dead with trunks 8 inches in diameter and greater (measured at 4 ½ feet from the base of the trunk or as otherwise allowed in the latest edition of the Guide for Plant Appraisal published by the International Society of Arboriculture) located within 25 feet to either side of the limits of clearing and grading. The tree preservation plan shall provide for the preservation of those areas shown for tree preservation, those areas outside of the limits of clearing and grading shown on the CDP/FDP and those additional areas in which trees can be preserved as a result of final engineering. The tree preservation plan and narrative shall include all items specified in PFM 12-0506 and 12-0508. Specific tree preservation activities that will maximize the survivability of any tree identified to be preserved, such as: crown pruning, root pruning, mulching, fertilization, and others as necessary, shall be included in the plan.

B. The Applicant shall retain the services of a certified arborist or landscape architect in conjunction with the development of Land Bay B, and shall have the limits of clearing and grading marked with a continuous line of flagging prior to the walk-through meeting. During the tree-preservation walk-through meeting, the Applicant's certified arborist or landscape architect shall walk the limits of clearing and grading with an UFMD, DPWES, representative to determine where adjustments to the clearing limits can be made to increase the area of tree preservation and/or to increase the survivability of trees at the edge of the limits of clearing and grading, and such adjustment shall be implemented. Trees that are identified as dead or dying may be removed as part of the clearing operation. Any tree that is so designated shall be removed using a chain saw and such removal shall be accomplished in a manner that avoids damage to surrounding trees and associated understory vegetation. If a stump must be removed, this shall be done using a stump-grinding machine in a manner causing as little disturbance as possible to adjacent trees and associated understory vegetation and soil conditions.

C. Clearing, grading and construction shall conform to the limits of clearing and grading as shown on the CDP/FDP. The limits of clearing and grading on Land Bay A shall be subject to the installation of necessary utility lines, trails and other required site improvements, all of which shall be installed in the least disruptive manner possible, considering cost and engineering, as determined in accordance with the approved plans; but, the limits of clearing and grading on Land Bay B shall not be subject to the installation of utility lines, trails or any other site improvements.

D. All trees shown to be preserved on the tree preservation plan shall be protected by tree protection fence. Tree protection fencing in the form of four (4) foot high, fourteen (14) gauge welded wire attached to a six (6) foot steel posts driven eighteen (18) inches into the ground and placed no further than ten (10) feet apart or, super silt fence to the extent that required trenching for super silt fence does not sever or wound compression roots which can lead to structural failure and/or

uprooting of trees shall be erected at the limits of clearing and grading as shown on the demolition, and phase I & II erosion and sediment control sheets, as may be modified by the "Root Pruning" proffer below.

All tree protection fencing shall be installed after the tree preservation walk-through meeting but prior to any clearing and grading activities, including the demolition of any existing structures. The installation of all tree protection fencing shall be performed under the supervision of a certified arborist, and accomplished in a manner that does not harm existing vegetation that is to be preserved. Three (3) days prior to the commencement of any clearing, grading or demolition activities, but subsequent to the installation of the tree protection devices, the UFMD, DPWES, shall be notified and given the opportunity to inspect the site to ensure that all tree protection devices have been correctly installed. If it is determined that the fencing has not been installed correctly, no grading or construction activities shall occur until the fencing is installed corrected, as determined by the UFMD, DPWES.

E. The Applicant, in conjunction with the development of Land Bay B, shall root prune, as needed to comply with the tree preservation requirements of these proffers. All treatments shall be clearly identified, labeled, and detailed on the erosion and sediment control sheets of the subdivision plan submission. The details for these treatments shall be reviewed and approved by the UFMD, DPWES, accomplished in a manner that protects affected and adjacent vegetation to be preserved, and may include, but not be limited to the following:

(1) Root pruning shall be done with a trencher or vibratory plow to a depth of 18 inches.

(2) Root pruning shall take place prior to any clearing and grading, or demolition of structures.

(3) Root pruning shall be conducted with the supervision of a certified arborist.

(4) An UFMD, DPWES, representative shall be informed when all root pruning and tree protection fence installation is complete.

F. During any clearing or tree/vegetation/structure removal on Land Bay B, a representative of the Applicant shall be present to monitor the process and ensure that the activities are conducted as proffered and as approved by the UFMD. The Applicant shall retain the services of a certified arborist or landscape architect to monitor all construction and demolition work and tree preservation efforts in order to ensure conformance with all tree preservation proffers, and UFMD approvals. The monitoring schedule shall be described and detailed in the Landscaping and Tree Preservation Plan, and reviewed and approved by the UFMD, DPWES.

5. Stormwater Management/Best Management Practices.

A. Stormwater management for Land Bay A and Land Bay B shall be provided in a regional stormwater pond located on property identified as 56-2 ((27)) C (Parcel C) (the "Pond"), which has been constructed in accordance with the plans and specifications approved by DPWES. The Pond was constructed with the following design characteristics:

(1) A micropool designed to contain a minimum of 10 percent of the BMP value, subject to DPWES approval.

(2) Sediment forebays sized to contain either 0.1 inch of runoff for impervious acre or a minimum of 10 percent of the BMP value associated with the contributing drainage of each forebay, subject to DPWES approval.

(3) The two-year post development peak flow rate reduced to a level that is two-thirds less than the predevelopment rate, to the extent feasible.

(4) The detention of the one-year storm and release over a 24-hour period, to the extent feasible.

(5) Removal of trees (greater than three inches in diameter) below an elevation that is the lower of (i) three feet below the two-year elevation, or (ii) two feet below the BMP elevation, except as required by grading for the construction and development of the community as depicted on the CDP/FDP.

B. In accordance with the release of bonds, DPWES has assumed all maintenance responsibilities for the Pond. Should maintenance of thePond, including routine cleaning and removal of debris, be performed by either the Association established for Owners of the Land Bay A or the Owner of Land Bay B, said cost shall be allocated between Land Bays A and B on a pro-rata basis in accordance with the number of dwelling units in each Land Bay. Upon performance of maintenance, detailed invoices shall be submitted to the other owner and payment shall be due and payable within thirty (30) days or subject to collection. Said cost sharing of maintenance shall not be in effect until after the issuance of the first RUP on Land Bay B.

C. The Applicant shall be able to construct alternative stormwater management/Best Management Practices facilities to serve development on a temporary basis, as determined by DPWES if in substantial conformance with the CDP/FDP.

D. Surface parking spaces at the residential entrance for Land Bay B shall be paved with pervious pavers, as shown on the CDP/FDP.

6. Recreational Facilities.

A. Pursuant to Paragraph 2 of Section 6-409 of the Zoning Ordinance regarding developed recreational facilities, the Applicant shall provide the following recreational facilities to serve the Property.

(1) The facilities on Land Bay A shall include a swimming pool, passive seating areas, tot lot, on-site trail and an indoor recreational/leasing facility that is a minimum of 4,500 square feet in size.

(2) The facilities on Land Bay B shall include, at a minimum, a landscaped courtyard that is a minimum of 8,000 square feet in size with benches, seating areas, a fire pit, water feature and other amenities that have comparable recreational value as determined by the Director of DPWES, and an indoor recreational facility, that is a minimum of 3,000 square feet in size. The indoor recreational facility shall include an exercise room that is a minimum of 1,000 square feet, a media center and cyber cafe. A half court basketball court shall be striped out on the top level of the parking garage located on Land Bay B as shown on the CDP/FDP. The court shall be available for recreation and shall not be striped for nor used as parking spaces. The scheduling of use and the operation of the court shall be one of the duties assigned to the property manager of Land Bay B.

(3) Subject to the receipt of permission from Fairfax County and the Association established for the Owners of Land Bay A at no cost, the Owner of Land Bay B shall install a tot lot on Parcel C or Land Bay A for use by the residents of Land Bay A and Land Bay B. The location of the tot lot shall be determined at time of site plan approval for Land Bay B in coordination with Fairfax County and the Association established for the Owners of Land Bay A.

B. The recreational facilities on Land Bay B shall be made available to the residents of Land Bay C. The recreational facilities in Land Bay B shall also be made available to the residents of Land Bay A, if an agreement is reached between the owners of Land Bay A and Land Bay B regarding cost sharing and reciprocal use of such facilities. Such efforts shall be documented by the Applicant, shall be diligently prosecuted, and shall be provided to DPWES prior to the issuance of the first RUP for Land Bay B.

C. At the time of site plan for Land Bay B, the Applicant shall demonstrate that the minimum expenditure for the recreational facilities on Land Bay A was $955.00 per residential unit within Land Bay A and that the minimum expenditure in accordance with Section 6-110 of the Zoning Ordinance for the recreational facilities on Land Bay B was $1,500.00 per residential unit within Land Bay B. In the event the total cost of recreational improvements constructed on Land Bay A and Land Bay B by the Applicant is demonstrated to be less than $955.00 per unit and $1,500.00 per unit, respectively, the Applicant shall provide the remainder in a cash contribution to the Fairfax County Park Authority for the

development of active recreational facilities in the vicinity of the Property prior to site plan approval for Land Bay B.

D. The Applicant shall make a contribution in the amount of $68,878.00 to the Board of Supervisors for use in improving public recreation facilities in the vicinity of the Property prior to site plan approval for Land Bay B.

E. The Applicant shall provide a contribution in the amount of $2,000.00 to the Nottoway Nights program in the Providence District. Said contribution shall be made through the Providence District Supervisor's office prior to site plan approval for Land Bay B.

7. Noise Attenuation.

A. The Applicant shall provide the following noise attenuation measures as a result of the Traffic Noise Analysis prepared by Polysonics, Corp. dated April 2001:

(1) In order to reduce exterior noise to a level of approximately 65 dBA Ldn at the proposed outdoor recreational areas, a noise attenuation barrier, composed of a combination sound wall and/or berm, has been installed along the frontage of I-66. The noise attenuation barrier is built to VDOT standards and located within the I-66 right-of-way. Neither the Applicant, nor its successors or assigns, shall be responsible for restoration, removal, relocation or reconstruction of the noise wall if such wall is removed or otherwise altered in conjunction with future improvements to I-66.

(2) In order to reduce interior noise to a level of approximately 45 dBA Ldn, units identified in the supplemental noise analysis described in Proffer 7A(1), as being impacted by highway noise from I-66 having levels projected to be greater than 70 dBA Ldn after the noise attenuation wall is in place shall employ the following acoustical measures:

Exterior walls shall have a laboratory sound transmission class (STC) rating of at least 45. Doors and glazing shall have a laboratory STC rating of at least 37 unless glazing constitutes more than 20% of any façade exposed to noise levels of Ldn 65 dBA or above. If glazing constitutes more than 20% of an exposed façade, then the glazing shall have a STC rating of at least 45. All surfaces shall be sealed and caulked in accordance with methods approved by the American Society for Testing and Materials (ASTM) to minimize sound transmission.

(3) In order to reduce interior noise to a level of approximately 45 dBA Ldn within Land Bay B for those units facing Waples Mill Road, and for those units within Land Bay A identified in the supplemental noise analysis described in Proffer 7A(1), as being impacted by highway noise from I-66 having levels projected to be between 65 and 70 dBA Ldn after the noise

attenuation wall is in place shall employ with the following acoustical measures:

Exterior walls shall have a laboratory sound transmission class (STC) rating of at least 39. Doors and glazing shall have a laboratory STC rating of at least 28 unless glazing constitutes more than 20% of any façade exposed to noise levels of Ldn 65 dBA or above. If glazing constitutes more than 20% of an exposed façade, then the glazing shall have a STC rating of at least 39. All surfaces shall be sealed and caulked in accordance with methods approved by the American Society for Testing and Materials (ASTM) to minimize sound transmission.

B. Alternative interior noise attenuation measures may be provided subject to the implementation of a refined noise study as reviewed and approved by DPWES after consultation with DPZ.

8. Architectural Design.

A. The architectural design of the buildings within Land Bay A shall be consistent with the elevations shown on Sheet 10 of the CDP/FDP, and shall be generally consistent in style on all sides of the structure. The buildings on Land Bay A shall be constructed with a mixture of masonry, siding and glass materials. No balconies shall be provided for those dwelling units within Building 1 in Land Bay A that face the noise wall.

B. The building on Land Bay B shall be in substantial conformance with the elevations shown on Sheet 7C of the CDP/FDP, shall be constructed with a mixture of masonry, cementatious siding and glass materials, shall be substantially consistent in style on all sides of the structure, and shall be similar in façade design, color, materials and quality to the structures within Land Bay A, as shown on the CDP/FDP. No vinyl siding shall be used on the exterior building facades, but may be used within the courtyard facades. All mechanical equipment for the building on Land Bay B shall be located on the roof, and shall be screened from the view of pedestrians who are at ground level. All dumpsters shall be fully screened from view through the use of solid, opaque enclosures. The building on Land Bay B shall meet the R-30 District Angle of Bulk Plane requirements for multi-family structures within affordable dwelling developments (Par. 2A of Sect. 3-3010 of the Ordinance).

C. The elevations may be refined as a result of final design and engineering so long as the character and quality of the buildings remain in substantial conformance with those shown.

D. At time of site plan and building plan approval for Land Bay B, the Applicant shall demonstrate compliance of the multi-family residential building on Land

Bay B with the universal design criteria as set forth in the ICC/ANSI A117.1-2003 and the 1998 Fair Housing Design Manual.

9. Sustainable Design. In order to promote energy conservation and green building techniques, the Applicant shall select one of the following programs to be implemented in the construction of multi-family residential dwelling units on Land Bay B:

   A. LEED Certification as specified for multi-family developments;

   B. Certification in accordance with the Earthcraft House Program as demonstrated through documentation provided to DPWES and DPZ prior to the issuance of a RUP; or

   C. National Green Building Certification for multi-family developments.

   Selection of certification method shall be within the Applicant's sole discretion at time of site plan submission.

10. Pedestrian Facilities.

   A. The Applicant shall provide a comprehensive sidewalk system within the developed portions of the Property as generally shown on Sheets 2, 2A, 2B and 2C of the CDP/FDP, including completion of sidewalks along the Property frontages and internal connections between all the residential buildings, and between Land Bay B and the adjacent office building. Construction of sidewalks shall be concurrent with development activity on the Property.

   B. The Applicant shall construct a ten (10) foot wide asphalt trail along Land Bay B's Waples Mill Road frontage, with the exact location and design determined at the time of site plan approval.

   C. The six-foot wide asphalt pedestrian trail along the southern side of the Pond is located within a dedicated easement and is to be maintained by Fairfax County. Should maintenance of the trail, including routine cleaning and removal of debris, be performed by either the Association established for Owners of the Land Bay A or the Owner of Land Bay B, said cost shall be allocated between Land Bay A and B on a pro-rata basis in accordance with the number of dwelling units in each Land Bay. Upon performance of maintenance, detailed invoices shall be submitted to the other owner and payment shall be due and payable within thirty (30) days or subject to collection. Said cost sharing shall not be in effect until after the issuance of the first RUP on Land Bay B.

11. Affordable Dwelling Units. The Applicant shall provide twenty-one (21) Affordable Dwelling Units (ADU) within Land Bay B in accordance with Section 2-800 of the Zoning Ordinance, except as may be modified by the ADU Advisory Board in accordance with Section 2-815 of the Zoning Ordinance. Should the Applicant elect to

construct less than 150 dwelling units on Land Bay B, the number of required ADUs shall be reduced in accordance with the Zoning Ordinance. No new dwelling units are proposed within Land Bay A other than those approved pursuant to RZ 2000-PR-056.

12. Workforce Housing. The Applicant shall provide eleven (11) Workforce Dwelling Units (WDUs) within Land Bay B in accordance with the Policy Guidelines adopted by the Board of Supervisors on October 15, 2007. Should the Applicant elect to construct less than 150 dwelling units on Land Bay B, the number of WDUs shall be reduced in accordance with the Policy.

13. Exterior Lighting. All on-site lighting shall be directed downward and inward in order to minimize light from spilling onto adjacent properties. In order to provide maximum security, energy efficiency and quality ambient lighting, full cut-off light fixtures shall be used for all parking lot and parking deck lighting, including any "wall-pack" security lighting. Lighting for landscaping shall not utilize "up-lighting", but shall rather utilize downward-focused lighting that does not present glare or provide an overly lit environment that hinders night-time vision.

14. Bicycle Racks. The Applicant shall provide bicycle racks in the vicinity of the front door of the building on Land Bay B sufficient to store a minimum of four (4) visitor bicycles. The Applicant shall provide additional secured bicycle storage within the parking structure on Land Bay B for use by the residents of Land Bay B, as further described in Proffer17.D.(8). Subject to the approval of the Owner of Land Bay A at no cost, the Applicant shall provide bicycle racks in the vicinity of the pool on Land Bay A, or another mutually agreeable location, sufficient to store a minimum of four (4) visitor bicycles. The design, style and installation of the bike racks and bicycle storage shall be approved by FCDOT at time of site plan approval for Land Bay B. Bicycle racks shall be installed prior to the issuance of the last RUP for Land Bay B.

15. Use of Garages. The Applicant agrees that individual garages on Land Bay A shall only be used for a purpose that will not interfere with the intended purpose of garages (e.g., parking of vehicles). Likewise, any required parking space within Land Bay B's parking garage shall only be used for a purpose that will not interfere with the intended purpose of that parking space (e.g. parking of vehicles.) Tenants and/or owners shall be advised of the use restriction which shall be included in the initial lease/sales documents.

16. Parking Management.

    A. The Owner of Land Bay B shall assign parking management as one of the duties of its property manager. Parking management shall entail the efficient use of available constructed parking spaces within Land Bay B, and shall include specifications that residents of and visitors to Land Bay B shall not utilize any parking located on Land Bay A (unless such a visitor is a resident of Land Bay A), whether or not spaces on Land Bay A are assigned.

B. The Applicant shall pursue an agreement with the owner of the property identified as Tax Map 46-4 ((1)) 15B and 56-2 ((1)), 15C and 15D to allow parking on these properties by the residents of Land Bay A on weekends and during the week after typical working hours. In the alternative, and within the Applicant's sole discretion at time of site plan, the Applicant shall construct fifty (50) additional parking spaces within the parking garage located on Land Bay B that will be available for use by the residents of Land Bay A on an unrestricted basis.

17. TDM Strategies.

A. Transportation demand management ("TDM") strategies, as detailed below, shall be utilized by the Applicant and/or its successors or assigns to reduce vehicular trips generated by residents of the Property during peak hours.

B. Mass transit, ride-sharing, and other transportation strategies shall be utilized to reduce baseline trips generated from the Property (Land Bays A and B, combined) during peak hours by a minimum of 15%. For purposes of this proffer, the baseline number of trips from which such reductions are measured shall be determined using the trip generation rates data published by the Institute of Transportation Engineers in the Trip Generation Manual, 8th Edition and as determined by FCDOT for a total of 570 dwelling units during the highest peak hour period (AM or PM) of the adjacent street, Waples Mill Road. In the event the Property is developed with fewer than 570 dwelling units, then the baseline number of trips shall be calculated as if 570 units were constructed. Residents of the Property shall be advised of this transportation strategy. Transportation coordination duties shall be carried out by the owner of Land Bay B, or assigns.

C. To encourage use of mass transit, the Owner of Land Bay B shall work with the Fairfax County Department of Transportation to relocate bus service from Lee Jackson Memorial Highway (Route 50) to a route that will include Fairfax Ridge Road and Waples Mill Road. Efforts to relocate the bus services shall be documented to DPWES prior to the issuance of the first RUP for Land Bay B. Upon successful relocation of said route, the Applicant shall construct a bus shelter, subject to VDOT approval, on Fairfax Ridge Road prior to the issuance of the final RUP for Land Bay B. If the Applicant is not successful with its efforts to relocate the bus route prior to the issuance of the first RUP for Land Bay B, efforts will continue up until the issuance of the final RUP for Land Bay B. If the route is relocated prior to the issuance of the final RUP for Land Bay B, the Applicant shall construct the bus shelter, subject to VDOT approval, on Fairfax Ridge Road prior to final bond release on Land Bay B.

D. The following is a list of strategies that shall be instituted by the Owner of Land Bay B prior to the issuance of the first RUP for Land Bay B:

(1) Designate an individual (such as property management staff and/or condominium association representative) to act as the transportation

coordinator ("TC") for the Property (Land Bays A and B), who shall be responsible to implement the TDM strategies for the Property, with on-going coordination with FCDOT. Such individual shall also be responsible for communication and coordination of TDM strategies with the development association on adjacent Land Bay C. This individual may, if appropriate, be the same person for all three land bays (A, B and C). The Applicant shall provide written notice to FCDOT within 10 days of the designation of the TC and thereafter within 10 days of any change in said designation.

(2) Market new units to bicyclists, and to one-car or no-car families.

(3) Disseminate information regarding Metrobus, carpool and/or vanpool, ridesharing, and other relevant transit options in residential sale/leasing packages;

(4) Provide Metro maps, schedules, and forms; information on the Fairfax County Ride Share Program; and information on other relevant transit options available to owners/tenants either in a newsletter to be published on a regular basis and not fewer than four (4) times per calendar year or on a web site. In the event, the Applicant elects to establish a website for the project, then the Applicant shall provide written notice to FCDOT of the website address and the date the site became operational.;

(5) Provide SmartTrip cards loaded with a minimum of $25 to all tenants of Land Bay B upon their initial lease or to initial purchasers at the time of settlement.

(6) Provide a business center on Land Bay B for use by the residents of the Property. The business center shall include, at a minimum, access to telephone(s), a fax machine, computer(s), printer(s), a scanner, and high-speed internet.

(7) Equip all residential units on the Property with broadband wiring for internet access.

(8) Provide secure bike storage for residents of Land Bay B, sufficient to store, at a minimum, one (1) bicycle for every forty (40) required residential vehicle parking spaces. Provide bicycle racks for visitors either in the visitor parking area or in the vicinity of the main entrance, as further qualified by Proffer14. The design, style and installation of the bike racks and bicycle storage shall be approved by FCDOT.

(9) Participate in a larger Traffic Management Area Program should one be established by the County for this area.

(10) The TDM program shall be continued by the COA in the event of a condominium conversion.

E. Eighteen (18) months following build-out of the Property, the Transportation Coordinator will administer a survey of residents of the Property. For purposes of this proffer, build-out of the Property shall be deemed to occur upon the issuance of the last RUP for Land Bay B. The survey shall include, at a minimum, details regarding the number of times per week the resident commutes, the mode of transportation for community purposes, and his or her work destination

F. Eighteen (18) months following build-out of the Property, and annually thereafter, the effectiveness of the TDM strategies shall be evaluated and reported to FCDOT. For purposes of this proffer, build-out of the Property shall be deemed to occur upon the issuance of the last RUP for Land Bay B. The TC shall submit to FCDOT a report describing the previous year's TDM strategic efforts and the effectiveness of the TDM program in reaching trip reduction goals, including, as applicable, sample marketing materials, expenditures, the result of traffic counts as outlined in Paragraph G below. The report shall be submitted to FCDOT no later than April 30th of each year. The TC shall coordinate draft survey materials and the methodology for conducting traffic counts with FCDOT prior to each year's count, as applicable.

G As part of the annual reporting process, the Owner of Land Bay B shall measure actual trip generation of the Property in order to evaluate the success of meeting the trip reduction objectives set forth in subparagraphB., above.

(1) Only trips that are generated by the residential uses in Land Bays A and B shall be counted. Peak hour counts shall be conducted during the highest peak traffic period (AM or PM, whichever is highest) ("Peak Hour Trips") of the adjacent street, Waples Mill Road, over two (2) days, within a maximum two (2) week period, at a time of year that reflects typical travel demand conditions (e.g., September to May - and not during holiday weeks, on Mondays or Fridays, or when public schools are not in session.) The average number of peak hour trips shall be computed by summing the number of applicable peak hour trips entering and exiting the Property (at all driveways) on each of the two (2) day's counts and dividing that sum by two (2).

Residents of Land Bays A and B shall not be notified in advance of the days or times that these counts will be taken.

The Applicant shall notify FCDOT at least one (1) week in advance of the dates that the counts are to be undertaken.

(2) The results of the trip generation analyses referenced in subparagraphF., above, shall be compared to the baseline trip generation referenced in

subparagraphB., above, to determine if the proffered 15% reduction of peak hour trips has been met.

(3) In the event the traffic counts reveal that the proffered 15% peak hour trip reduction has been met, then the Applicant shall continue to implement the TDM strategies in place and no adjustments to the program or penalties are required.

(4) If applicable, the first time traffic counts that are conducted in accord with proffer subparagraphG.1., above, reveal that the baseline trip reduction has not been met, the TC shall request a meeting with FCDOT within thirty (30) days after the completion of the traffic counts to review the results of that report and the TDM strategies then in place for the Property. The TC shall be responsible to design and implement a strategy that is intended to bring baseline peak hour trip reductions to the proffered percentage. The Applicant shall submit any revisions to the TDM Plan to FCDOT within thirty (30) days following this meeting.

(5) In the event that a subsequent (second) annual traffic count conducted in accord with proffer subparagraphG.1., above, reveals that the baseline trip reductions have not been met, then the Owner of Land Bay B shall pay a penalty at a rate of $125 per trip for each trip not reduced from the baseline reduction, into a fund established with the TC for the implementation of certain other on-site TDM incentives/enhancements. (For example, if the baseline reduction is established as 49 trips (or 327 PM peak hour trips X .15 reduction), then the "penalty paid" is $125 * (49- X), where "X" is the number of trips actually reduced from the ITE base of 327 PM peak hour trips.) The TC shall request a meeting with FCDOT within thirty (30) days after the completion of the traffic counts to review the results of that report and the TDM strategies then in place for the Property. The TC shall be responsible to design and implement a strategy that is intended to bring baseline peak hour trip reductions to the proffered percentage. The Applicant shall submit any revisions to the TDM Plan to FCDOT within thirty (30) days following this meeting.

(6) If a following (third) annual traffic count is required in accord with proffer subparagraphG.1., above, reveals that the baseline trip reduction has not been met, then the penalty described in subparagraphG.5., above, shall again be paid. Further, the TC shall request a meeting with FCDOT within thirty (30) days after the completion of the Trip Counts to review the results of that report and the TDM strategies then in place for the Property, to discuss alternative strategies to meet the proffered reduction, to discuss the appropriateness of the proffered reduction, and/or to discuss setting an alternative peak hour trip reduction (that may be less than 15%), and which must be formalized through an interpretation of these proffers. The TC shall submit any revisions to the TDM Plan and TDM Budget to

FCDOT within thirty (30) days following this meeting. FCDOT shall approve any changes to the TDM Plan prior to its implementation.

H. If three (3) consecutive annual trip counts conducted in accord with subparagraphG.1, above, reveal that the trip reduction thresholds are met after build out of the Property as defined herein, then trip counts shall only be conducted biannually if requested by the County, or less (including elimination of this requirement) if it is determined by FCDOT that fewer counts are necessary to indicate continued compliance. Further, upon such event, only annual reports detailing the programmatic elements in place and yearly TDM expenditure assessment and/or survey results will be required.

I If subsequent trip counts reveal that the trip reduction thresholds are not being met, then the annual counts, reports and penalties shall again be required as described in SubparagraphsG.4,G.5, andG.6. If three (3) consecutive annual trip counts reveal that the trip reduction thresholds are met, then trip counts shall again only be conducted biannually if requested by the County, or less (including elimination of this requirement) if it is determined by FCDOT that fewer counts are necessary to indicate continued compliance. Further, upon such event, only annual reports detailing the programmatic elements in place and yearly TDM expenditure assessment and/or survey results will be required.

18. Asbestos. If DPWES and the Owner of Land Bay B determine that a potential health risk exists during construction due to the presence of asbestos-containing rock on the Property, the Owner of Land Bay B shall:

A. Take appropriate measures as determined by the Health Department to alert all construction personnel and residents of Land Bay A as to the potential health risks.

B. Commit to appropriate construction techniques as determined by DPWES in coordination with the Health Department and the Applicant to minimize this risk. Such techniques may include, but are not limited to, dust suppression measures during all blasting and drilling activities and covered transportation of removed material presenting this risk, and appropriate disposal.

19. Schools Contribution. At the time of site plan approval for Land Bay B, the Applicant shall contribute the amount of $132,582.00 ($11,630.00 per student generated by Land Bay B, which is .076 student per unit), plus $23,260.00 for the two (2) additional students generated by the development of Land Bay A (which were actually generated by the development of Land Bay A, but not anticipated in a previous rezoning application) to the Fairfax County Board of Supervisors for the construction of capital improvements to Fairfax County public schools to which the students generated by the Property are scheduled to attend. The contribution based on student generation by Land Bay B may be reduced by $11,630.00 x .076 per unit should the Applicant elect to construct less than 150 dwelling units on Land Bay B.

20. Blasting. If blasting is required during construction of the improvements on Land Bay B, and before any blasting occurs on Land Bay B, the Applicant or its successors will ensure that blasting is done per Fairfax Fire Marshal requirements and all safety recommendations of the Fire Marshal, including, without limitation, the use of blasting mats, shall be implemented. In addition:

A. A professional consultant shall be retained to perform a pre-blast survey of each house, residential building and office building located within one hundred fifty (150) feet (TM 46-4 ((1)) 15B; TM 56-2 ((1)) 15C, 15D, 19, 23B, 25B; 56-2 ((26)) All; and 56-2 ((27)) (9) – (11) All) and any well located within two hundred fifty (250) feet (TM 46-4 ((1)) 15B, 34; TM 56-2 ((1)) 15C, 15D, 19, 23B, 25B, 74B; 56-2 ((26)) All; and 56-2 ((27)) (8) – (11) All) of Land Bay B. The consultant shall request access by way of certified mail to the last known address of the owner(s) of any house, buildings, swimming pools or wells located within the aforesaid ranges, to determine the pre-blast conditions of these structures. The consultant shall give a minimum of fourteen (14) days notice of the scheduling of the pre-blast survey. All owners of structures entitled to pre-blast inspections shall be provided with the name, address, and phone number of the blasting contractor's insurance carrier. Written confirmation that the pre-blast survey has been completed shall be provided to DPWES and copies of the survey shall be provided to Fairfax County upon request prior to any blasting.

B. The consultant shall place seismographic instruments prior to blasting to monitor the shock waves. Seismographic monitoring records shall be provided to County agencies upon their request.

C. The consultant shall provide an analysis of the potential for gas migration from the site to the Fire Marshal for review and approval prior to blasting, and appropriate mitigation or notification as determined by the Fire Marshal shall be implemented.

D. All residences and office buildings within 150 feet of the Land Bay B boundary shall be notified ten (10) days prior to blasting, no blasting shall occur until such notice has been given.

E. Upon receipt of a claim of actual damage resulting from said blasting, the consultant shall respond within five (5) days by meeting at the site of the alleged damage to confer with the property owner. Any verified claims for damage due to blasting shall be expeditiously resolved.

F. Blasting subcontractors shall be required to maintain necessary liability insurance to cover the costs of repairing any damages to structures that are directly attributable to the blasting activity.

21. Construction Activities and Lighting

A. At a minimum of one (1) month prior to the commencement of construction activities on Land Bay B ("Commencement of Construction"), the Owner of Land Bay B shall request a preconstruction meeting with Owners of Land Bay A to discuss the timetable for construction and to present strategies for construction related parking management – particularly as to how construction parking will be managed along Fairfax Ridge Road. The Owners of Land Bay A agree to schedule such a meeting within one (1) month of the request, and the owner of Land Bay B shall attend that meeting. In addition, after Commencement of Construction, the Owner of Land Bay B shall meet quarterly with the Owners of Land Bay A, if requested by the Owners of Land Bay A, to discuss ongoing construction activities. The name of a contact person for construction issues shall be provided to a representative of the Owners of Land Bay A.

B. Outdoor construction activities on Land Bay B shall only occur between the hours of 7:00 a.m. and 9:00 p.m., Monday through Saturday, and between the hours of 9:00 a.m. and 9:00 p.m. on Sundays and Federal Holidays.

C. Construction within utility easements on Land Bay A, which are related to the construction of the improvements on Land Bay B, shall only occur between the hours of 9:30 a.m. and 3:30 p.m., daily.

D. Trash collection during the construction of the improvements on Land Bay B shall only occur between the hours of 6:00 a.m. and 9:00 p.m., daily.

E. Any construction-related loading or unloading of vehicles shall only occur between the hours of 6:00 a.m. and 9:00 p.m., daily.

F. Construction workers shall either park on-site during the construction of the improvements on Land Bay B or shall park in a remote location and be shuttled to the site. Construction workers shall not be permitted to park on Fairfax Ridge Road.

G. Construction hours, and any other information posted on the Property during construction, shall be posted in both English and Spanish.

H. All construction site lighting, with the exception of lighting that is used to illuminate the interiors of buildings under construction which is provided for in the following paragraph, shall use full cut-off or directionally shielded fixtures that are aimed and controlled so the directed light shall be substantially confined to the object intended to be illuminated. Directional control shields shall be used where necessary to limit stray light.

I. If interiors of the multifamily structure on Land Bay B are lit during construction, then frosted light bulbs (as opposed to clear light bulbs) shall be used to light the ten (10) foot outermost perimeter area of the interiors of the building in order to diffuse the light.

22. Cooperation Between Owners:

A. "Owner", as used in these Proffers, shall mean the legal owner of a Land Bay's Parcel(s), if under common ownership, or shall mean the unit owners, collectively, acting through the executive organ of a duly constituted Condominium Owners Association ("COA"), and not the owners of individual condominium units.

B. The Owner of Land Bay A, shall own, manage and maintain all common areas of Land Bay A; and the Owner of Land Bay B shall own, manage and maintain all common areas of Land Bay B, and operate the TDM program for the Property, as defined in Proffer 17. In the event that Land Bay B is converted to condominiums, the maintenance and operational responsibilities of Land Bay B's Owner shall be included in Land Bay B's COA documentation, which includes maintenance of all open space and recreational facilities, landscaping, and commercial parking spaces on Land Bay B. In accordance with the Virginia Condominium Act, purchasers of units within Land Bay B shall be advised of these requirements and restrictions prior to entering into a contract of sale through the Public Offering Statement of the condominium.

C. The owner of Land Bay B shall use best efforts to establish a program with the Owner of Land Bay C for cost sharing and for the shared implementation of the TDM Plan. Further, the owner of Land Bay B shall use best efforts to establish a cooperative agreement between the owners of Land Bays A, B and C, regarding sharing the use of amenities on the combined properties, sharing of maintenance obligations, implementation of the TDM Plan, and the discussion of the potential removal or relocation of the gate currently separating Land Bays A and C. These efforts shall be diligently prosecuted. In the event that the owner of Land Bay B is successful in reaching such agreements, any obligations shall be disclosed to contract purchasers prior to entering into a contract of sale, and shall be disclosed in the COA documents prepared for the Property. In the event the Owner of Land Bay B is unable to reach such an agreement, the Owner of Land Bay B shall provide written documentation of its best efforts to DPWES.

23. Signs.

A. The Applicant shall abide by the regulations in Article 12 of the Zoning Ordinance with regard to permanent and temporary signs on the Property including: "real estate signs" advertising the sale, rental or lease of units on Land Bay B – which signs shall be limited to two (2), temporary signs that have a maximum area of twelve (12) square feet each and a maximum height of eight (8) feet each (Par. 3D of Sect. 12-103 of the Ordinance); temporary signs announcing such happenings as "grand opening", which are limited to a maximum of twenty (20) square feet in area, eight (8) feet in height, for a period of fourteen (14) days (Par. 3G of Sect. 12-103 of the Ordinance); and bunting, banners, pennants and other decorative materials which must be securely attached to the building, shall

not exceed twice the allowable building-mounted sign area, for a period not to exceed fourteen (14) days, only in a location that has been given written approval by the Zoning Administrator, which may be displayed only one (1) time in a twelve (12) month period, and only upon the posting of a bond, with surety satisfactory to the Zoning Administrator, to ensure the removal of the signs at the termination of the fourteen (14) day period (Par. 3G of Sect. 12-103 of the Ordinance).

B. Regardless of the "Possible Sign Location" denoted in the CDP/FDP for Land Bay B, freestanding identification signs shall be limited to one (1) at each primary entrance to the development off of Fairfax Ridge Road, and shall be of a design, style, and color in substantial conformance with that shown on the CDP/FDP for Land Bay A.

C. Illumination of signs shall be in conformance with the performance standards for glare as set forth in Part 9 of Article 14 of the Zoning Ordinance. Additionally, signs that require lighting shall be internally illuminated or down-lit to avoid glare and light trespass. No uplighting shall be permitted on any sign.

D. No temporary signs (including "popsicle" paper or cardboard signs) which are prohibited by Article 12 of the Zoning Ordinance, and no signs which are prohibited by Chapter 7 of Title 33.1 or Chapter 8 of Title 46.2 of the Code of Virginia shall be placed on or off-site by the Applicant or by any builder or at the Applicant's or any builder's direction to assist in the initial and future marketing and/or sales/rental of dwelling units on the Property. The Applicant shall direct its agents and employees involved in marketing the Property to adhere to this proffer.

24. Sewer Capacity. The Applicant shall demonstrate that there is adequate sewer capacity to service the proposed development on Land Bay B, to the satisfaction of DPWES, prior to approval of a site plan for the building on Land Bay B. Further, the Applicant shall ensure that any deficiencies in the sewer system that are identified by DPWES, which are necessary to be addressed in order to ensure adequate sewer capacity for Land Bay B, are addressed. No site plan shall be approved for any structure that will require additional sewer capacity shall occur on Land Bay B, if and until adequate sewer capacity is verified by DPWES. Such verification shall occur prior to site plan submission.

25. Swimming Pool Discharge. Swimming pool discharge water shall be routed into the stormwater management system. The discharge process shall follow the guidelines below in order to ensure that pool water is property neutralized prior to being discharged:

A. In order to ensure that high levels of chlorine are not discharged into the surface water system, pool water shall not be chlorinated prior to backwashing and/or discharge.

B. All waste water resulting from the cleaning and draining of the pool shall meet the appropriate level of water quality prior to discharge.

C. If the water being discharged from the pool is discolored or contains a high level of suspended solids that could affect the clarity of the receiving stream, it shall be allowed to stand so that most of the solids settle out prior to being discharged.

26. Severability. If determined appropriate in accordance with the parameters stated in Par. 10D of Sect. 16-402 of the Ordinance, any of these land bays/sections/buildings within the Property may be subject to Proffered Condition Amendments and Final Development Plan Amendments without joinder or consent of the property owners of the other land bays/sections/buildings. The Applicant reserves the right to file for separate zoning action on either Land Bay A or B, when determined appropriate by the Zoning Administrator, without joinder or consent of the property owners of the other land bay.

27. Successors and Assigns. These proffers will bind and inure to the benefit of the Applicant and his/her successors and assigns.

28. Counterparts. These proffers may be executed in one or more counterparts, each of which when so executed and delivered shall be deemed an original document and all of which taken together shall constitute but one in the same instrument.

{A0218232.DOC / 1 Proffers RZ 2006-PR-027 3-31-11 (blk) 000096 000048}

[SIGNATURES BEGIN ON NEXT PAGE]

CO-APPLICANT

TCR MID ATLANTIC PROPERTIES, INC.

_____

By: Alice S. Tanchel
Its: Vice President

[SIGNATURES CONTINUED ON NEXT PAGE]

RZ 2006-PR-027
Signature Sheet

CO-APPLICANT / AGENT FOR TITLE OWNERS OF TAX MAP 56-2 ((27)) (5) 101-413, (6) 101-413, (7) 101-410, (8) 101-413, (9) 101-413, (10) 101-410, (11) 101-410 and 46-4 ((19)) (1) 101-421, (2) 101-306, (3) 101-413, (4) 101-410

FAIRFAX RIDGE CONDOMINIUM UNIT OWNERS ASSOCIATION

By: OAC Fairfax LLC
Its: Attorney-in-Fact by virtue of Declaration and Power of Attorney dated 11/16/04 recorded at Deed Book 16740 Page 2163 among the Land Records of Fairfax County, Virginia

By: CREL/OAC L.L.C.,
Its: Sole Member

_____

By: Anthony S. Fusco
Its: Vice President

_____

By: Nazeeh S. Habachy
Its: Secretary

[SIGNATURES CONTINUED ON NEXT PAGE]

RZ 2006-PR-027
Signature Sheet

TITLE OWNER OF TAX MAP 56-2 ((1)) 18A

OAC FAIRFAX LLC

By: CREL/OAC L.L.C.
Its Sole Member

_____

By: Anthony S. Fusco
Its: Vice President

_____

By: Nazeeh S. Habachy
Its: Secretary

[SIGNATURES END]

Verbatim Transcript - Portion of November 1, 2011, Board of Supervisors' Meeting
3:30 p.m. – Public Hearing on Rezoning Application RZ 2006-PR-027
(TCR Mid Atlantic Properties, Incorporated and Fairfax Ridge Condominium Unit Owners Association) (Providence District)
And
Public Hearing on Special Exception Amendment Application SEA 00-P-050
(TCR Mid Atlantic Properties, Incorporated) (Providence District)

(4:25 p.m.)

Chairman Bulova: Lynne Strobel, do you have a presentation for us?

Lynne Strobel: Yes, thank you, Madam Chair, Members of the Board, the applications that are being presented to you this afternoon have been pending for quite a long time. You may notice, in listening to the presentation and looking at the staff report, that the applications were originally filed in 2006. They were presented to the Planning Commission in 2007. At that time there were a number of issues that were identified by the Fairfax Ridge community and ultimately the applications were indefinitely deferred. During the intervening years the applicant has been meeting periodically with the Fairfax Ridge community, with the Planning staff, and also has been dealing, like all of us, with economic challenges. The applications were reactivated in 2010, and in addition to working with the staff there has been an ongoing dialogue with the Fairfax Ridge community. In preparing for this hearing this afternoon I had the opportunity to go through some of my files and I counted at least 11 meetings that I personally attended with the Fairfax Ridge community in an effort to address their concerns. I think that Ms. Strunk has more than adequately described the application. As you can see, it really is centered on a parcel of about three acres that is being requested to be rezoned for development with multi-family residential dwelling units. I would just say that, in the time that these applications have been pending, there have been significant changes. The application presented to the Planning Commission in 2007 showed a development of 256 multi-family dwelling units. The application that's before you today is for 150 multi-family dwelling units. This is of course a necessity number of changes to the way that the uhm...the building is proposed with the parking, uhm, the number of entrances, the façade....there have been a number of changes that have been made. I would say that the density too...I would just point out....is currently 23.7 dwelling units per acre within the recommendations of the Plan. I think that the concern that we have dealt with most with the residents of Fairfax Ridge is parking. The Fairfax Ridge residents have struggled with sufficient parking for their own community, and for their visitors. I would note that the community is parked in accordance with the Ordinance requirements, but it is an ongoing concern. We have worked very hard on this issue. We began by trying to achieve a shared parking arrangement with an office building owner. Uhm...while that may still come to pass, we really wanted to move this application forward. And, so, we are proposing to provide 100 parking spaces for the use of the Land Bay A residents within the parking garage that will be constructed on Land Bay B. I would note that we started off with a proposal for 50 parking spaces. In working with the Supervisor and the Planning Commissioner we were encouraged to provide 100 spaces, which we have done. I would note the cost of a garage parking space is approximately $15,000 a space, which is about $750,000 for the additional 50 parking spaces.

And, I just point this out to let the Board know that this is a significant commitment on behalf of the applicant. Uhm....we do have also, put together, a fairly complete proffer package, as you may see. Proffer commitments include sustainable design, a contribution to public recreation, a contribution to schools, the provision of affordable and workforce housing, a contribution to Nottoway....Nottoway Nights, the installation of a half-court basketball court on top of the parking garage, and numerous TDM strategies. I'm very pleased to be before you today with a recommendation of approval from the staff, also from the Planning Commission, and I would ask for your favorable consideration this afternoon. I'd be happy to answer any questions. Thank you.

Chairman Bulova: Are there any questions of Ms. Strobel? If not, this is a public hearing, we have one speaker who is signed up to testify....

Denise Long

DENISE LONG, Deputy Clerk *(transcriber)*
Office of Clerk to the Board of Supervisors

Board Agenda Item
June 23, 2015

11:00 a.m.

Matters Presented by Board Members

Board Agenda Item
June 23, 2015

11:50 a.m.

CLOSED SESSION:

(a) Discussion or consideration of personnel matters pursuant to Virginia Code § 2.2-3711(A) (1).

(b) Discussion or consideration of the acquisition of real property for a public purpose, or of the disposition of publicly held real property, where discussion in an open meeting would adversely affect the bargaining position or negotiating strategy of the public body, pursuant to Virginia Code § 2.2-3711(A) (3).

(c) Consultation with legal counsel and briefings by staff members or consultants pertaining to actual or probable litigation, and consultation with legal counsel regarding specific legal matters requiring the provision of legal advice by such counsel pursuant to Virginia Code § 2.2-3711(A) (7).

1. Proposed Consent Order with the Virginia Department of Environmental Quality Regarding Unpermitted Discharges at Fairfax County's I-95 Landfill Complex (Mount Vernon District)

2. *Eric S. Clark v. The County of Fairfax, Virginia, John H. Kim, T. B. Smith, and John Spata*, Case No. 14-1210 (U.S. Sup. Ct.)

3. *Christopher Alipui v. Biggs J. Byerson, John Doe (White Male Officer), John Doe (White Male Officer), John Doe (Duty Sergeant), John Doe (Lady Detective)*, Case No. 1:14-cv-103 (E.D. Va.)

4. *Ian Smith v. Major Thomas Ryan, Lance Guckenberger and John Doe II*, Case No. CL-2014-0001347 (Fx. Co. Cir. Ct.)

5. *Ramatu Bangura v. Fairfax County, Fairfax County School Board, and John Doe*, Case No. CL-2014-0009790 (Fx. Co. Cir. Ct.)

6. *Francis Philip Wiafe v. Bruce Patrick*, Case No. CL-2015-0006119 (Fx. Co. Cir. Ct.)

7. *Francis Philip Wiafe v. OFC G.S Roberts # 315348*, Case No. CL-2015-0005874 (Fx. Co. Cir. Ct.)

8. *Leslie B. Johnson, Fairfax County Zoning Administrator v. George Daamash*, Case No. CL-2011-0000818 (Fx. Co. Cir. Ct.) (Mount Vernon District)

9. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Lubna F. Ahmed*, Case No. CL-2012-0015342 (Fx. Co. Cir. Ct.) (Dranesville District)

10. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Chom Sun Cholihan*, Case No. CL-2013-0012453 (Fx. Co. Cir. Ct.) (Sully District)

11. *Leslie B. Johnson, Fairfax County Zoning Administrator, and Elizabeth Perry, Property Maintenance Code Official for Fairfax County, Virginia v. Young Bong Cho and Yung Soo Cho*, Case No. CL-2014-0012410 (Fx. Co. Cir. Ct.) (Springfield District)

12. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Duc Dang*, Case No. CL-2012-0011237 (Fx. Co. Cir. Ct.) (Providence District)

13. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Kwang Woo Kim and Eun Sook Kim*, Case No. CL-2014-0006957 (Fx. Co. Cir. Ct.) (Mason District)

14. *Leslie B. Johnson, Fairfax County Zoning Administrator, and Elizabeth Perry, Property Maintenance Code Official for Fairfax County, Virginia v. Kenneth E. Reppart and Edna M. Reppart*, Case No. CL-2015-0000262 (Fx. Co. Cir. Ct.) (Mason District)

15. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Flor Barreda*, Case No. GV15-007102 (Fx. Co. Gen. Dist. Ct.) (Mason District)

16. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Sang G. Lim and Mirim Lim*, Case No. GV15-007101 (Fx. Co. Gen. Dist. Ct.) (Sully District)

17. *Elizabeth Perry, Property Maintenance Code Official for Fairfax County, Virginia v. Donald W. Major, Richard B. Major, and Dennis G. Major*, Case No. GV15-009950 (Fx. Co. Gen. Dist. Ct.) (Hunter Mill District/Town of Vienna)

18. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Michael A. Maestri and Diane R. Maestri*, Case No. GV15-010625 (Fx. Co. Gen. Dist. Ct.) (Dranesville District)

19. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Carlton W. Powell*, Case No. GV15-010624 (Fx. Co. Gen. Dist. Ct.) (Lee District)

20. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Andrew W. Arntson and Caron R. Arntson*, Case No. GV15-010994 (Fx. Co. Gen. Dist. Ct.) (Lee District)

21. *Elizabeth Perry, Property Maintenance Code Official for Fairfax County, Virginia v. Andrew W. Arntson and Caron R. Arntson*, Case No. GV15-010992 (Fx. Co. Gen. Dist. Ct.) (Lee District)

22. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Ara Kim*, Case No. GV15-010995 (Fx. Co. Gen. Dist. Ct.) (Braddock District)

23. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Fort Dade, LLC*, Case No. GV15-011105 (Fx. Co. Gen. Dist. Ct.) (Mount Vernon District)

24. *Elizabeth Perry, Property Maintenance Code Official for Fairfax County, Virginia v. Fort Dade, LLC*, Case No. GV15-011105 (Fx. Co. Gen. Dist. Ct.) (Mount Vernon District)

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Board Agenda Item
June 23, 2015

3:00 p.m.

Decision Only on Amendments to the Fairfax County Code to: Adopt New Chapter 108.1 (Noise Ordinance), Repeal Chapter 108 (Noise Ordinance), and Repeal Article 6 (Excessive Sound Generation in Residential Areas and Dwellings Ordinance) to Chapter 5 (Offenses)

ISSUE:
The Board of Supervisors (Board) requested staff to better address the methodology used in noise measurements, consider the appropriateness of establishing daytime and night time noise to protect the community, and add other objective criteria to regulate noise within Fairfax County. In response, a new Noise Ordinance is being proposed, and the current Noise and Excessive Sound Generation in Residential Areas and Dwellings Ordinances would be repealed.

RECOMMENDATION:
The County Executive recommends that the Board approve the following modifications to the Fairfax County Code: (1) adopt a new Noise Ordinance (Chapter 108.1), (2) repeal the existing Noise Ordinance (Chapter 108), and (3) repeal the Excessive Sound Generation in Residential Areas and Dwellings Ordinance (Article 6 of Chapter 5) as contained in the April 7, 2014 staff report and as modified by the proposed changes dated April 20, 2015 and contained as Attachment 2.

TIMING:
Board of Supervisors' authorization to advertise on April 7, 2015. Board public hearing on May 12, 2015 at 4:00 p.m., and decision was deferred to June 23, 2015 at 3:00 p.m. The provisions of this amendment would become effective at 12:01 a.m. on the day following adoption.

BACKGROUND:
The proposed amendment is on the 2014 Priority 1 Zoning Ordinance Amendment Work Program and is in response to a Board of Supervisors' (Board) request to review and revise the Noise Ordinance (Chapter 108 of the County Code) to better address the methodology used in noise measurements, consider the appropriateness of establishing daytime and nighttime noise levels to protect the community, and add other objective criteria to regulate noise within Fairfax County. On December 3, 2013, the Board adopted a new Article 6 (Excessive Sound Generation in Residential Areas and Dwellings Ordinance) to Chapter 5 (Offenses) of the County Code which gave the Police Department the ability to address certain sound that is generated in a residential dwelling or residential area that is plainly audible and discernible inside another

person's dwelling with doors and windows closed. The new Article 6 of Chapter 5 was intended to be an interim step in addressing noise until more comprehensive amendments to Chapter 108 were considered by the Board. The proposed amendments, which include the establishment of a new Noise Ordinance (Chapter 108.1 of the County Code), the repeal of Chapter 108, and the repeal of Article 6 of Chapter 5 are in response to these requests. The amendment addresses, but is not limited to, the following:

(1) Addresses certain sounds that are a hazard to the public health, welfare, peace and safety and the quality of life of the citizens of Fairfax County.

(2) Prohibits certain sound producing activities **(prohibitions)**; excludes certain activities from the Noise Ordinance **(exceptions)**; and when not specifically prohibited or excepted, subjects activities or sources of sound to **maximum decibel levels**. The prohibitions, exceptions and maximum decibel levels may be further qualified by time, location and duration limitations.

(3) Is administered and enforced by the Director of the Department of Planning and Zoning (Director) and his/her duly authorized agents, including the Zoning Administrator, the Department of Code Compliance and the Department of Public Works and Environmental Services, and would be assisted by other departments. The Police Department may also enforce the Ordinance.

(4) Provides that violations of the Noise Ordinance may be prosecuted as a misdemeanor or a civil penalty, or the Board could seek injunctive relief from the Circuit Court.

(5) Provides that waivers from the Noise Ordinance can be granted by the Director for up to one year if it is found that the noise does not endanger the public health, safety or welfare; or that compliance with the Noise Ordinance produces serious hardship without providing an equal or greater benefit to the public. Any person aggrieved by a waiver decision of the Director can appeal the decision within 30 days of the decision to the County Executive.

(6) Provides that if there is a conflict between the Noise Ordinance and any proffered conditions and/or development conditions pertaining to noise or sound, the text of the Noise Ordinance in effect at the time such conditions were approved shall govern.

A more detailed discussion of the proposed amendments is set forth in the Staff Report enclosed as Attachment 1.

Since the publication of the staff report, staff has continued to review the proposed amendment in response to ongoing comments received, particularly with regard to the

use of loudspeakers on school and recreational grounds, as well as issues identified by the staff working group that required additional clarification. As a result of these discussions, staff recommends the following modifications and clarifications to the proposed amendment:

(1) A new Par. (f) has been added to Sect. 108.1-3-1 to clarify that all sound requiring analysis or measurement under this ordinance shall be such sound that crosses a property boundary or a partition between residential dwellings.

(2) Paragraphs (j) and (k) of proposed Sect. 108.1-4-1 include prohibitions pertaining to person, motor vehicle or instrument ("people noise") and animal noise. These paragraphs have been modified to consistently use the term "residential dwelling" instead of "residence". In addition, it has been clarified that "people noise" is prohibited when it is plainly audible in any other person's residential dwelling with doors and windows closed between 1 a.m. and 7 a.m. on Saturdays, Sundays and Federal holidays when the residential dwelling is located in a mixed use area and the sound is emanating from a location that is not another residential dwelling.

(3) Under proposed Sect. 108.1-5-1, band performances or practices, athletic contests or practices and other such activities on school or recreational ground are not subject to the proposed Noise Ordinance between the hours of 7 a.m. and 10 p.m. on Sunday through Thursday or between 7 a.m. and 11 p.m. on Friday, Saturday, or the day before a Federal holiday. The use of loudspeakers and instruments in conjunction with such activities, except for unamplified musical instruments, would not be permitted prior to 9 a.m. on Saturdays, Sundays and Federal holidays. In addition, the overall noise levels for the loudspeakers and/or instruments and the associated activities cannot exceed 72 dBA at the property boundary of the noise source.

When the school or recreational grounds are in close proximity to a residence, it is believed that the proposed 72 dBA maximum may be too loud given that the maximum allowable decibel levels for residential areas in residential districts is proposed to be 60 dBA between 7 a.m. and 10 p.m. Therefore, staff is recommending that when a residential dwelling is located within 50 yards of the loudspeaker and/or instrument, the noise level from the loudspeaker and/or instrument shall be subject to the maximum decibel levels contained in the proposed Maximum Sound Levels Tables. For example, a loudspeaker on a school property that is residentially zoned could not exceed 60 dBA at the property line or anywhere on an adjacent residentially zoned and developed lot.

(4) Proposed Sect. 108.1-7-1 states that the Noise Ordinance does not negate any applicable proffered condition, development condition, special permit or special exception condition pertaining to noise or sound. Given that these conditions

were the result of a public hearing process and input from impacted property owners, staff believes that it is appropriate to clarify that any condition that refers to the Noise Ordinance shall be deemed to refer to the text of the Noise Ordinance in effect at the time the condition was approved.

The recommended changes noted above are set forth in Attachment 2.

At the Board public hearing on May 12, 2015, a number of issues were raised by speakers, including the maximum allowable decibel levels in residential districts, loudspeaker regulations on athletic fields, impulse sound, animal noise, dog parks and criminal penalties vs. civil penalties for animal noise violations. The Board deferred decision on the proposed amendment until June 23, 2015, in order to provide additional time to address the issues. The Board also requested that the proposed Noise Ordinance be discussed at the June 9, 2015 Development Process Committee. In addition, the Board requested that a representative from Fairfax County Public Schools attend the Committee meeting on June 9th to discuss the school policy for regulating noise on athletic fields. Finally, the Board requested that Park Authority staff provide an overview of the site selection and approval process for County off-leash dog parks. At the June 9, 2015 Development Process Committee, the Committee requested that the amendment be discussed again at the next Committee meeting to be scheduled in the early fall of 2015.

REGULATORY IMPACT:
The proposed amendments should facilitate the implementation and enforcement of the noise regulations. The amendments will be implemented and enforced using existing resources and staff.

FISCAL IMPACT:
None.

ENCLOSED DOCUMENTS:
Attachment 1 – Staff Report previously distributed and available online at:
http://www.fairfaxcounty.gov/dpz/zoningordinance/proposed/noiseordinance.pdf
Attachment 2 – Recommended Changes Since the April 7, 2015 Staff Report

STAFF:
Robert A. Stalzer, Deputy County Executive
Fred Selden, Director, Department of Planning and Zoning (DPZ)
Leslie B. Johnson, Zoning Administrator, DPZ
Lorrie Kirst, Senior Deputy Zoning Administrator, DPZ

Attachment 2

PROPOSED COUNTY CODE AMENDMENT

April 20, 2015

Recommended Changes since the April 7, 2015 Staff Report are Noted with Italics, Strike-Outs and Underlining

Amend the Fairfax County Code by adding a new Chapter 108.1, Noise Ordinance, to read as follows:

ARTICLE 3. Administration, Penalties and Authority and Duties.

Section 108.1-3-1. Administration and Enforcement.

(f) All sound requiring analysis or measurement under this Chapter shall be such sound that traverses a property boundary or a partition between residential dwellings.

ARTICLE 4. Prohibited Sounds.

Section 108.1-4-1. Specific Prohibitions

The following acts are violations of this Chapter:

(j) Unless otherwise excepted by this Chapter, any person, motor vehicle or instrument that permits, operates, or causes any source of sound or sound generation to create a sound that is plainly audible in any other person's residential dwelling with the doors and windows closed:

(1) Between 10 p.m. and 7 a.m. on Sunday through Thursday, or between 11 p.m. and 7 a.m. on Fridays, Saturdays, and the day before a Federal holiday; or

(2) Between 1 a.m. and 7 a.m. on Saturdays, Sundays and federal holidays when the ~~*residence*~~ *residential dwelling* is located in a mixed use area and the sound is emanating from a ~~*nonresidential use*~~ *location that is not another residential dwelling.*

In addition, the source of sound or sound generation must be discernible regardless of whether such doors and windows are closed.

(k) Any owner or person in control of any animal that allows or otherwise permits any such animal to bark, howl, bay, meow, squawk, quack, crow or make such other sound:

(1) Between 10 p.m. and 7 a.m. that is plainly audible in any other ~~*persons residence*~~ *person's residential dwelling* with doors and windows closed and the source of

sound generation shall be discernible regardless of whether such doors or windows are closed; or

(2) Between 7 a.m. and 10 p.m. when the animal sound is plainly audible and discernible across real property boundaries or through partitions common to residential dwellings and such sound can be heard for more than two (2) consecutive or non-consecutive minutes in any ten (10) minute period of time. Animal sounds that can be heard for less than two (2) consecutive or non-consecutive minutes in any ten (10) minute period shall not be subject to this Chapter.

The provisions of this paragraph shall not apply to any animal that, at the time of the sound or sound generation, was responding to pain or injury or was protecting itself, its kennel, its offspring, or a person from an actual threat; when the animal is a police dog that is engaged in the performance of its duties at the time of making the sound; or when part of a bona fide agricultural operation. This provision shall apply to all animal sounds emanating from the same property. Notwithstanding the provisions of this paragraph, animals located in a dog park shall be subject to the provisions of Par. (l) below.

ARTICLE 5. Exceptions.

Section 108.1-5-1. Exceptions.

No provisions of this Chapter shall apply to:

(r) Band performances or practices, athletic contests or practices and other such activities on school or recreational grounds, or any activity on recreational grounds customarily associated with its intended use shall not be subject to the provisions of this Chapter between 7 a.m. to 10:00 p.m. on Sunday through Thursday, or between 7 a.m. and 11:00 p.m. on Friday and Saturday or the day before a Federal holiday. Loudspeakers or instruments associated with such activities shall be subject to the following:

(1) Notwithstanding the other provisions of this Chapter, the use of loudspeakers or instruments~~, except for unamplified musical instruments,~~ shall not be permitted prior to 9 a.m. on Saturdays, Sundays and Federal holidays; and

(2) The overall noise levels for the loudspeakers and/or instruments and the associated activities shall not exceed 72 dBA at the property boundary of the noise source, *except when a residential dwelling is located within fifty (50) yards of such loudspeaker and/or instrument, the noise level from the loudspeaker and/or instrument shall be subject to the Maximum Sound Levels Table contained in Sect. 108.1-4-2 above*. ***[The advertised range is between 60 and 72 dBA]***

For the purposes of this provision, instrument shall exclude unamplified musical instruments.

ARTICLE 7. Proffered and Development Condition Applicability

Section 108.1-7-1. Proffered and Development Condition Applicability.

The provisions of this Chapter shall not negate any applicable proffered condition, development condition, special permit or special exception condition pertaining to noise or sound. ~~*In the event of any conflict between the conditions and this Chapter, the text of the Noise Ordinance in effect at the time the conditions were approved shall govern.*~~ *Any condition that refers to the Noise Ordinance shall be deemed to refer to the text of the Noise Ordinance in effect at the time the condition was approved.*

Board Agenda Item
June 23, 2015

3:00 p.m.

Public Hearing on PCA 76-M-007-02 (Fairfax County School Board) to Amend the Proffers for RZ 76-M-007 Previously Approved for Office Uses to Permit an Addition to the School (Gymnasium), an Outdoor Play Area, Bus Drop-Off and Pick-Up Area, and Associated Modifications to Proffers, Site Design, and Building Setbacks in the CRD District, with an Overall Floor Area Ratio of 0.71, The Public School Use in the Existing Building was Approved with Application 2232-M13-14, Located on Approximately 3.41 Acres of Land Zoned C-3, CRD, SC and HC (Mason District)

This property is located on the S.W. side of Leesburg Pike, approximately 1,200 feet S.E. of its intersection with Arlington Boulevard. Tax Map 51-3 ((1)) 30 and 31; 51-3 ((11)) 188 A; 51-3 ((13)) 5, 10, and 11.

The Board of Supervisors deferred this public hearing from the June 2, 2015, meeting to June 23, 2015 at 3:00 p.m.

PLANNING COMMISSION RECOMMENDATION:
On Thursday, May 21, 2015, the Planning Commission voted 9-0 (Commissioners Lawrence, and Murphy, and Sargeant were absent from the meeting) to recommend the following actions to the Board of Supervisors:

- Approval of PCA 76-M-007-02 subject to the execution of proffers dated May 21, 2015 as amended which adds the following language to Proffer 12, line 3 of Paragrah 2:
    - Add "*by the applicant*" following the wording "shall be constructed";
- Approval of a modification of the front yard setback from 20 feet to 11 feet, pursuant to Paragraph 1A of Section 9-622 of the Zoning Ordinance, in favor of the alternatives as shown on the proposed GDP and as conditioned;
- Approval of a modification of the transitional screening requirement along a portion of the western property line adjacent to Lot 12A, pursuant to Paragraph 14 of Section 13-305 of the Zoning Ordinance, in favor of the alternatives as shown on the proposed GDP and as conditioned; and

Board Agenda Item
June 23, 2015

- Approval of a modification of the location of the barrier, pursuant to Paragraph 14 of Section 13-305 of the Zoning Ordinance, in favor of the location as shown on the proposed GDP and as conditioned.

ENCLOSED DOCUMENTS:
Attachment 1: Planning Commission Verbatim Excerpt
Attachment 2: Handout dated May 21, 2015
Staff Report previously furnished and available online at:
http://ldsnet.fairfaxcounty.gov/ldsnet/ldsdwf/4486540.PDF

STAFF:
Barbara Berlin, Director, Zoning Evaluation Division, Department of Planning and Zoning (DPZ)
Joe Gorney, DPZ

PCA 76-M-007-02 – FAIRFAX COUNTY SCHOOL BOARD

Decision Only During Commission Matters
(Public Hearing held on May 20, 2015)

Commissioner Strandlie: Thank you, Mr. Chairman. We have the decision in the Bailey's upper playground case. That is PCA 76-M-007-02, and I'd like to call the representatives of the School Board up to the podium. And since last evening, we have been working to simplify Proffer Number 12. It's always more difficult to write less is – less than more, so we have been diligently working on that today, and we have circulated to everyone the revised proffers, and you will see that Proffer Number 12 has lots of red lining in it. We have also circulated another document that is the actual language without all the red lining in it, and with one minor omission on the second paragraph, line 3. It should say the interparcel connection on the property shall be constructed by the applicant – the words "by the applicant" are missing -- at the same time. So, Mr. McGranahan, would you summarize our conversation and confirm that – that we have agreed to this language and we will revise these proffers?

John McGranahan, Jr., Esquire, Hunton & Williams LLP: Yes, yes. And Commissioner Strandlie described what you have in front of you. The revised proffers do have this language in it, but it's – it's so substantially revised, we thought it was better for you, and easier and quicker for you to read the clean version. But we did – we worked with Commissioner Strandlie and with staff throughout the day. We had a couple – I had a couple of meetings and was out of the office and I know Ms. Abrahamson had a couple of meetings and she was tied up. So, it was kind of tight as we were wrapping things up and your meeting was approaching but, essentially, it memorializes what we discussed last night and I think what you see here in front of you is that the interparcel access is provided for and there's the commitment that when it happens, either with the redevelopment of the next door neighbor's property or with a VDOT project for Leesburg Pike/Route 7, that the School Board would make sure that that connection on their property is constructed to tie into that so that you get it. And then the following paragraphs talk about what happens to that existing entrance once that alternative is in place, if you will. So with that, I think we have addressed the staff's issues to the School Board's satisfaction and are in good shape.

Vice Chairman de la Fe: Ms. Hurley.

Commissioner Hurley: Thank you, Mr. Chairman. I have a – I asked last night if the direct access to Route 7 would be closed off to all except school buses that would staff, as well as the parents, as well service clerks, etcetera, use the interparcel road. And last night, I thought we – the answer was yes, staff would use the interparcel access. This proffer says the driveway entrance onto Route 7 service shall be restricted to bus and staff use. So, will staff continue to go directly onto Route 7? I don't particularly care either way. I'm just looking for – seeking clarification.

Mr. McGranahan: Yes, I mean, really, it is both. That's essentially what happens now. I mean, right now, there are two entrances onto Route 7. One of them is for student drop off, kiss-and-ride, as it's known; and then the other is for the buses and the – and the staff. And they're segregated that way. The concept is that the new interparcel connection in the back, or to the south, would replace the – the current parent/student drop off.

Commissioner Hurley: So I's basically –

Mr. McGranahan: – and so that function moves but the other function remains in place, and that's why it says –

Commissioner Hurley: It's only for the kiss-and-ride function and the service trucks delivering food, books, whatever, will use the Route 7 access as well, then. Everybody except the kiss-and-ride?

Mr. McGranahan: No, I mean, I think the way the proffer's written, it's buses and staff –

Commissioner Hurley: I'm trying to find –

Mr. McGranahan: – and staff

Commissioner Hurley: Only staff.

Mr. McGranahan: Yes.

Commissioner Hurley: But that doesn't mean the service truck staff. It only means teaching staff. I'm thinking about the trucks.

Mr. McGranahan: Correct. Staff means school staff.

Commissioner Hurley: Okay, you might clarify that a little bit before it gets to the Board of Supervisors, because the trucks are a different kind of traffic.

Commissioner Strandlie: We can do that.

Commissioner Hurley: I don't have any problems with it, but I just want it clarified.

Commissioner Hart: Mr. Chairman?

Vice Chairman de la Fe: Yes, Mr. Hart.

Commissioner Hart: Let me – let me just suggest – I – I – I read 12 and 13 several times before the public hearing yesterday and I couldn't quite get it, but what I was going to suggest… I think everyone knows what we mean. And this is, I think, very close to that, and we just – since we've got, sort of complicated changes at the last minute – I know there's a Board date and we have to vote tonight. Mr. McGranahan, if there's some slight word-smithing to capture what everyone's agreed to in concept between now and the Board, you – you don't have a problem with that, do you?

Mr. McGranahan: No problem whatsoever, and I think, quite frankly, the three of us who were working on it right up until 7:30 – we might see something that needs to be tweaked to get to the intent. I – I don't anticipate that, but we have no problem with what you just said, Commissioner Hart.

Commissioner Hart: Thank you.

Vice Chairman de la Fe: Okay.

Commissioner Strandlie: Thank you.

Vice Chairman de la Fe: Okay, Ms. Strandlie.

Commissioner Strandlie: And heretofore, it's student drop- – drop off and pickup, as opposed to kiss-and-ride or parent drop off, because obviously other people than parents, guardians, grandparents and after-school programs do drop-offs, and they don't kiss. So – so that – we'll – we'll clarify – that has been clarified in this. So if anyone has any other questions, we'll go forward with a motion.

Mr. McGranahan: Thank you.

Commissioner Strandlie: And we'll continue to fine-tune this as – as needed. I therefore MOVE THAT THE PLANNING COMMISSION RECOMMEND APPROVAL OF PCA 76-M-00-202 [*sic*] – let me try that again – PCA 76-M-77-02 [*sic*], SUBJECT TO THE EXECUTION OF PROFFERS DATED MAY 21ST, 2015, AS AMENDED BY THE APPLICANT THIS EVENING, AND DISTRIBUTED THIS EVENING WHICH ADDS THE WORDS TO PROFFER NUMBER 12 BY THE APPLICANT AFTER THE WORDS CONSTRUCTION IN paragraph – LINE 3 OF PARAGRAPH 2 AND AS FINE-TUNED AS SUGGESTED BY COMMISSIONER HART. I therefore move that the planning Commission recommend approval of the following: modification –

Vice Chairman de la Fe: Could – could we vote on each –

Commissioner Strandlie: Sure.

Vice Chairman de la Fe: – separately? Is there a second for the first one?

Commissioner Hedetniemi: Second.

Vice Chairman de la Fe: Seconded by Commissioner Hedetniemi. Any discussion?

Commissioner Hart: Mr. Chairman?

Vice Chairman de la Fe: Yes.

Commissioner Hart: I think what Ms. Strandlie meant to say was after the word "CONSTRUCTED," rather than "construction."

Commissioner Strandlie: Okay.

Vice Chairman de la Fe: Okay.

Commissioner Strandlie: Right, after – after "shall be constructed."

Commissioner Hart: Yes.

Vice Chairman de la Fe: Okay, all those in favor, please signify by saying aye.

Commissioners: Aye.

Vice Chairman de la Fe: Opposed? The motion carries. Commissioner Strandlie.

Commissioner Strandlie: Okay, thank you. I MOVE THAT THE PLANNING COMMISSION RECOMMEND APPROVAL OF THE FOLLOWING:

- MODIFICATION OF THE FRONT YARD SETBACK FROM 20 FEET TO 11 FEET, PURSUANT TO PARAGRAPH 1A OF SECTION 9-622 OF THE ZONING ORDINANCE, IN FAVOR OF THE ALTERNATIVES AS SHOWN ON THE PROPOSED GDP AND AS CONDITIONED;

- MODIFICATION OF THE TRANSITIONAL SCREENING REQUIREMENT ALONG A PORTION OF THE WESTERN PROPERTY LINE adjacent – ADJACENT TO LOT 12A, PURSUANT TO PARAGRAPH 14 OF SECTION 13-305 OF THE ZONING ORDINANCE, IN FAVOR OF THE ALTERNATIVES AS SHOWN ON THE PROPOSED GDP AND AS CONDITIONED; AND

- MODIFICATION OF THE LOCATION OF THE BARRIER, PURSUANT TO PARAGRAPH 14 OF SECTION 13-305 OF THE ZONING ORDINANCE, IN FAVOR OF THE LOCATION AS SHOWN ON THE PROPOSED GDP AND AS CONDITIONED.

Commissioner Hedetniemi: Second.

Vice Chairman de la Fe: Seconded by Commissioner Hedetniemi. Any discussion? Hearing and seeing none all those in favor, please signify by saying aye.
Commissioners: Aye.

Vice Chairman de la Fe: Opposed? The motion carries.

//
(Each motion carried by a vote of 9-0. Commissioners Lawrence, and Murphy, and Sargeant were absent from the meeting.)

JN

FAIRFAX COUNTY SCHOOL BOARD
(BAILEY'S UPPER ELEMENTARY SCHOOL)
PCA 76-M-007-02
PROFFER STATEMENT
MARCH 26, 2015
APRIL 20, 2015
APRIL 30, 2015
May 7, 2015
May 20, 2015
May 21, 2015

Pursuant to Section 15.2-2303(A) of the Code of Virginia, as amended, and subject to the Fairfax County Board of Supervisors' (the "Board") approval of this application PCA 76-M-007-02, the Fairfax County School Board (the "Applicant") for itself and its successors and assigns, hereby proffers that development of the property identified as Fairfax County Tax Map Parcels 51-3-((1))-30, -31; 51-3-((11))-188A; 51-3-((13))-5, -10 and -11 (the "Property"), containing approximately 3.41 acres, shall be in accordance with the following proffered conditions (the "Proffers"), which, if approved, shall replace and supersede all previous proffers approved for the Property. In the event this application is denied, these Proffers shall immediately be null and void and the previous proffers shall remain in full force and effect.

1. **Permitted Uses**. Use of the Property shall be limited to public uses up to a maximum floor area ratio of 0.71.

2. **Substantial Conformity**. The proposed gymnasium, outdoor play area and sport court shall be developed in substantial conformance with the Generalized Development Plan ("GDP") dated December 3, 2014, and revised through May 6, 2015, prepared by ADTEK, consisting of ten (10) sheets. Pursuant to Paragraph 5 of Section 18-204 of the Zoning Ordinance, minor modifications from the approved GDP may be permitted as determined by the Zoning Administrator.

3. **Phasing**. The proposed gymnasium, outdoor play area, sport court and bus lane and other related site improvements are subject to Minor Site Plan 6494-MSP-002-2-1 (the "Minor Site Plan") which is pending review and approval by the Department of Public Works and Environmental Services ("DPWES"). The Applicant shall submit a separate site plan, minor site plan or public improvement plan (collectively, "Future Site Plan") to DPWES for the proposed pedestrian improvements referenced in Proffer 11 below before the first non-RUP is issued for the Minor Site Plan. The Applicant shall diligently pursue approval of the Future Site Plan after its initial submission.

4. **Gymnasium**. The architecture for the proposed gymnasium shall be in substantial conformance with the elevations shown on Sheet 9 of the GDP.

5. **Landscaping**. A landscaping plan shall be submitted in conjunction with the Minor Site Plan pursuant to Article 13 of the Zoning Ordinance for review and approval by the Urban Forest Management Division ("UFMD") of DPWES (the "Landscaping Plan"). The Landscaping Plan shall address the following:

A. Leesburg Pike Streetscape. In addition to the landscaping shown on the GDP, the Applicant shall provide ornamental groupings of shrubs and perennials on the Property within the streetscape area along Leesburg Pike adjacent to the proposed gymnasium.

B Native Species Landscaping. All landscaping provided shall be native to the middle Atlantic region to the extent feasible and non-invasive as determined by UFMD.

C. Invasive Species Management Plan. An invasive species management plan shall be submitted as part of the Minor Site Plan detailing how invasive and undesirable vegetation will be removed and managed. The invasive species management plan shall include the following information:

- The targeted undesirable and invasive plant species to be removed, suppressed and managed.
- The targeted area of undesirable and invasive plants to be removed, suppressed and managed, which shall be clearly identified on the Landscaping Plan or the Tree Preservation Plan (as defined below).
- The recommended government and industry methods of management, e.g. hand removal, mechanical equipment and chemical control, with the potential impacts of recommended methods on surrounding trees and vegetation not targeted for removal/suppression/management and how these trees and vegetation will be protected (for example, if mechanical equipment is proposed in a tree save area, what will be the impacts to trees identified for preservation and how will these impacts be reduced).
- How targeted species will be disposed.
- If chemical control is recommended, treatments shall be performed by or under direct supervision of a Virginia Certified Pesticide Applicator or Registered Technician and under the general supervision of the Project Arborist (as defined below).
- Information regarding timing of treatments (hand removal, mechanical equipment or chemical treatments), when treatments will begin and end during a season and proposed frequency of treatments per season.

- Potential areas of replanting.

- Semi-annual monitoring reports provided to UFMD and Site Development and Inspection Division ("SDID") staff.

- That the management program and semi-annual monitoring reports will continue until the earlier to occur of: (i) bond release, (ii) release of the Conservation Deposit, or (iii) when targeted plants appear to be eliminated based on documentation provided by the Project Arborist (as defined below) and an inspection by UFMD staff.

D. Transitional Screening. Transitional screening shall be provided along the northern and western property lines as required by Article 13 of the Zoning Ordinance, with the exception of a minor portion of the Property located along the western property line between the proposed bus lane and the adjacent single family lot identified as Tax Map Parcel 51-3-((13))-12A ("Parcel 12A"). The Applicant shall provide landscaping adjacent to Parcel 12A as shown on the GDP subject to the review and approval of UFMD.

E. Existing Vegetation. Existing trees that are dead and/or diseased and in poor condition shall be removed and replaced with Category II and/or III evergreens in order to meet the intent of the transitional screening and peripheral parking lot landscape requirements subject to the review and approval of UFMD.

6. **Landscape Pre-Inspection Meeting**. Prior to installation of plants to meet requirements of the approved Landscaping Plan, the Applicant shall coordinate a pre-installation meeting on site with the landscape contractor and a representative of UFMD. Any proposed changes to the location of planting, size of trees/shrubs, and any proposed plant substitutions for species identified on the approved Landscaping Plan shall be reviewed and approved prior to planting. The installation of plants not specified on the approved Landscaping Plan, and not previously approved by UFMD, may require submission of a revision to the Landscaping Plan or removal and replacement with approved material.

Field location of planting material, when required by the approved Landscaping Plan, shall be reviewed at the pre-installation meeting. The landscape contractor shall stake proposed individual planting locations in consultation with the Applicant prior to the pre-installation meeting, for review by UFMD staff. Stakes shall be adjusted, as needed, during the course of the meeting as determined by UFMD staff based on discussion with the Applicant and the landscape contractor.

7 **Tree Preservation.** The Applicant shall submit a Tree Preservation Plan and Narrative (the "Tree Preservation Plan") as part of the Minor Site Plan, which shall be prepared by a Certified Arborist or a Registered Consulting Arborist (the "Project Arborist"), and shall be subject to the review and approval of UFMD.

The Tree Preservation Plan shall include a tree inventory that identifies the location, species, critical root zone, size, crown spread and condition analysis percentage rating for all individual trees located outside of the limits of disturbance, living or dead, with trunks 10 inches in diameter and greater (measured at 4 ½ feet from the base of the trunk or as otherwise allowed in the latest edition of the *Guide for Plant Appraisal* published by the International Society of Arboriculture). All trees inventoried shall be tagged in the field so they can be easily identified. If permission is not allowed from the offsite property owner to tag trees located along the Property line, it shall be noted on the Tree Preservation Plan by providing written documentation that the Applicant requested permission from the offsite property owner. The Tree Preservation Plan shall provide for the preservation of those areas shown on the GDP outside of the limits of disturbance and those additional areas in which trees can be preserved as a result of final engineering. The Tree Preservation Plan shall include all items required by the Public Facilities Manual ("PFM") Sections 12-0507 and 12-0509, as amended or replaced. Specific tree preservation activities that will maximize the survivability of any tree identified to be preserved, such as crown pruning, root pruning, mulching, fertilization, compost tea, Cambistat, radial mulching, notes and details for asphalt removal around trees, and others as necessary, shall be included in the Tree Preservation Plan.

A. Tree Preservation Walk-Through. The Applicant shall retain the services of the Project Arborist, and shall have the limits of clearing and grading marked with a continuous line of flagging prior to the walk-through meeting. During the tree preservation walk-through meeting, the Project Arborist shall walk the limits of clearing and grading with a UFMD representative to determine where adjustments to the clearing limits can be made to increase the area of tree preservation and/or to increase the survivability of trees at the edge of the limits of clearing and grading, and such adjustment shall be implemented. Trees that are identified as dead or dying may be removed as part of the clearing operation. Any tree that is so designated shall be removed using a chain saw and such removal shall be accomplished in a manner that avoids damage to surrounding trees and associated understory vegetation. If a stump must be removed, this shall be done using a stump-grinding machine in a manner causing as little disturbance as possible to adjacent trees and associated understory vegetation and soil conditions.

B. Tree Preservation Fencing. All trees shown to be preserved on the Tree Preservation Plan shall be protected by tree protection fencing. Tree

protection fencing in the form of four (4) foot high, fourteen (14) gauge welded wire attached to six (6) foot steel posts driven eighteen (18) inches into the ground and placed no further than ten (10) feet apart or, super silt fence, to the extent that required trenching for super silt fence does not sever or wound compression roots which can lead to structural failure and/or uprooting of trees, shall be erected at the limits of clearing and grading as shown on the demolition, and phase I & II erosion and sediment control sheets, as may be modified by the "Root Pruning" condition below.

All tree protection fencing shall be installed after the tree preservation walk-through meeting but prior to any clearing and grading activities, including the demolition of any existing structures. Three (3) days prior to commencement of any clearing, grading or demolition activities, but subsequent to the installation of the tree protection fencing, UFMD shall be notified and given the opportunity to inspect the site to ensure that all tree protection fencing has been correctly installed. If it is determined that the fencing has not been installed correctly, no grading or construction activities shall occur until the fencing is installed correctly, as determined by UFMD.

C. Root Pruning. The Applicant shall root prune as needed to comply with the tree preservation requirements. All root pruning shall be clearly identified, labeled, and detailed on the erosion and sediment control sheets of the Minor Site Plan submission. The details of the root pruning shall be reviewed and approved by UFMD, accomplished in a manner that protects affected and adjacent vegetation to be preserved, and may include, but not be limited to, the following:

- Root pruning shall be done with a trencher or vibratory plow to a depth of 18 - 24 inches.
- Root pruning shall take place prior to any clearing and grading, or demolition of structures.
- Root pruning shall be conducted with the supervision of the Project Arborist.
- A UFMD representative shall be informed when all root pruning and tree protection fence installation is complete.

D. Site Monitoring. During any clearing on the Property, a representative of the Applicant shall be present to monitor the clearing and ensure that the activities are conducted in substantial conformance with these Proffers and as approved by UFMD. The Applicant shall retain the Project Arborist to monitor all construction and demolition work and tree preservation efforts in order to ensure conformance with all tree

preservation commitments and UFMD approvals. The monitoring schedule shall be described and detailed in the Tree Preservation Plan, and reviewed and approved by UFMD.

8. **Stormwater Management and Best Management Practices (BMPs).** Stormwater management and BMPs shall be provided as generally depicted on the GDP which include an existing underground detention facility and two (2) proposed Low Impact Development ("LID") facilities such as, but not limited to, a tree box filterra system as may be approved by DPWES. Adequate outfall shall be demonstrated in accordance with the Public Facilities Manual ("PFM") as determined by DPWES.

9. **Green Building Design**. The Applicant shall incorporate the following green building technology and strategies during the final building design for the gymnasium:

   A. The Applicant shall provide an area for separation, collection and storage of glass, paper, metal, plastic and cardboard generated from the students and employees. There shall be a dedicated area on the Property for the storage of such recycled materials.

   B. The Applicant shall incorporate environmentally sustainable attributes into the proposed gymnasium which shall include, but are not necessarily limited to, elements such as high efficiency mechanical systems and LED lighting, lighting occupancy sensors, hands free/low consumption plumbing fixtures, bottle filling station, low emissivity glazing (windows), and low volatile organic compounds ("VOC") emitting materials.

10. **Outdoor Educational Areas**. The Applicant reserves the right to provide outdoor educational areas which may include, but not be limited to, gardens, mulch pads, rain gardens, benches, shade structures, natural surface trails or other similar educational facilities in the areas identified as "possible future outdoor learning area" on the GDP. However, such outdoor educational facilities shall not result in any material adverse impacts to the transitional screening areas shown on the GDP.

11. **Pedestrian Improvements**. The Applicant shall provide standard curb ramps and crosswalks at the two (2) existing entrances to the school from the existing service drive along Leesburg Pike, subject to the approval of VDOT. These improvements shall be the subject of a Future Site Plan. Such Future Site Plan shall be filed before the first non-RUP is issued for the Minor Site Plan. The Applicant shall diligently pursue approval of such Future Site Plan after its initial submission to DPWES. The standard curb ramps and crosswalks shall be constructed within 18 months of approval of such Future Site Plan by DPWES. Notwithstanding the above, upon demonstration that, despite diligent efforts or due to factors beyond the Applicant's control, the pedestrian

improvements have been delayed beyond the timeframe specified, the Zoning Administrator may agree to a later date for completion of such improvements.

12. ~~Possible~~ **Future Interparcel** ~~Access by Others. In the event~~Connection and Future Improvements to Leesburg Pike. At the time of site plan approval, the Applicant shall identify a location in the southeastern portion of the Property for an interparcel vehicular ~~access (the "Interparcel Access") is proposed to be constructed by others on adjacent~~connection to Tax Map Parcel 51-3-((11))-189A ("Parcel 189A") ~~along the southeastern portion of the Property which provides~~, and shall record the appropriate easements to permit the future construction of the interparcel connection and public access to ~~Leesburg Pike,~~the Property.

~~13.~~ Minor adjustments to the location of the interparcel connection may be permitted upon agreement of both the Applicant ~~shall coordinate with~~and the owner of Parcel 189A, ~~or its successors and assigns, to identify a location mutually agreeable to such parcel owner. The Applicant shall, in conjunction with the construction of the Interparcel Access on~~ with the approval of FCDOT, without the need for a PCA. The interparcel connection on the Property shall be constructed at the same time as i) the redevelopment of Parcel 189A ~~by others, construct its portion of the Interparcel Access on the Property, including~~, or ii) the removal of the service drive along Leesburg Pike, whichever occurs first, and shall include a painted crosswalk to facilitate pedestrian connectivity to the ~~uses on the~~ Property. ~~In the event Parcel 189A is approved for rezoning, special exception, special permit or site plan, which provide for construction of the portion of the Interparcel Access located on the Property, the Applicant shall not be required to construct such improvements but shall provide at no cost, appropriate easements on the Property to allow such construction by others.~~

~~At such time as the Interparcel Access has been constructed, the Applicant shall utilize the Interparcel Access as the entrance for parent drop off/pick up.~~

Prior to the opening of the interparcel connection to traffic, the owner of Tax Map Parcel 51-3-((11))-1888 shall be notified. At such time as the interparcel connection has been fully constructed and is operational to provide access to the Property from Route 7, the Applicant shall utilize the interparcel connection for student pickup and drop off. At such time, the northern driveway entrance on the Route 7 service drive shall be restricted to bus and staff use only, and the southern driveway entrance on the

service drive shall be closed and a fence or other barrier erected to restrict the use of this access point.

~~Future Improvements to Leesburg Pike. At such time as the existing service drive fronting on Leesburg Pike is removed, and upon request by Fairfax County and/or the Virginia Department of Transportation ("VDOT"), the Applicant shall agree, without compensation to the Applicant, to close the existing southern-most entrance to the Property and provide a fence or other barrier to restrict vehicles from entering and exiting the Property.~~ The Applicant shall grant temporary construction easements to Fairfax County and/or VDOT for future improvements to Leesburg Pike as long as such easements do not impact the improvements on the Property.

[SIGNATURE ON FOLLOWING PAGE]

FAIRFAX COUNTY SCHOOL BOARD
Applicant and Title Owner of
Tax Map Parcels 51-3-((1))-30, -31;
51-3-((11))-188A; 51-3-((13))-5, -10 and -11

By:_____

Name:_____

Title:_____

Revised Language:

12. **Future Interparcel Connection and Future Improvements to Leesburg Pike.** At the time of site plan approval, the Applicant shall identify a location in the southeastern portion of the Property for an interparcel vehicular connection to Tax Map Parcel 51-3-((11))-189A ("Parcel 189A"), and shall record the appropriate easements to permit the future construction of the interparcel connection and public access to the Property. by the applicant

Minor adjustments to the location of the interparcel connection may be permitted upon agreement of both the Applicant and the owner of Parcel 189A with the approval of FCDOT, without the need for a PCA. The interparcel connection on the Property shall be constructed at the same time as i) the redevelopment of Parcel 189A, or ii) the removal of the service drive along Leesburg Pike, whichever occurs first, and shall include a painted crosswalk to facilitate pedestrian connectivity to the Property.

Prior to the opening of the interparcel connection to traffic, the owner of Tax Map Parcel 51-3-((11))-188B shall be notified. At such time as the interparcel connection has been fully constructed and is operational to provide access to the Property from Route 7, the Applicant shall utilize the interparcel connection for student pickup and drop off. At such time, the northern driveway entrance on the Route 7 service drive shall be restricted to bus and staff use only, and the southern driveway entrance on the service drive shall be closed and a fence or other barrier erected to restrict the use of this access point.

The Applicant shall grant temporary construction easements to Fairfax County and/or VDOT for future improvements to Leesburg Pike as long as such easements do not impact the improvements on the Property.

Board Agenda Item
June 23, 2015

3:00 p.m.

Public Hearing on PCA 82-P-015 (Yue Wang also known as Mike Wang) to Amend the Proffers and Conceptual Plans for RZ 82-P-015 Previously Approved for Residential Development at 9.73 du/ac, to Permit Residential Development and Associated Modifications to Proffers and Site Design at a Density of 11.64 Dwelling Units per Acre (du/ac), Located on Approximately 2.49 Acres of Land Zoned PDH-12 and HC, Comp. Plan Rec: 8-12 du/ac (Providence District)

This property is located on the West side of Hollywood Road, East of Morris Street and South of Lee Landing. Tax Map 50-1 ((22)) A, and 50-1 ((22)) 1-22.

The Board of Supervisors deferred this public hearing from the June 2, 2015, meeting to June 23, 2015 at 3:00 p.m.

PLANNING COMMISSION RECOMMENDATION:
On Thursday, April 16, 2015, the Planning Commission voted 8-0 (Commissioners Lawrence, Litzenberger, Sargeant, and Strandlie were absent from the meeting) to recommend to the Board of Supervisors approval of PCA 82-P-015, subject to the proffers dated April 13, 2015.

In a related action, the Planning Commission voted 8-0 (Commissioners Lawrence, Litzenberger, Sargeant, and Strandlie were absent from the meeting) to approve FDPA 82-P-015, subject the Board's approval of PCA 82-P-015 and the Conceptual Development Plan Amendment.

ENCLOSED DOCUMENTS:
Attachment 1: Planning Commission Verbatim Excerpt
Staff Report previously furnished and available online at:
http://ldsnet.fairfaxcounty.gov/ldsnet/ldsdwf/4482544.PDF

STAFF:
Barbara Berlin, Director, Zoning Evaluation Division, Department of Planning and Zoning (DPZ)
Mike Van Atta, DPZ

PCA/FDPA 82-P-015/CDPA 82-P-015 – YUE WANG (a/k/a MIKE WANG)

After Close of the Public Hearing

Chairman Murphy: Public hearing is closed – Mr. Hart.

Commissioner Hart: Thank you, Mr. Chairman. This was a relatively straight-forward case. And I thought, actually – this is a good example of the type of infill that we probably ought to be doing. And when I went out there, the house – believe me – is not being used for a child care. You don't want the kids going there. It – it's not going to survive the next thunderstorm. I mean, it just – it's something – it's dangerous. I think it should've been torn down a long time ago. I think if children were going in there, there could be a real hazard.

Chairman Murphy: They don't have any of that tape either, I presume.

Commissioner Hart: They got nothing. It's a – it's a disaster. I mean, I don't know if we have pictures of it, but it's bad. Anyway, the application has staff's favorable recommendation and I would concur with the rationale in the staff report. And this approval is actually very consistent with what was approved years ago anyway and this is certainly a better package than we had. I think it's – I think it's ready to go. And with the – with the revised proffers, I think we've addressed the concern about stormwater. The objective will be to get the new houses to be part of the existing HOA so that they're not stuck with all the financial burdens for everything. But there will be contributions if it works out and hopefully it will – and it sounds like the HOA is on board and we're on the right on track on that – that everything can be folded in and everyone will be happy. But we have Plan B just in case that doesn't work out. Therefore, Mr. Chairman, I MOVE THAT, FIRST, THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS APPROVAL OF the –

Chairman Murphy: PCA.

Commissioner Hart: PCA 82-P-015, SUBJECT TO THE PROFFERS DATED APRIL 13, 2015.

Commissioner Ulfelder: Second.

Chairman Murphy: Seconded by Mr. Ulfelder. Is there a discussion of the motion? All those in favor of the motion to recommend to the Board of Supervisors that it approve PCA 82-P-015, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries. Mr. Hart.

Commissioner Hart: Thank you, Mr. Chairman. I move that the Planning Commission recommend to the Board of Supervisors approval of FDPA 82-P-015.

Commissioner Ulfelder: Second.

Chairman Murphy: Seconded by Mr. Ulfelder. Is there a discussion of that motion? I guess we approve that, don't we? A Final Development Plan?

Commissioner Hart: Well, I'm reading here on my script, but we do approve it, don't we?

Commissioner de la Fe: Yes.

Commissioner Hart: So let me start over. I MOVE THAT THE PLANNING COMMISSION APPROVE FDPA 82-P-015.

Commissioner de la Fe: Subject to the approval-

Chairman Murphy: Second – subject to the-

Commissioner Migliaccio: Well it's subject to-

Commissioner de la Fe: Yes, subject to approval of-

Commissioner Hart: SUBJECT TO APPROVAL OF THE PCA.

Chairman Murphy: CDPA too. Seconded by Mr. Ulfelder –

Commissioner Hart: What happened to the CDPA? Uh oh.

Catherine Lewis, Zoning Evaluation Division, Department of Planning and Zoning: You don't – I mean, it – the CDPA is – well, we've had confusions about this. But the PCA refers to that CDPA. You don't actually need to make a separate motion.

Commissioner Hart: Okay. I'm just following orders here.

Ms. Lewis: Yes.

Commissioner Hart: Okay.

Chairman Murphy: Seconded by-

Ms. Lewis: You're okay.

Chairman Murphy: Seconded by Mr. Ulfelder. All those in favor of the motion to approve FDPA 82-P-015, subject to the PCA and the CDPA – right? Say aye.

Commissioners: Aye.
Chairman Murphy: Opposed? Motion carries. Okay. Thank you very much.

Commissioner Hart: Mr. Chairman, before they go, let me thank Mr. Van Atta and Ms. Lewis for their help – their fine help on very short notice – on getting me up to speed and getting this ready.

Chairman Murphy: Thank you very much.

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(Each motion carried by a vote of 8-0. Commissioners Lawrence, Litzenberger, Sargeant, and Strandlie were absent from the meeting.)

JLC

Board Agenda Item
June 23, 2015

3:30 p.m.

Public Hearing on SE 2015-SP-002 (Terry M. Peter / Love'n Care Day Care, Inc.) to Permit a Home Child Care Facility, Located on Approximately 9,911 Square Feet of Land Zoned PDH-2 (Springfield District)

This property is located at 8388 Crosslake Drive, Fairfax Station, 22039. Tax Map 97-3 ((13)) 52.

PLANNING COMMISSION RECOMMENDATION:
On Wednesday, May 20, 2015, the Planning Commission voted 10-0 (Commissioners Lawrence and Sargeant were absent from the meeting) to recommend to the Board of Supervisors approval of SE 2015-SP-002, subject to the Development Conditions contained in Appendix 1 of the staff report.

ENCLOSED DOCUMENTS:
Attachment 1: Planning Commission Verbatim Excerpt
Staff Report previously furnished and available online at:
http://ldsnet.fairfaxcounty.gov/ldsnet/ldsdwf/4486401.PDF

STAFF:
Barbara Berlin, Director, Zoning Evaluation Division, Department of Planning and Zoning (DPZ)
Carmen Bishop, Planner, DPZ

SE 2015-SP-002 – TERRY M. PETER/LOVE'N CARE DAY CARE

After Close of the Public Hearing

Vice Chairman de la Fe: And if there are no comments, I'll close the public hearing. Mr. Murphy.

Commissioner Murphy: Thank you, Mr. Chairman. This is a straightforward application for a daycare center to go up to 12 children. We have contacted the leadership of the Crosspoint Community and they apparently, as we see tonight, are of no objection to that. So I'd like Ms. Peter to come back up, if you would please. I'm going to move for approval of this application to the Board of Supervisors. Before I do that and make the motion, I want you to affirm the fact that you understand the development conditions and you will oblige by them.

Terry Peter, Applicant/Title Owner: Yes sir, I do understand and will abide.

Commissioner Murphy: Thank you very much. Mr. Chairman, I MOVE THE PLANNING COMMISSION TO THE BOARD OF SUPERVISORS THAT IT APPROVE SE 2015-SP-002, SUBJECT TO THE DEVELOPMENT CONDITIONS CONTAINED IN APPENDIX 1 OF THE STAFF REPORT.

Commissioner Hart: Second.

Vice Chairman de la Fe: Seconded by Mr. Hart. Is there any discussion? Hearing and seeing none, all those in favor, please signify by saying aye.

Commissioners: Aye.

Vice Chairman de la Fe: Opposed? The motion carries unanimously. Thank you very much.

Ms. Peter: Thank you sir.

Commissioner Murphy: Thank you.

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(The motion carried by a vote of 10-0. Commissioners Lawrence and Sargeant were absent from the meeting.)

JLC

Board Agenda Item
June 23, 2015

3:30 p.m.

Public Hearing on SE 2015-MV-003 (First Years Learning Center LLC / Claudia Tramontana) to Permit a Home Child Care Facility, Located on Approximately 10,488 Square Feet of Land Zoned PDH-2 (Mount Vernon District)

This property is located at 6614 Winstead Manor Court, Lorton, 22079. Tax Map 99-2 ((17)) 34.

PLANNING COMMISSION RECOMMENDATION:
The Planning Commission public hearing was held on Wednesday, June 10, 2015. The decision was deferred to July 8, 2015. The Commission's recommendation will be forwarded to the Board of Supervisors subsequent to that date.

ENCLOSED DOCUMENTS:
Staff Report previously furnished and available online at:
http://ldsnet.fairfaxcounty.gov/ldsnet/ldsdwf/4488469.PDF

STAFF:
Barbara Berlin, Director, Zoning Evaluation Division, Department of Planning and Zoning (DPZ)
Mary Ann Tsai, Planner, DPZ

Board Agenda Item
June 23, 2015

3:30 p.m.

Public Hearing on SEA 91-S-031 (Milestone Tower Limited Partnership III Cellco Partnership D/B/A Verizon Wireless & Virginia Electric and Power Company D/B/A Dominion Virginia Power) SEA Application under Sections 3-C04 of the Zoning Ordinance to Amend SE 91-S-031 Previously Approved for Electric Substation to Permit a Telecommunications Facility Change in Land Area and Associated Modifications to Site Design and Development Conditions, Located on Approximately 95.11 Acres of Land Zoned R-C and WS (Springfield District)

This property is located at 12895 Clifton Creek Drive, Clifton, 20124. Tax Map 75-3 ((1)) 10.

PLANNING COMMISSION RECOMMENDATION:
On Wednesday, June 17, 2015, the Planning Commission voted 10-0 (Commissioners Lawrence and Sargeant were absent from the meeting) to recommend the following actions to the Board of Supervisors:

- Approval of SEA 91-S-031, subject to the Development Conditions dated June 11, 2015;

- Approval of the modification of Section 13-303 of the Zoning Ordinance for the transitional screening requirement, in favor of the existing vegetation on the site, the landscape plantings shown on the Special Exception Amendment Plat, and the Development Conditions; and

- Approval of a waiver of Section 13-304 of the Zoning Ordinance for the barrier requirement along all the property lines.

In a related action, the Commission voted C10-0 (Commissioners Lawrence and Sargeant were absent from the meeting) to approve 2232-S14-9. The Commission noted that the application was substantially in accord with the provisions of the adopted Comprehensive Plan.

ENCLOSED DOCUMENTS:
Attachment 1: Planning Commission Verbatim Excerpt
Staff Report previously furnished and available online at:
http://ldsnet.fairfaxcounty.gov/ldsnet/ldsdwf/4489554.PDF

STAFF:
Barbara Berlin, Director, Zoning Evaluation Division, Department of Planning and Zoning (DPZ)
Mary Ann Tsai Planner, DPZ

SEA 91-S-031/2232-S14-9 – MILESTONE COMMUNICATIONS AND CELLCO PARTNERSHIP d/b/a VERIZON WIRELESS, VA

After Close of the Public Hearing

Vice Chairman de la Fe: The public hearing is closed. Mr. Murphy.

Commissioner Murphy: Thank you, Mr. Chairman. The application is in the very lengthy staff report and the reason is because it needed a thorough analysis – where this monopole is scheduled to be built. It is on a Dominion easement close to the town of Clifton and near Clifton Creek Drive. During the process, we had a land use committee meeting and the applications were presented to the land use committee – the Springfield Land Use Committee – and the committee unanimously voted to support the application and its recommendation for approval. One of the things that came up was the type of monopole the citizens would like to have in this location, which – as I said – in the middle of an easement where there aren't Dominion power lines. And after much consideration, the Clifton Town Council took a position and said that the Town Council voted unanimously to approve a 140-foot flat top tree pole, as opposed to a regular monopole. And that pole is now 130 feet high. When they made that recommendation, the applicant went back and provided information for the staff to do a quick analysis of this particular monopole at – in a designed – designed like a tree monopole and they are still recommending approval of the application. So I have two letters for the record. One is a letter from the Clifton Town Council and the second is a letter from Deborah Johnson, who is with Dominion Power. During our land use committee meeting, there were several citizens who asked about Dominion Power's procedures on the right-of-way and the Clifton substation regarding the lights and scheduling of maintenance. And the response to those questions and concerns are in this very short letter, which addresses them. So we did have two balloon tests. I believe one was winded out, if that's the correct pronunciation. The wind was so high that day the balloon was going all over the place so we couldn't tell exactly the height of the pole, as it's reflected in the height of the balloon. We had a second balloon test. People came out to see both of them. And from there, we went to the hearing with the land use committee. I want to thank Mary Ann Tsai, who did an excellent job shepherding this application through the process, as she always does. And I would like now to have the applicant come forward and confirm for the record the agreement of the proposed development conditions dated June 11th, 2015.

Frank Stearns, Esquire, Applicant's Agent, Donohue & Stearns, PLC: I do, Commissioner Murphy. And let me just say we also thank Mary Ann Tsai and Harvey Clark. This was not an easy project and they spent a lot of time on it and we do thank them.

Commissioner Murphy: Thank you very much.

Vice Chairman de la Fe: Thank you.

Commissioner Murphy: Mr. Chairman, I concur with the staff's conclusion that the proposed monopole by Milestone Tower Limited Partnership III, Cellco Partnership d/b/a Verizon Wireless and Virginia Power and Electric Company construct a 130-foot tall tree pole telecommunications

facility at 12895 Clifton Creek Drive in Clifton, satisfies the criteria of character, location, and extent, as specified in *Virginia Code* Section 15.2-2232, as amended. Therefore, Mr. Chairman, I MOVE THE PLANNING COMMISSION FIND THE SUBJECT APPLICATION, 2232-S14-9, SUBSTANTIALLY IN ACCORD WITH THE PROVISIONS OF THE ADOPTED COMPREHENSIVE PLAN AND I MOVE TO APPROVE THE 2232.

Commissioner Hart: Second.

Vice Chairman de la Fe: Seconded by Mr. Hart. Is there any discussion? Hearing and seeing none, all those in favor, please signify by saying aye.

Commissioners: Aye.

Vice Chairman de la Fe: Opposed? The motion carries unanimously. Thank you very much.

Commissioner Murphy: Mr. Chairman, I ALSO MOVE THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS THAT IT APPROVE SE 2014-SP-060 [sic], SUBJECT TO THE PROPOSED DEVELOPMENT CONDITIONS DATED JUNE 11TH, 2015.

Commissioner Hart: Second.

Vice Chairman de la Fe: Seconded by Mr. Hart. Any discussion? Hearing and seeing none, all those in favor, please signify by saying aye.

Commissioners: Aye.

Vice Chairman de la Fe: Opposed? The motion carries. Thank you very much.

Commissioner Murphy: Yes, and I have a couple others that I will put together. I MOVE THAT THE PLANNING COMMISSION RECOMMEND THE BOARD OF SUPERVISORS' APPROVAL OF:

- THE MODIFICATION OF SECTION 13-303 OF THE ZONING ORDINANCE FOR THE TRANSITIONAL SCREENING REQUIREMENT, IN FAVOR OF THE EXISTING VEGETATION ON THE SITE, THE LANDSCAPE PLANTINGS SHOWN ON THE SE exception – SPECIAL EXCEPTION AMENDMENT PLAT, AND THE DEVELOPMENT CONDITIONS; AND

- APPROVAL OF A WAIVER OF SECTION 13-304 OF THE ZONING ORDINANCE FOR THE BARRIER REQUIREMENT ALONG ALL THE PROPERTY LINES.

Commissioner Hart: Second.

Vice Chairman de la Fe: Seconded by Mr. Hart. Is there any discussion? Hearing and seeing none, all those in favor, please signify by saying aye.

Commissioners: Aye.

Vice Chairman de la Fe: Opposed? The motion carries. Thank you.

Commissioner Murphy: Okay. Thank you, Mr. Stearns, and all the folks with your company. And – appreciate, again, Mary Ann. Thank you for an excellent job.

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(Each motion carried by a vote of 10-0. Commissioners Lawrence and Sargeant were absent from the meeting.)

JLC

Board Agenda Item
June 23, 2015

3:30 p.m.

Public Hearing on SEA 2004-DR-004 (Shore Armani Trustee E A/K/A Shoreh H. Armani) to Amend SE 2004-DR-004 Previously Approved for an Existing Office Use in a Residential District to Permit Change in Development, Located on Approximately 19,500 Square Feet of Land Zoned R-3, CRD, and SC (Dranesville District)

This property is located at 1580 Chain Bridge Road, McLean, 22101. Tax Map 30-4 ((2)) (6) 46.

PLANNING COMMISSION RECOMMENDATION:
On Wednesday, June 10, 2015, the Planning Commission voted 9-0 (Commissioners de la Fe, Lawrence, and Sargeant were absent from the meeting) to recommend the following actions to the Board of Supervisors:

- Approval of SEA 2004-DR-004, subject to the Development Conditions dated May 26, 2015; and

- Approval of the following waivers and modifications:

    - Modification of the transitional screening yard requirements and barrier requirements, per Paragraph 3 of Section 13-304 and Paragraph 12 of Section 13-304 of the Zoning Ordinance to that shown on the SEA Plat;

    - Waiver of the loading space requirement, pursuant to the provisions of Section 11-202 of the Zoning Ordinance;

    - Modification of the travel lane requirement to allow a 15-foot wide travel lane, as shown on the SEA Plat; and

    - Waiver of frontage improvements, including curb and gutter and right-of-way improvements, along Pathfinder Lane.

ENCLOSED DOCUMENTS:
Attachment 1: Planning Commission Verbatim Excerpt
Staff Report previously furnished and available online at:
http://ldsnet.fairfaxcounty.gov/ldsnet/ldsdwf/4488227.PDF

STAFF:
Barbara Berlin, Director, Zoning Evaluation Division, Department of Planning and Zoning (DPZ)
Mike Van Atta, Planner, DPZ

SEA 2004-DR-004 – SHORE ARMANI, TRUSTEE A/K/A SHOREH H. ARMANI

After Close of the Public Hearing

Chairman Murphy: Without objection, the public hearing is closed. Recognize Mr. Ulfelder.

Commissioner Ulfelder: Thank you, Mr. Chairman. This is pretty straightforward – the applicant just seeking to continue a previously-approved office use in an existing single-family detached dwelling and add an additional employee, who would live in the dwelling for security purposes. This has the support of both the McLean Citizens Association and the McLean Planning Committee. And, therefore, I'm going to move that the Planning Commission recommended to the Board of Supervisors approval of SEA 2004-DR-004, subject to the development – well, development conditions – well, wait a minute. Before I do that, I would like to ask Ms. Kelsey to come forward.

Chairman Murphy: Ms. Kelsey, would you come here – stand up please and –

Commissioner Ulfelder: Please.

Chairman Murphy: -reaffirm that you agree with the development conditions and you understand them.

Commissioner Ulfelder: Does the application agree with the-

Jane Kelsey, Applicant's Agent, Jane Kelsey & Associates, Inc.: Yes.

Commissioner Ulfelder: -development conditions dated May 26th?

Ms. Kelsey: I have – concur that the applicant does agree with the development conditions, as contained in the staff report.

Commissioner Ulfelder: Thank you – dated, I think, May 26th, right?

Ms. Kelsey: Yes.

Commissioner Ulfelder: Therefore, I MOVE THE PLANNING COMMISSION RECOMMEND TO BOARD OF SUPERVISORS APPROVAL OF SEA 2004-DR-004, SUBJECT TO DEVELOPMENT CONDITIONS DATED MAY 26, 2015.

Commissioner Migliaccio: Second.

Chairman Murphy: Seconded by Mr. Migliaccio. Is there a discussion of the motion? All those in favor of the motion to recommend to the Board of Supervisors that it approve SEA 2004-DR-004, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries. Thank you very much.

Commissioner Ulfelder: I also have some modifications and waivers to move.

Chairman Murphy: Okay.

Commissioner Ulfelder: I MOVE THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS APPROVAL OF THE FOLLOWING WAIVERS AND MODIFICATIONS:

- MODIFICATION OF THE TRANSITIONAL SCREENING YARD REQUIREMENTS AND BARRIER REQUIREMENTS, PER PARAGRAPH 3 OF SECTION 13-304 AND PARAGRAPH 12 OF SECTION 13-304 OF THE ZONING ORDINANCE TO THAT SHOWN ON THE SEA PLAT;

- WAIVER OF THE LOADING SPACE REQUIREMENT, PURSUANT TO THE PROVISIONS OF SECTION 11-202 OF THE ZONING ORDINANCE;

- MODIFICATION OF THE TRAVEL LANE REQUIREMENT TO ALLOW A 15-FOOT WIDE TRAVEL LANE, AS SHOWN ON THE SEA PLAT; AND

- WAIVER OF FRONTAGE IMPROVEMENTS, INCLUDING CURB AND GUTTER AND RIGHT-OF-WAY IMPROVEMENTS, ALONG PATHFINDER LANE.

Commissioner Migliaccio: Second.

Chairman Murphy: Seconded by Mr. Migliaccio. Is there a discussion of that motion? All those in favor of the motion, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries. Thank you very much.

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(The motions carried by a vote of 9-0. Commissioners de la Fe, Lawrence, and Sargeant were absent from the meeting.)

JLC

Board Agenda Item
June 23, 2015

3:30 p.m.

Public Hearing on SE 2014-DR-033 (Krishna R. Murthy) to Permit Uses in a Floodplain, Located on Approximately 25,564 Square Feet of Land Zoned R-1 (Dranesville District)

Also, Under the Board's Consideration will be the Water Quality Impact Assessment Request #6100-WQ-003-2 and Resource Protection Area Encroachment Exception Request # 6100-WRPA-005-2 Under Section 118-6-9 (Chesapeake Bay Preservation Ordinance) of Chapter 118 of the Code of the County of Fairfax to Permit Encroachment Within a Resource Protection Area (RPA) for the Purpose of Placing Fill in the RPA.

This property is located at 8512 Lewinsville Road, McLean, 22102. Tax Map 29-1 ((1)) 25

PLANNING COMMISSION RECOMMENDATION:
On Thursday, June 11, 2015, the Planning Commission voted 9-0 (Commissioners de la Fe, Lawrence, and Sargeant were absent from the meeting) to recommend the following actions to the Board of Supervisors:

- Approval of SE 2014-DR-033, subject to the Development Conditions dated April 1, 2015; and

- Approval of Resource Protection Area Encroachment Exception Number 6100-WRPA-005-2 and Water Quality Impact Assessment Number 6100-WQ-003-2, subject to the proposed Development Conditions contained in Attachment A of Appendix 4 of the staff report.

ENCLOSED DOCUMENTS:
Attachment 1: Planning Commission Verbatim Excerpt
Staff Report previously furnished and available online at:
http://ldsnet.fairfaxcounty.gov/ldsnet/ldsdwf/4482710.PDF

STAFF:
Barbara Berlin, Director, Zoning Evaluation Division, Department of Planning and Zoning (DPZ)
Bob Katai Planner, DPZ

Planning Commission Meeting Attachment 1
June 11, 2015
Verbatim Excerpt

SE 2014-DR-033 – KRISHNA R. MURTHY

After Close of the Public Hearing

Chairman Murphy: Public hearing is closed; recognize Mr. Ulfelder.

Commissioner Ulfelder: Yes, Mr. Murthy, would you confirm for the record that you agree to the proposed development conditions dated April 1st as well as the proposed development --- for the special exception – and as well as the proposed development conditions in Attachment A of Appendix 4 of the staff report for the RPA exception and the water quality impact assessment.

Krishna R. Murthy, Applicant: Yes, I do.

Commissioner Ulfelder: Okay, thank you very much. With that, as I mentioned last evening, we actually heard this back in April. There was an issue about the advertisement at that time – had not referenced the RPA encroachment exception or the water quality impact assessment and, therefore, we had to readvertise. And I would like to extend an apology to you for – for that and the delay that we – we've had to go through in order to finally get to this point where we can move this application forward. So I thank you for your patience and – and again want to apologize for that delay.

Mr. Murthy: Sure, thank you, sir.

Commissioner Ulfelder: With that, Mr. Chairman, I MOVE THAT THE PLANNING COMMISSION RECOMMEND THAT THE BOARD OF SUPERVISORS APPROVE SE 2014-DR-033, SUBJECT TO CONDITIONS DATED APRIL 1ST, 2015.

Commissioner Hedetniemi: Second.

Chairman Murphy: Seconded by Ms. Hedetniemi. Is there any discussion of the motion? All those in favor of the motion to recommend to the Board of Supervisors that it approve SE 2014-DR-033, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

Commissioner Ulfelder: One other motion. I MOVE THAT THE PLANNING COMMISSION RECOMMEND THAT THE BOARD OF SUPERVISORS APPROVE RESOURCE PROTECTION AREA ENCROACHMENT EXCEPTION NUMBER 6100-WRPA-005-2 AND WATER QUALITY IMPACT ASSESSMENT NUMBER 6100-WQ-003-2, SUBJECT TO THE PROPOSED DEVELOPMENT CONDITIONS CONTAINED IN ATTACHMENT A OF APPENDIX 4 OF THE STAFF REPORT.

Commissioner Hedetniemi: Second.

Chairman Murphy: Seconded by Ms. Hedetniemi. Discussion? All those in favor of that motion, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

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(Each motion carried by a vote of 9-0. Commissioners de la Fe, Lawrence, and Sargeant were absent from the meeting.)

JN

Board Agenda Item
June 23, 2015

3:30 p.m.

Public Hearing on RZ 2013-DR-017 (JLB Dulles Tech LLC) to Rezone from I-4 to PRM to Permit Residential Use With an Overall Floor Area Ratio of 0.99, Inclusive of Any Bonus Associated with the Provision of ADU's or WDU's, and Approval of the Conceptual Plan, Located on Approximately 11.60 Acres of Land, Comprehensive Plan Recommended Mixed Use (Dranesville District)

(Concurrent with PCA 79-C-037-07, PCA 2002-HM-043, SEA 85-C-119, and SEA 2002-HM-046-02)

This property is located on the South Side of Dulles Technology Drive approximately 450 Feet East of its Intersection with River Birch Road. Tax Map 16-3 ((1)) 4 M

and

Public Hearing on PCA 79-C-037-07 (JLB Dulles Tech LLC) to Amend the Proffers for RZ 79-C-037 Previously Approved for Office to Permit Deletion of Land Area and Associated Modifications to Proffers and Site Design to Permit Residential Use With an Overall Floor Area Ratio of 0.99, Inclusive of Any Bonus Associated With ADU's or WDU's, Located on Approximately 11.60 Acres of Land Zoned I-4, Comprehensive Plan Recommended Mixed Use (Dranesville District)

(Concurrent with RZ/FDP 2013-DR-017, PCA 2002-HM-043, FDPA 2002-HM-043-2, SEA 85-C-119, and SEA 2002-HM-046-02).

This property is located on the South Side of Dulles Technology Drive approximately 450 feet East of its Intersection With River Birch Road. Tax Map 16-3 ((1)) 4 M.

and

Public Hearing on PCA 2002-HM-043 (JLB Dulles Tech LLC / Fairfax County Park Authority) to Amend the Proffers and Conceptual Plan for RZ 2002-HM-043, Previously Approved for a Storm Water Management Facility to Permit Site Modifications and Associated Modifications to Proffers and Site Design for the Construction of a Public Road, Located on Approximately 10.87 Acres of Land Zoned PDC, Comprehensive Plan Recommended Public Parks (Dranesville District)

(Concurrent with RZ 2013-DR-017, PCA 79-C-037-07, SEA 85-C-119, and SEA 2002-HM-046-02).

Board Agenda Item
June 23, 2015

This property is located in the South West Quadrant of the Intersection of Sunrise Valley Drive and Centreville Road. Tax Map 16-3 ((1)) 5 D

and

Public Hearing on SEA 2002-HM-046-02 (JLB Dulles Tech LLC / Fairfax County Park Authority) to Amend SE 2002-HM-046 Previously Approved for Uses in a Floodplain to Permit the Deletion of Land Area and Associated Modifications to Site Design and Development Conditions for the Construction of a Public Road, Located on Approximately 8.10 Acres of Land Zoned PDC (Dranesville District)

(Concurrent with RZ 2013-DR-017, PCA 79-C-037-07, PCA 2002-HM-043, and SEA 85-C-119)

This property is located in the South West Quadrant of the Intersection of Sunrise Valley Drive and Centreville Road approximately 450 Feet East of its Intersection with River Birch Road. Tax Map 16-3 ((1)) 5 D

and

Public Hearing on SEA 85-C-119 (JLB Dulles Tech LLC / Fairfax County Park Authority) to Amend SE 85-C-119 Previously Approved for a Storm Water Management Facility in Floodplain to Permit Uses in Floodplain and Associated Modifications to Site Design and Development Conditions, Located on Approximately 14.38 Acres of Land Zoned I-4 and PDC (Dranesville District)

(Concurrent with RZ 2013-DR-017, PCA 79-C-037-07, PCA 2002-HM-043, and SEA 2002-HM-046-02)

This property is located on the South Side of Dulles Technology Drive approximately 450 Feet East of its Intersection with River Birch Road. Tax Map 16-3 ((1)) 4 M and 5 D.

PLANNING COMMISSION RECOMMENDATION:
On Thursday, June 18, 2015, the Planning Commission voted 10-2 (Commissioner Migliaccio and Sargeant were absent from the meeting) to make the following recommendations to the Board of Supervisors:

- Approval of PCA 79-C-037-07 subject to the execution of proffers consistent with those dated June 17, 2015;

- Approval of RZ 2013-DR-017, subject to the execution of proffers consistent with those dated June 17, 2015;

- Approval of a modification of the tree planting width from eight feet to six feet along the public roadway frontage and private driveway, in favor of structural planting cells, or other methods as coordinated with Department of Public Works and Environmental Service, Urban Forestry Management Division, when necessary due to the placement of utilities;

- Approval of a modification of the interior parking lot landscaping, in favor of the alternatives as shown on the CDP/FDP and as conditioned;

- Approval of a modification of the number of loading spaces from 6 to 2, in favor of the alternatives as shown on the CDP/FDP and as conditioned;

- Approval of PCA 2002-HM-043, subject to the execution of proffers consistent with those dated June 17, 2015;

- Approval of SEA 2002-HM-046-02, subject to the proposed development conditions dated June 17, 2015; and

- Approval of SEA 85-C-119, subject to the proposed development conditions dated June 17, 2015.

In a related action the Planning Commission voted 10-2 (Commissioner Migliaccio and Sargeant were absent from the meeting) to approval of FDP 2013-DR-017 and FDPA 2002-HM-043-02, subject to the proposed development conditions dated June 17, 2015;

ENCLOSED DOCUMENTS:
Attachment 1: Planning Commission Verbatim Excerpt
Staff Report previously furnished and available online at:
http://ldsnet.fairfaxcounty.gov/ldsnet/ldsdwf/4489850.PDF

STAFF:
Barbara Berlin, Director, Zoning Evaluation Division, Department of Planning and Zoning (DPZ)
Joe Gorney, Planner, DPZ

RZ/FDP 2013-DR-017/PCA 79-C-037-07 – JLB DULLES TECH, LLC
PCA 2002-HM-043/FDPA 2002-HM-043-02/SEA 85-C-110/SEA 2002-HM-046-02 –
JLB DULLES TECH, LLC & FAIRFAX COUNTY PARK AUTHORITY

After Close of the Public Hearing

Chairman Murphy: Public hearing is closed; Mr. Ulfelder.

Commissioner Ulfelder: Thank you, Mr. Chairman. There's been a lot of time, effort, and work put into this application and it has shifted significantly in certain regards and I think in most cases it has – it has been improved over time and has met some key objectives of the Comprehensive Plan for this area. We have scheduled a Board date of June 23rd; and therefore, I'm going to move the action this evening by the Planning Commission. And if you'll bear with me, this is going to take about a half hour to go through the series of motions that we're going to make, and I think I'll do them one by each so that we can be clear on exactly what we're going to be recommending to Board for their consideration. And I'll also do this with the understanding that a couple of the issues that came up this evening that we discussed will be addressed in the – in the proffer language or development conditions between now and the Board, between staff and the applicant. So, Mr. Chairman, I'm going to MOVE THAT THE PLANNING COMMISSION RECOMMEND THE FOLLOWING: first: APPROVAL OF PCA 79-C-037-07, SUBJECT TO THE EXECUTION OF PROFFERS CONSISTENT WITH THOSE DATED JUNE 17TH, 2015.

Commissioner Hedetniemi: Second.

Chairman Murphy: Seconded by Ms. Hedetniemi. Is there any discussion of the motion? All those in favor of the motion to recommend to the Board of Supervisors that it approve PCA 79-C-037-07, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries. Mr. Ulfelder.

Commissioner Ulfelder: I'm going to recommend – I recommend that the Board – THAT THE PLANNING COMMISSION RECOMMEND APPROVAL OF RZ 2013-DR-017, SUBJECT TO THE EXECUTION OF PROFFERS CONSISTENT WITH THOSE DATED JUNE 17TH, 2015.

Commissioner Hedetniemi: Second.

Chairman Murphy: Seconded by Ms. Hedetniemi. Is there a discussion? All those in favor of the motion to recommend to the Board of Supervisors that it approve RZ 2013-DR-017, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries. Mr. Ulfelder.

Commissioner Ulfelder – THAT THE PLANNING COMMISSION RECOMMEND THAT THE BOARD OF SUPERVISORS DIRECT THE DIRECTOR OF THE DEPARTMENT OF PUBLIC WORKS AND ENVIRONMENTAL SERVICES TO APPROVE THE FOLLOWING:

- MODIFICATION OF THE TREE PLANTING WIDTH FROM EIGHT FEET TO SIX FEET ALONG THE PUBLIC ROADWAY FRONTAGE AND PRIVATE DRIVEWAY IN FAVOR OF STRUCTURAL PLANTING CELLS OR OTHER METHODS, AS COORDINATED WITH THE URBAN FORESTRY MANAGEMENT DIVISION, WHEN NECESSARY DUE TO THE PLACEMENT OF UTILITIES;
- MODIFICATION OF THE INTERIOR PARKING LOT LANDSCAPING IN FAVOR OF THE ALTERNATIVES, AS SHOWN ON THE CDP/FDP AND AS CONDITIONED; AND
- MODIFICATION OF THE NUMBER OF LOADING SPACES FROM SIX TO TWO, IN FAVOR OF THE ALTERNATIVES AS SHOWN ON THE CDP/FDP AND AS CONDITIONED.

Commissioner Hedetniemi: Second.

Chairman Murphy: Seconded by Ms. Hedetniemi. Is there a discussion of that motion? All those in favor, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

Commissioner Ulfelder: I MOVE THAT THE PLANNING COMMISSION RECOMMEND APPROVAL OF PCA 2002-HM-043, SUBJECT TO THE EXECUTION OF PROFFERS CONSISTENT WITH THOSE DATED JUNE 15TH, 2015. (sic)

Commissioner Hedetniemi: Second.

Chairman Murphy: Seconded by Mrs. Hedetniemi. Is there a discussion? All those in favor of the motion to recommend to the Board of Supervisors that it approve PCA 2002-HM-043, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

Commissioner Ulfelder: Further, I MOVE THAT THE PLANNING COMMISSION RECOMMEND APPROVAL OF SEA 2002-HM-046-02, SUBJECT TO DEVELOPMENT CONDITIONS DATED JUNE 17TH, 2015.

Commissioner Hedetniemi: Second.

Chairman Murphy: Seconded by Ms. Hedetniemi. Is there a discussion? All those in favor of the motion to recommend to the Board of Supervisors that it approve SEA 2002-HM-046-02, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

Commissioner Ulfelder: I further recommend that the – I FURTHER MOVE THAT THE PLANNING COMMISSION RECOMMEND APPROVAL OF SEA 85-C-119, SUBJECT TO DEVELOPMENT CONDITIONS DATED JUNE 17TH, 2015.

Commissioner Hedetniemi: Second.

Chairman Murphy: Seconded by Mrs. Hedetniemi. Is there a discussion? All those in favor of the motion to recommend to the Board of Supervisors that it approve SEA 85-C-119, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

Commissioner Ulfelder: I also MOVE THAT THE PLANNING COMMISSION APPROVE THE FOLLOWING, and I'll read both of them –

- FDP 2013-DR-017, SUBJECT TO DEVELOPMENT CONDITIONS DATED JUNE 17TH, 2015; and
- FDPA 2002-HM-043-02, SUBJECT TO DEVELOPMENT CONDITIONS DATED JUNE 17TH, 2015.

Commissioner Hedetniemi: Second.

Chairman Murphy: Seconded by Mrs. Hedetniemi. Is there a discussion? All those in favor of the motion to approve FDP 2013-DR-017 and FDPA 2002-HM-043-02, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

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(Each motion carried by a vote of 10-2. Commissioner Migliaccio and Sargeant were absent from the meeting.)

JN

Board Agenda Item
June 23, 2015

4:00 p.m.

Public Hearing on RZ 2015-BR-001 (AREC 2018, LLC) to Rezone from I-4 to I-5 to Permit Mini-Warehouse Truck Heavy Equipment and Specialized Vehicle Rental with an Overall Floor Area Ratio of 0.90, Located on Approximately 5.03 Acres of Land (Braddock District)

(Concurrent with SE 2015-BR-001)

This property is located on the East Side of Port Royal Road South of Braddock Road. Tax Map 70-4 ((10)) 503 and 503 A

and

Public Hearing on SE 2015-BR-001 (AREC 2018, LLC) to Permit an Increase in Floor Area Ratio to 0.90, Located on Approximately 5.03 Acres of Land Proposed to be Zoned From I-4 to I-5 (Braddock District)

(Concurrent with RZ 2015-BR-001)

This property is located at 5271 and 5285 Port Royal Road, Springfield, 22151. Tax Map 70-4 ((10)) 503 and 503 A

PLANNING COMMISSION RECOMMENDATION:
On Thursday, May 21, 2015, the Planning Commission voted 9-0 (Commissioners Lawrence, Murphy, and Sargeant were absent from the meeting) to recommend the following actions to the Board of Supervisors:

- Approval of RZ 2015-BR-001, and the associated Generalized Development Plan, subject to the execution of the proffers consistent with those dated April 23, 2015;

- Approval of SE 2015-BR-001, subject to the proposed Development Conditions consistent with those dated May 1, 2015;

- Approval of a waiver of the major regional trail system along Interstate 495;

- Approval of a modification of the transitional screening yard requirements along the northern property line in favor of that shown on the GDP/SE Plat; and

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- Approval of a waiver of the planned on-road bike lane along Port Royal Road.

ENCLOSED DOCUMENTS:
Attachment 1: Planning Commission Verbatim Excerpt
Staff Report previously furnished and available online at:
http://ldsnet.fairfaxcounty.gov/ldsnet/ldsdwf/4486438.PDF

STAFF:
Barbara Berlin, Director, Zoning Evaluation Division, Department of Planning and Zoning (DPZ)
Sharon Williams, Planner, DPZ

RZ/SE 2015-BR-001 – AREC 2018, LLC

After Close of the Public Hearing

Vice Chairman de la Fe: The public hearing is closed; Ms. Hurley.

Commissioner Hurley: Thank you, Mr. Chairman, I MOVE THAT THE PLANNING COMMISSION RECOMMEND APPROVAL OF RZ 2015-BR-001, AND THE ASSOCIATED GENERALIZED DEVELOPMENT PLAN, SUBJECT TO THE EXECUTION OF THE PROFFERS CONSISTENT WITH THOSE DATED APRIL 23RD, 2015.

Commissioner Hedetniemi: Second.

Vice Chairman de la Fe: Seconded by Commissioner Hedetniemi. Any discussion? Hearing and seeing none all those in favor, please signify by saying aye.

Commissioners: Aye.

Vice Chairman de la Fe: Opposed? The motion carries.

Commissioner Hurley: I MOVE THAT THE PLANNING COMMISSION RECOMMEND APPROVAL RECOMMEND APPROVAL OF SE 2015-BR-001, SUBJECT TO THE PROPOSED DEVELOPMENT CONDITIONS CONSISTENT WITH THOSE DATED MAY 1ST, 2015.

Commissioner Hedetniemi: Second.

Vice Chairman de la Fe: Seconded by Commissioner Hedetniemi. Any discussion? Hearing and seeing none all those in favor, please signify by saying aye.

Commissioners: Aye.

Vice Chairman de la Fe: Opposed? The motion carries.

Commissioner Hurley: I MOVE THAT THE PLANNING COMMISSION RECOMMEND APPROVAL OF A WAIVER OF THE MAJOR REGIONAL TRAIL SYSTEM ALONG INTERSTATE 495.

Commissioner Hedetniemi: Second.

Vice Chairman de la Fe: Seconded by Commissioner Hedetniemi. Any discussion? All those in favor, please signify by saying aye.

Commissioners: Aye.

Vice Chairman de la Fe: Opposed? The motion carries.

Commissioner Hurley: I MOVE THAT THE PLANNING COMMISSION RECOMMEND APPROVAL OF A MODIFICATION OF THE TRANSITIONAL SCREENING YARD REQUIREMENTS ALONG THE NORTHERN PROPERTY LINE IN FAVOR OF THAT SHOWN ON THE GDP/SE PLAT.

Commissioner Hedetniemi: Second.

Vice Chairman de la Fe: Seconded by Commissioner Hedetniemi. Any discussion? Hearing and seeing none all those in favor, please signify by saying aye.

Commissioners: Aye.

Vice Chairman de la Fe: Opposed? The motion carries.

Commissioner Hurley: And finally, I MOVE THAT THE PLANNING COMMISSION RECOMMEND APPROVAL OF A WAIVER OF THE PLANNED ON-ROAD BIKE LANE ALONG PORT ROYAL ROAD.

Commissioner Hedetniemi: Second.

Vice Chairman de la Fe: Seconded by Commissioner Hedetniemi. Any discussion? Hearing and seeing none all those in favor, please signify by saying aye.

Commissioners: Aye.

Vice Chairman de la Fe: Opposed? The motion carries.

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(Each motion carried by a vote of 9-0. Commissioners Lawrence, Murphy, and Sargeant were absent from the meeting.)

JN

Board Agenda Item
June 23, 2015

4:00 p.m.

Public Hearing on a Proposed Zoning Ordinance Amendment Re: Articles 7 and 19 – Architectural Review Board (ARB) Project Approval Process and Voting Membership

ISSUE:
Proposed Zoning Ordinance Amendment to Amend Part 2 of Article 7, Historic Overlay Districts and Part 3 of Article 19, Architectural Review Board to make the History Commission member of the ARB a voting member, as well as other modifications to clarify the professional requirements of the remaining members; and to expand the types of building permit applications which will not require ARB review and approval. The amendment was initiated to lift some of the regulatory burden on property owners in Historic Overlay Districts (HODs) without damaging the integrity of those districts.

PLANNING COMMISION RECOMMENDATION:
On Thursday, June 18, 2015, the Planning Commission voted -0-2 (Commissioners Migliaccio and Sargeant were absent from the meeting) to recommend to the Board of Supervisors approval of the Fairfax County Zoning Ordinance Amendment related to Articles 7 and 19 -- Architectural Review Board (ARB) Project Approval Process and Voting Membership, as amended in the staff recommendation dated June 11, 2015. This amendment shall become effective at 12:01 on the date following adoption by the Board of Supervisors.

RECOMMENDATION:
The County Executive recommends adoption of the amendment as recommended by the Planning Commission.

TIMING:
Board of Supervisors' authorization to advertise on March 24, 2015; Planning Commission public hearing on May 21, 2015; deferred Planning Commission decision on June 18, 2015; Board of Supervisors' public hearing on June 23, 2015, at 4:00 p.m.

BACKGROUND:
The proposed amendment is on the 2014 Priority 1 Zoning Ordinance Amendment Work Program and proposes changes to regulations governing building permit applications in the HODs, as well as changes to the membership of the ARB. These proposed changes are in response to a request from the ARB to (1) grant the ex-officio

History Commission member the same voting privileges as the other ARB members; and (2) expand the types of building permit applications that would not require approval by the ARB. Additionally, the proposed amendments revise the required professional qualifications of members of the ARB and remove redundant language in the regulations governing building permit applications in the HODs. Specifically, the amendment includes the following revisions to Sect. 19-303, which establishes the membership criteria for the ARB:

1. Changes to Par. 1 to increase the size of the ARB from ten to eleven voting members;
2. Changes to Paragraphs 1A and 1B to align more closely with standard language regarding licensed architects and landscape architects, respectively;
3. Changes to Paragraphs 1A and 1F to make clear and specific reference to the Secretary of the Interior's Professional Qualification Standards for the various professions represented on the ARB;
4. The addition of a new Par. 1E, requiring that the ARB include in its membership either a historian or an architectural historian who meets the Secretary of the Interior's Professional Qualification Standards.
5. Changes to Par. 1F to make the History Commission member a voting member of the ARB;
6. Changes to Par. 2 to clarify that the History Commission member is selected by the History Commission, and therefore not subject to the appointment terms which affect the remaining ARB membership.
7. The addition of a new Par. 4, requiring that members possess a demonstrated interest, competence, or knowledge of historic preservation, which is consistent with language found in Virginia Department of Historic Resources requirements for "Certified Local Governments," or CLGs. The CLG program was created by the National Historic Preservation Amendments Act of 1980, with Fairfax County becoming a CLG in 1995.

The amendment also includes the following revisions to Sect. 7-204, which establishes the criteria by which certain projects, requiring building permits, shall not be subject to ARB approval:

1. In Par. 4B, the term "public right-of-way" is replaced with "major thoroughfare," which is defined in the Zoning Ordinance to be "a public street including minor arterial, principal arterial or primary highway." As such, projects requiring building permit approval interior to a residential subdivision served by local and collector streets will no longer require ARB approval.
2. A second proposed modification to Par. 4B will require ARB approval for any projects that are visible from a historic byway, or from a road listed or determined to be eligible for listing in the National Register.

A more detailed discussion is presented in the Staff Report enclosed as Attachment 2.

Board Agenda Item
June 23, 2015

REGULATORY IMPACT:
The proposed amendment to Sect. 7-204 would reduce the regulatory burden on certain property owners within the Historic Overlay Districts by expanding the number of building permits that do not require review and approval by the ARB. At present, approximately 37 building permit applications per year are referred to Department of Planning and Zoning staff for review to determine if ARB review and approval is needed. Of these 37, about half are determined by staff to not require ARB review and approval, and these applications are approved administratively, i.e., without any further review by staff. Based on the proposed changes, this number will increase and it is estimated that upwards of 30 applications per year could be approved administratively. There would be no significant regulatory impact from the modifications proposed for Sect. 19-303, which merely update and enhance the membership requirements for the ARB.

FISCAL IMPACT:
There is currently no cost associated with ARB review of proposed applications within HODs. Nevertheless, moving building permit reviews to an administrative process will reduce staff time and overhead associated with the preparation of an ARB meeting. It is noted that ARB members are unpaid volunteers.

ENCLOSED DOCUMENTS:
Attachment 1 – Planning Commission Verbatim
Attachment 2 – Staff Recommendations dated June 11, 2015
Attachment 3 – Proposed Amendment Language
Attachment 4 – Memo to the Board dated June 19, 2015
Staff Report previously furnished and available online at:
http://www.fairfaxcounty.gov/dpz/zoningordinance/proposed/arbprocessmembership.pdf

STAFF:
Robert A. Stalzer, Deputy County Executive
Fred Selden, Director, Department of Planning and Zoning (DPZ)
Leslie B. Johnson, Zoning Administrator, DPZ
Anthony Robalik, Senior Assistant to the Zoning Administrator, DPZ

Planning Commission Meeting ATTACHMENT 1
June 18, 2015
Verbatim Excerpt

ZONING ORDINANCE AMENDMENT ON ARTICLES 7 AND 19 - ARCHITECTURAL REVIEW BOARD (ARB) PROJECT APPROVAL PROCESS AND VOTING MEMBERSHIP

Decision Only During Commission Matters
(Public Hearing held on May 21, 2015)

Commissioner Hedetniemi: Thank you, Mr. Chairman. Thank you Mr. Chairman. We have a Zoning Ordinance Amendment for the Architectural Review Board Project Approval Process and I would ask staff to give us a report on that, please. Mr. Chairman, staff has taken time to review and respond to every concern that was raised and so I think you will see this as a much more thorough and complete document than it was before.

Chairman Murphy: And are we going to have a report? Janyce, are they going to give a report?

Commissioner Hedetniemi: Briefly.

Chairman Murphy: Okay. We're on verbatim. Okay, gentlemen, please.

Anthony S. Robalik, Zoning Administration Division, Department of Planning and Zoning (DPZ): Good evening. I'll refer you to –

Chairman Murphy: Would you identify yourself for the record, please?

Mr. Robalik: I'm sorry. I apologize.

Chairman Murphy: That's okay.

Mr. Robalik: Tony Robalik, Department of Planning and Zoning.

Chairman Murphy: Thank you.

Mr. Robalik: So I will refer you to two documents; one a memo dated June 11th, 2015, which you should have in your packet, and revised amendments to Article 19 for tonight's amendment. So the memo goes through the revisions that we discussed last month at the Planning Commission hearing – public hearing that you would like to see through this proposed amendment. And I'll just go – go through it. It's pretty short. So, one of the things you wanted to see through was with paragraph 1 you wanted it to be very clear of the 11 members to the ARB, only 10 of them are appointed by the Board of Supervisors. The 11th is actually an ex officio member that is appointed by the History Commission. So we try to make that clear, both in paragraph 1 at the top and also at the bottom of par 1 right at the – right above par 2 where the – A through F ends. The second proposed revision that you look at look at the memo: we've removed some redundant language. You may remember that at the top of par 1 and also in par 4, which is a new par we're proposing, we say that members of the ARB must have – they must possess a demonstrated interest, competence, and knowledge of historic preservation. That was stated twice in the sections. We've removed one of those references to make – to remove the redundancy. Now it's only in par 4 at the bottom. We have revised par 1A to give a parallel

structure to the remaining subparagraphs so that it reads much more clearly. I think it reads more clear this way. We've also revised 1A to, again, make it clear that more than one of the licensed architects can be certified – can meet the Secretary of the Interior's Professional Qualification Standards. Before, it was unclear. Let's see; paragraph after that. Paragraph 1C, having to do with attorneys or lawyers, we removed the reference – incorrect reference to the non-existent "Virginia Bar," and replaced it with the correct reference to the Virginia State Bar. So I hope that meets your expectations. Par 1F; again, that's been made to be parallel with the remaining subparagraphs. Basically – oh that was the old PowerPoint I apologize. I'm reading through two documents. It's getting kind of confusing. We – in par 2 we added the term "ex officio" to ensure the unambiguity of a historic – History Commission member. He is in fact coming – or she – is coming from the History Commission, not being appointed by the Board of Supervisors. And finally, in par 4, we replaced the word "or" with the word "and," again clarifying that any members to the ARB must possess all of these traits, not just some subset of them. And those are the – the revisions. I hope that they meet your expectations. If you have you any questions, I'd be happy to entertain them.

Chairman Murphy: Ms. Hedetniemi, are there any questions? Yes, Ms. Hurley.

Commissioner Hurley: Just one little one; the ex officio member – is it already written somewhere in the code somewhere of how to impeach or otherwise – you know, you can impeach a Supreme Court member, even though they're appointed for life. I mean, just, since they are not appointed by the Board and they're not elected, is there a way that the public could remove that person if needed?

Mr. Robalik: They're appointed by the Board to History Commission, so I imagine that, like –

Commissioner Hurley: So, the History Commission could remove them? I mean, I'm just – how would – how could that person be removed? Is there – can we get some sort of language in there as –

Mr. Robalik: Well I believe the Board could remove them as a History Commission member, which would de facto remove them fr the ARB.

Commissioner Hurley: So the History Commission could remove the person.

Mr. Robalik: Right.

Commissioner Hurley: I'm getting a – a shake of the head back there.

Linda Blank, Planning Division, DPZ: Linda Blank. Yes, because the – all the History Commissioners are appointed by the Board of Supervisors, so if they're – either they're reappointed or they're not reappointed. And then – and then it's incumbent upon the History Commission to select a member that meets the qualifications in the Ordinance – to then appoint them to the ARB. But if they were not reappointed by the Board of Supervisors, they would not continue.

Commissioner Hurley: So there's a way?

Ms. Blank: Yes.

Commissioner Hurley: Okay. Thank you.

Chairman Murphy: All right. Ms. Hedetniemi.

Commissioner Hedetniemi: Thank you, Mr. Chairman. If there are no further questions from the Commission –

Chairman Murphy: Mr. Flanagan.

Commissioner Flanagan: You mentioned that you had these – this revised text in our packets.

Mr. Robalik: Well, I sent it out last week to Jill Cooper.

Commissioner Flanagan: I don't have.

Commissioner Hedetniemi: It was distributed.

Mr. Robalik: I have a copy here if you want to – if you need one.

Commissioner Flanagan: Does anybody have that packet copy?

Commissioner Hart: I got it in email.

Commissioner Hedetniemi: I got an email.

Commissioner Hart: I don't have a copy.

Chairman Murphy: I had – I had it in email too, but I – are there any further questions or comments? Ms. Hedetniemi.

Commissioner Hedetniemi: Thank you, Mr. Chairman. I move that the planning Commission recommend to the board of supervisors approval of the proposed ZONING ORDINANCE AMENDMENT regarding the ARCHITECTURAL REVIEW BOARD APPROVAL PROCESS AND VOTING MEMBERSHIP as advertised with an effective date of 12:01 on the day following adoption.

Commissioner Litzenberger: Second.

Chairman Murphy: Seconded by Mr. Litzenberger. Is there any discussion of the motion?

Commissioner Hart: Mr. Chairman?

Chairman Murphy: Mr. Hart.

Commissioner Hart: We don't want to do it as advertised. We want to do the new one.
Commissioner Hedetniemi: Yes, I'm sorry. You're right, as –

Commissioner Hart: So the motion shouldn't be to do what they had in the advertising, it should be with the revisions.

Chairman Murphy: As amended tonight by Ms. Hedetniemi.

Commissioner Hedetniemi: As amended by me.

Chairman Murphy: Mr. Litzenberger, okay? The seconder agrees. Is there any discussion of the motion – in addition to Mr. Hart's question? All those in favor of the motion to recommend to the Board of Supervisors that adopt the zoning ordinance amendment on articles 7 and 19 concerning architectural review board ARB project approval process and voting membership as articulated by Ms. Hedetniemi this evening, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries. The Chair abstains, I was not present for the public hearing and neither was Mr. Sargeant, he was on sabbatical.

Commissioner Flanagan: Mr. Chairman?

Chairman Murphy: Mr. Flanagan.

Commissioner Flanagan: I'm abstaining.

Chairman Murphy: And Mr. Flanagan abstains; he was not on sabbatical.

//

(The motion carried by a vote of 7-0-2. Commissioners Migliaccio and Sargeant were absent from the meeting.)

JN

ATTACHMENT 2

County of Fairfax, Virginia

MEMORANDUM

DATE: June 11, 2015

TO: Fairfax County Planning Commission

FROM: Anthony S. Robalik, AICP, Senior Assistant to the Zoning Administrator
Department of Planning and Zoning, Zoning Administration Division

SUBJECT: Revisions to Proposed Zoning Ordinance Amendment: Articles 7 and 19 – Architectural Review Board (ARB) Project Approval Process and Voting Membership

Pursuant to the comments made by the Planning Commission during the public hearing held during its meeting on May 21, 2015, the proposed Zoning Ordinance amendment, referenced above, has been revised as set forth below. A copy of the revised Zoning Ordinance Amendment is attached. Please note that the changes are limited to Sect. 19-303, as there were no recommended changes to Sect. 7-204.

The recommended changes to Sect. 19-303 of the Zoning Ordinance, which establishes the membership of the ARB, include:

- A proposed revision to Par. 1 now makes clear that the Board of Supervisors only directly appoints to the ARB *ten (10)* members;
- The second proposed revision to Par. 1 is the removal of redundant language stating that ARB members should possess a demonstrated knowledge and interest in the preservation of historical, architectural and cultural sites. This important matter is dealt with in Par. 4 of the proposed amendment, as discussed in the staff report.
- A proposed revision to Par. 1A gives it a parallel structure to the remaining paragraphs 1B through 1F.
- The second proposed revision to Par. 1A now makes clear that more than one of the required licensed architects may meet the Secretary of the Interior's Professional Qualification Standards for Historic Architecture.
- The proposed revision to Par. 1C fixes the incorrect reference to the non-existent "Virginia Bar," stating instead that the ARB must have in its membership one lawyer who is an "active member in good standing with the Virginia State Bar." Staff researched the history of this provision at the request of the Planning Commission and notes that this specific language was adopted as part of the 1978 Zoning Ordinance.
- The proposed revision to Par. 1F parallels the clarification added to Par. 1 regarding the direct appointment of members by the Board of Supervisors.

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Ordinance Administration Branch
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- The proposed revision to Par. 1G re-labels the paragraph as a continuation of Par. 1, with the intent to clarify that the ex officio History Commission member is chosen by the History Commission, rather than being directly appointed by the Board of Supervisors.
- The proposed revision to Par. 2 adds the term "ex officio" to ensure the unambiguity of the provenance of the History Commission member.
- Finally, the proposed revision to Par. 4 replaces the word "or" with the word "and," requiring that members of the ARB possess all of the characteristics stated therein, rather than just one of them.

cc: Michael R. Frey, Supervisor, Sully District
Leslie B. Johnson, Zoning Administrator
Lorrie Kirst, Deputy Zoning Administrator for Ordinance Administration Branch
Andrew Hushour, Deputy Zoning Administrator for Ordinance Administration Branch
Linda Blank, Historic Preservation Planner, Department of Planning & Zoning
Marc Gori, Assistant County Attorney

ATTACHMENT 3

PROPOSED AMENDMENT

This proposed Zoning Ordinance amendment is based on the Zoning Ordinance in effect as of March 24, 2015, and there may be other proposed amendments which may affect some of the numbering, order or text arrangement of the paragraphs or sections set forth in this amendment, as other amendments may be adopted prior to action on this amendment. In the case of such an event, any necessary renumbering or editorial revisions caused by the adoption of any Zoning Ordinance amendments by the Board of Supervisors prior to the date of adoption of this amendment will be administratively incorporated by the Clerk in the printed version of this amendment following Board adoption.

Amend Article 7, Overlay and Commercial Revitalization District Regulations, Part 2, Historic Overlay Districts, Sect. 7-204, Administration of Historic Overlay District Regulations, by revising Par. 4 to read as follows:

4. ARB approval shall not be required prior to issuance of Building Permits by the Director for the following:

   A. Building Permits for the interior alteration of any building or structure ~~in a Historic Overlay District~~; or

   B. Building Permits for additions to buildings and structures or for accessory structures when such proposed development is ~~not~~ neither adjacent to nor visible from ~~the public right-of-way~~a major thoroughfare, historic byway, road listed or determined to be eligible for listing in the National Register, or a contributing or historic property ~~within a Historic Overlay District~~; or

   C. Building Permits for re-roofing and re-siding of non-contributing buildings or structures, ~~within a Historic Overlay District~~ when the replacement roofing or siding is similar in color, material and texture to that which is being replaced; or

   D. Building Permits for signs which have been previously approved by the ARB during review of the sign permit application.

ATTACHMENT 3

Amend Article 19, Boards, Commissions, Committees, Part 3, Architectural Review Board, by revising Sect. 19-303, Membership, as follows:

1. The ARB shall be composed of ~~ten (10)~~ eleven (11) voting members who shall be residents of the County ~~with demonstrated knowledge of and interest in the preservation of historical, architectural, archaeological and cultural sites~~. Ten (10) of the ~~M~~members shall be appointed by the Board of Supervisors as follows:

   A. ~~At least t~~Two (2) ~~members shall be certified~~ licensed architects, at least one of whom must meet the Secretary of the Interior's Professional Qualification Standards for Historic Architecture as published in 36 CFR Part 61.

   B. One (1) licensed landscape architect. ~~authorized to practice in Virginia.~~

   C. One (1) lawyer ~~with membership~~who is an active member in good standing with ~~in~~ the Virginia State Bar.

   D. One (1) archaeologist who meets the Secretary of the Interior's Professional Qualification Standards for Archaeology as published in 36 CFR Part 61.

   E. One (1) historian who meets the Secretary of the Interior's Professional Qualification Standards for History as published in 36 CFR Part 61 or one (1) architectural historian who meets the Secretary of the Interior's Professional Qualification Standards for Architectural History as published in 36 CFR Part 61.

   ~~E~~F. The other members appointed by the Board of Supervisors shall be drawn from the ranks of related professional groups such as historians, architectural historians, architects, landscape architects, archaeologists, engineers, land-use planners, lawyers, and real estate brokers.

   ~~F. In addition, there~~ The eleventh member shall be ~~one (1)~~ an ex officio ~~and nonvoting~~ member from the Fairfax County History Commission, who shall be drawn from the ranks of related professional groups or who meets the Secretary of the Interior's Professional Qualification Standards for one of the disciplines cited in A, D, or E.

2. Members, other than the ex officio member from the History Commission, who is chosen by the History Commission, shall be appointed to serve for a term of three (3) years or until their successor has been appointed. Terms shall be staggered with three (3) members appointed every year except that four (4) members shall be appointed every third year. An appointment to fill a vacancy shall be only for the unexpired portion of the term. Members may be reappointed to succeed themselves.

3. Members shall exempt themselves from voting on any action in which their financial interests or those of their immediate family or employer are directly involved.

4. Members shall possess a demonstrated interest, competence, and knowledge of historic preservation.

ATTACHMENT 4

County of Fairfax, Virginia

MEMORANDUM

DATE: June 19, 2015

TO: Board of Supervisors

FROM: Anthony S. Robalik, AICP, Senior Assistant to the Zoning Administrator
Department of Planning and Zoning, Zoning Administration Division

SUBJECT: Proposed Zoning Ordinance Amendment: Articles 7 and 19 – Architectural Review Board (ARB) Project Approval Process and Voting Membership

REF: June 23, 2015 Board of Supervisors Public Hearing – 4:00 PM

This memorandum transmits the Planning Commission's recommendation regarding the proposed Zoning Ordinance Text Amendment to Articles 7 and 19 – Architectural Review Board (ARB) Project Approval Process and Voting Membership District. On May 21, 2015, the Planning Commission held a public hearing on the proposed amendment but deferred decision to June 18, 2015, in order to allow staff additional time to make requested revisions. The revisions included changes to the text to ensure that it is clear that the ex officio member from the History Commission was appointed by the History Commission to the ARB, and not directly by the Board of Supervisors, as well as other minor editorial changes. At its meeting on June 18, 2015, the Planning Commission recommended approval of the proposed text language, as amended. The text recommended by the Planning Commission is provided as Attachment 1.

Staff recommends approval of the proposed Amendment as revised and recommended by the Planning Commission. It is noted that the Office of the County Attorney has determined that the proposed revisions are within the scope of the advertisement.

Attachment: A/S

cc: Edward L. Long, Jr., County Executive
Robert A. Stalzer, Deputy County Executive
Michael R. Frey, Supervisor, Sully District
Leslie B. Johnson, Zoning Administrator
Andrew Hushour, Deputy Zoning Administrator for Ordinance Administration Branch
Linda Blank, Historic Preservation Planner, Department of Planning & Zoning
Marc Gori, Assistant County Attorney

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Attachment 1

PROPOSED AMENDMENT AS RECOMMENDED BY THE PLANNING COMMISSION ON JUNE 18, 2015

Those recommended changes made by the Planning Commission since the March 24, 2015 staff report are shown in highlight and noted with italics. Deleted text is identified with strike-outs, and added language has been underlined.

Amend Article 7, Overlay and Commercial Revitalization District Regulations, Part 2, Historic Overlay Districts, Sect. 7-204, Administration of Historic Overlay District Regulations, by revising Par. 4 to read as follows:

4. ARB approval shall not be required prior to issuance of Building Permits by the Director for the following:

   A. Building Permits for the interior alteration of any building or structure ~~in a Historic Overlay District~~; or

   B. Building Permits for additions to buildings and structures or for accessory structures when such proposed development is ~~not~~ neither adjacent to nor visible from ~~the public right-of-way~~ a major thoroughfare, historic byway, road listed or determined to be eligible for listing in the National Register, or a contributing or historic property ~~within a Historic Overlay District~~; or

   C. Building Permits for re-roofing and re-siding of non-contributing buildings or structures, ~~within a Historic Overlay District~~ when the replacement roofing or siding is similar in color, material and texture to that which is being replaced; or

   D. Building Permits for signs which have been previously approved by the ARB during review of the sign permit application.

Amend Article 19, Boards, Commissions, Committees, Part 3, Architectural Review Board, by revising Sect. 19-303, Membership, as follows:

1. The ARB shall be composed of ~~ten (10)~~ eleven (11) voting members who shall be residents of the County ~~*with demonstrated knowledge of and interest in the preservation of historical, architectural, archaeological and cultural sites*~~. *Ten (10) of the* ~~*M*~~*m*embers shall be appointed by the Board of Supervisors as follows:

   A. ~~*At least t*~~*T*wo (2) ~~*members shall be*~~ ~~certified~~ licensed architects, *at least* one of whom must meet the Secretary of the Interior's Professional Qualification Standards for Historic Architecture as published in 36 CFR Part 61.

   B. One (1) licensed landscape architect. ~~authorized to practice in Virginia.~~

   C. One (1) lawyer ~~*with membership*~~ *who is an active member in good standing with* ~~*in*~~ the Virginia *State* Bar.

   D. One (1) archaeologist who meets the Secretary of the Interior's Professional Qualification Standards for Archaeology as published in 36 CFR Part 61.

E. One (1) historian who meets the Secretary of the Interior's Professional Qualification Standards for History as published in 36 CFR Part 61 or one (1) architectural historian who meets the Secretary of the Interior's Professional Qualification Standards for Architectural History as published in 36 CFR Part 61.

~~E~~F. The other members *appointed by the Board of Supervisors* shall be drawn from the ranks of related professional groups such as historians, architectural historians, architects, landscape architects, archaeologists, engineers, land-use planners, lawyers, and real estate brokers.

~~*F.*~~ ~~*In addition, there*~~ *The eleventh member* shall be ~~*one (1)*~~ an ex officio ~~and nonvoting~~ member from the Fairfax County History Commission, who shall be drawn from the ranks of related professional groups or who meets the Secretary of the Interior's Professional Qualification Standards for one of the disciplines cited in A, D, or E.

2. Members other than the member from the History Commission, who is chosen by the History Commission, shall be appointed to serve for a term of three (3) years or until their successor has been appointed. Terms shall be staggered with three (3) members appointed every year except that four (4) members shall be appointed every third year. An appointment to fill a vacancy shall be only for the unexpired portion of the term. Members may be reappointed to succeed themselves.

3. Members shall exempt themselves from voting on any action in which their financial interests or those of their immediate family or employer are directly involved.

4. Members shall possess a demonstrated interest, competence, ~~*or*~~ *and* knowledge of historic preservation.

Board Agenda Item
June 23, 2015

4:00 p.m.

Public Hearing on 2014 Amendment to Restated and Amended Service Agreement with the Upper Occoquan Service Authority

ISSUE:
The Board of Supervisors' adoption of proposed amendments to the Restated and Amended Service Agreement with the Upper Occoquan Service Authority (UOSA). The proposed amendments will: 1) allow member jurisdictions the option of participating in a UOSA bond sale as currently done, or cash funding the participant's share of the capital program and 2) allow a responsible officer of a member jurisdiction to execute the continuing disclosure agreements associated with bonds issued by UOSA unless the member jurisdiction determines that the obligations under such agreements are materially different from the obligations under continuing disclosure agreements executed in connection with prior UOSA bonds. These amendments were approved by UOSA Board of Directors at their November 2014 Board meeting.

RECOMMENDATION:
The County Executive recommends that the Board adopt the proposed Amendment to the Restated and Amended Service Agreement with UOSA. It is further recommended that the Board of Supervisors be notified if and when a new disclosure agreement is executed between Fairfax County and UOSA.

TIMING:
Board of Supervisors authorized advertisement of the Public Hearing on May 12, 2015. Public Notice of the proposed amendments to the Restated and Amended Service Agreement with UOSA was advertised on May 22, 2015 as required by Va. Code Ann. § 15.2-5104, the public hearing must be held not less than 30 days after publication of the advertisement.

BACKGROUND:
The Upper Occoquan Service Authority owns and operates a wastewater treatment plant that receives wastewater from its four member jurisdictions of Fairfax and Prince William Counties and Cities of Manassas and Manassas Park. The Restated and Amended Service Agreement currently does not allow member jurisdictions the option

of cash funding their pro-rata share of the capital program. Currently, all member jurisdictions must participate in the sale of UOSA Revenue Bonds. The Board of Directors for the Upper Occoquan Service Authority has agreed to amend the Service Agreement to allow member jurisdictions the option of participating in the bond sale or cash funding the capital program. Cash funding the capital program would save millions of dollars in interest payments over the life of the bond depending on the size of the bond sale.

In addition, the amendment allows the option for a responsible officer of a member jurisdiction to execute the disclosure agreements associated with bonds issued by UOSA without a specific vote of the governing body. The Securities and Exchange Commission requires continuing disclosure of information related to municipal securities issued after July 3, 1995. Although UOSA is expected to provide the bulk of the required information, its member jurisdictions must provide updated information related to the financial and operating data of their respective sewer systems. A disclosure agreement is executed among UOSA and other member jurisdictions for provision of the updated information. Currently, the disclosure agreement is approved by the Board of Supervisors and executed by the Chairman of the Board. This amendment allows the option of approving and executing the disclosure agreement by a responsible officer of the County, such as the County Executive.

FISCAL IMPACT:
Cash funding the capital program would save millions of dollars in interest payments depending on the size of the bond sale.

ENCLOSED DOCUMENTS:
Attachment I - 2014 Amendment to Restated and Amended Service Agreement

STAFF:
Robert A. Stalzer, Deputy County Executive
James W. Patteson, Director, Department of Public Works and Environmental Services (DPWES)
Randy Bartlett, Deputy Director, DPWES
Shahram Mohsenin, Director, Wastewater Planning and Monitoring Division, DPWES
Joseph Mondoro, Acting Chief Financial Officer, Department of Management and Budget

2014 AMENDMENT TO
RESTATED AND AMENDED SERVICE AGREEMENT

THIS 2014 AMENDMENT AGREEMENT (this "Amendment"), made as of the ____ day of ____, 2014, amends the Service Agreement dated as of May 15, 1972, as most recently restated and amended as of 2007 (the "Service Agreement"), by and between the UPPER OCCOQUAN SEWAGE AUTHORITY ("UOSA"), a public body politic and corporate duly created pursuant to the Virginia Water and Waste Authorities Act, and the CITY OF MANASSAS and the CITY OF MANASSAS PARK, municipal corporations of the Commonwealth of Virginia, and the BOARD OF SUPERVISORS OF FAIRFAX COUNTY and the BOARD OF COUNTY SUPERVISORS OF PRINCE WILLIAM COUNTY, acting for and on behalf of said counties and the sanitary districts thereof, which are located in whole or in part within the Service Area as defined in the Service Agreement (such four parties being called collectively the "Political Subdivisions" and individually a "Political Subdivision");

WITNESSETH:

WHEREAS, the Service Agreement provides for the treatment of sewage at an advanced regional wastewater treatment plant and related facilities and for the financing thereof through the issuance, from time to time, of obligations secured by revenues payable to UOSA by the Political Subdivisions under the Service Agreement, such revenues including not only payments for principal of, premium, if any, and interest on such obligations but also operating expenses and amounts to replenish debt service reserve or other reserve funds with respect to such obligations or the facilities financed;

WHEREAS, the parties to the Service Agreement desire to provide that when one or more facilities or portions thereof is to be financed by a borrowing secured through revenues under the Service Agreement, one or more of the Political Subdivisions may deposit cash to

fund all or a portion of its or their respective initial costs of such project in lieu of UOSA borrowing such deposited amounts; and

WHEREAS, an amendment to the Service Agreement is required to effectuate such option setting forth the requirements for such action and the effects thereof on related matters under the Service Agreement; and

WHEREAS, in connection with the issuance of obligations which are publicly offered, since the promulgation of Rule 15c2-12 of the Securities and Exchange Commission, UOSA and the Political Subdivisions have executed continuing disclosure agreements with the underwriters of such obligations with respect to the types of information to be provided to the public thereunder and the timing therefor and, because of the regularity and content consistency of such agreements, UOSA wants to provide an option to its member Political Subdivisions to agree to provide this information through its officers as opposed to requiring a vote of the governing bodies of each Political Subdivision;

NOW THEREFOR, the Service Agreement is hereby amended as follows:

Section 1. The following definition is hereby added to the definitions of terms provided in Section 1.1 of the Service Agreement:

“Partial Cash Funded Project" shall mean one or more facilities or portions thereof (including replacements or improvements) which is described in and qualified under Sections 4.11 and 4.12 herein.

Section 2. New Sections 4.11 and 4.12 are hereby added to the Service Agreement and shall read as follows:

Section 4.11. If one or more of the Political Subdivisions wants to be permitted to deposit cash to fund all or a portion of that Political Subdivision's costs of one or more

projects or a designated portion of an identified UOSA program to be funded by Bonds (or other financing) authorized by this Agreement, then for purposes of this Agreement, such project or projects or portion of a program shall be deemed to be a Partial Cash Funded Project if the additional conditions set forth in this Section and Section 4.12 are met. A request for a Partial Cash Funded Project shall be made in writing at least 90 days prior to the issuance of such Bonds (or other financing) authorized by this Agreement and shall include:

a) The portion or amount of the desired deposit; and

b) An acknowledgement that such Political Subdivision shall continue to be obligated under the provisions of Section 6.1(c) to make payments to UOSA to restore the balance in any debt service reserve with respect to the Bonds for such project, even if the entire respective portion of the costs of such project has been deposited by the Political Subdivision and it therefor has no responsibility for regular payments for principal, premium, if any, or interest on such Bonds.

All monies relating to the same project, whether cash or financed funds, shall be maintained and administered in one fund. Any excess monies at the conclusion of the project shall be used for future project costs as may be permitted by the Bond (or other financing) documents in accordance with each member Political Subdivision's allocation of the costs of such project or projects or program.

Section 4.12. Before issuance of the Bonds (or other financing) for the Partial Cash Funded Project shall occur, the following three criteria must be met:

(a) a unanimous vote by the UOSA Board to allow a project to be a Partial Cash Funded Project;

(b) evidence satisfactory to it that the ratings on the Bonds for the Partial Cash

Funded Project will be at least as high as the ratings on outstanding (but not defeased) Bonds of UOSA with which the Bonds to be issued will be secured in parity, unless the reduced rating can be attributed wholly to matters not associated with the financing qualifying as a Partial Cash Funded Project; and

(c) from the Political Subdivision or Subdivisions making the request under Section 4.11, the deposit with the trustee for the Bonds financing the Partial Cash Funded Project of cash in an amount equal to the portion of the cost of the Partial Cash Funded Project (not including Bond issuance expenses or initial reserve deposits) identified by the Political Subdivision or Subdivisions as the portion for which it intends to provide cash in lieu of a borrowing. Such Deposit shall include that Political Subdivision's share of the project costs to be financed, as well as that Political Subdivision's proportionate share of the fixed costs of borrowing (such as bond rating agency and financial advisor costs, etc.), but shall not include the variable costs of the borrowing which are calculated as a percentage of the borrowing (underwriting fees and initial reserve deposit). The proportionate share of the fixed costs of borrowing is based on the allocation of project costs (as set forth in Section 6.4) compared to the allocation of total project costs being funded. Project cost allocations and the proportionate share of fixed costs for a project to increase UOSA plant capacity beyond 54 mgd would have to be defined through a future Service Agreement Amendment.

Section 3. The following sentence is hereby added as a paragraph at the end of Section 6.1(c):

For purposes of Section 6.4(a) - (f), with respect to any Partial Cash Funded Project, the phrase "all charges due or incurred under 6.1(c)" shall be determined pursuant to Section 6.11.

Section 4. A new Section 6.11 is hereby added to the Service Agreement and shall read as follows:

Section 6.11. Political Subdivisions which funded cash deposits for a Partial Cash Funded Project, to the extent such deposits were in lieu of their responsibility for the borrowing, shall not be charged for payment of principal of, premium, if any, and interest on the Bonds for such Partial Cash Funded Project provided such requesting Political Subdivisions shall be responsible in accordance with Section 6.4(a) - (f) (with the specified percentage or other allocation therein determined as if the one or more financed facilities or portions thereof was not a Partial Cash Funded Project) and charged for the related Cost of the UOSA Plant and UOSA Delivery System not paid with Bond or financing proceeds, and other monies due under the Trust Agreement, as the same become due. It is acknowledged by the parties hereto that such deposit shall not reduce or otherwise affect the obligation of the Political Subdivisions under Section 6.1(c) to make payments for any deficiencies in any required reserves for such project or on such Bonds or bonds refunding such Bonds as if the one or more financed facilities or portions thereof was not a Partial Cash Funded Project.

The existence of a Partial Cash Funded Project shall not affect the responsibility of any Political Subdivision under any provision of this Agreement other than Section 6.4 and then only as it relates to a Partial Cash Funded Project. If Bonds which funded a Partial Cash Funded Project are subsequently refunded, the responsibility for the payment of principal of, premium, if any, and interest on the refunding Bonds shall be proportionately the same as for the Bonds for the project, with the responsibility for any deficiencies in the reserves after the initial deposit being allocated in the same percentages as for the refunded Bonds including as to the depositing Political Subdivisions.

Section 5. A new Section 6.12 is hereby added to the Service Agreement and shall read as follows:

Section 6.12. In connection with the issuance of publicly offered Bonds, unless a member Political Subdivision determines that the obligations under any continuing disclosure agreement to be executed therefor are materially different, either in the actions required or the types of information to be disclosed, from the obligations under agreements executed in connection with prior UOSA Bonds, then such agreements, at the option of the member Political Subdivision, may be executed on behalf of a Political Subdivision by responsible officers thereof without a specific vote of the governing body thereof.

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IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed, and their seals to be affixed and attested by their duly authorized officers, all as of the date appearing next to their signatures.

UPPER OCCOQUAN SEWAGE AUTHORITY

Date:_____ BY:_____

(SEAL)
ATTEST:

CITY OF MANASSAS

_____ BY:_____
City Clerk Mayor

Date:_____

(SEAL)
ATTEST:

CITY OF MANASSAS PARK

_____ BY:_____
City Clerk Mayor

Date:_____

(SEAL)
ATTEST:

BOARD OF SUPERVISORS OF
FAIRFAX COUNTY, VIRGINIA

_____ BY:_____
Clerk Chairman

Date:_____

(SEAL)
ATTEST:

BOARD OF COUNTY SUPERVISORS OF
PRINCE WILLIAM COUNTY, VIRGINIA

_____ BY:_____
Clerk Chairman

Date:_____

Board Agenda Item
June 23, 2015

4:00 p.m.

Public Hearing to Establish the Mason Community Parking District (Mason District)

ISSUE:
Public hearing on proposed amendment to Appendix M of *The Code of the County of Fairfax, Virginia* (Fairfax County Code) to establish the large area Mason Community Parking District (CPD).

RECOMMENDATION:
The County Executive recommends that the Board adopt the amendment to the Fairfax County Code, shown in Attachment I, to establish the Mason CPD in accordance with existing large area CPD restrictions.

TIMING:
On June 2, 2015, the Board authorized advertisement of a Public Hearing to consider the proposed amendment to Appendix M of the Fairfax County Code to take place on June 23, 2015, at 4:00 p.m.

BACKGROUND:
Fairfax County Code Section 82-5B-2 authorizes the Board to establish a CPD for the purpose of prohibiting the parking of watercraft; boat trailers; motor homes; camping trailers and any other trailer or semi-trailer, regardless of whether such trailer or semi-trailer is attached to another vehicle; any vehicle with three or more axles; any vehicle that has a gross vehicle weight rating of 12,000 or more pounds except school buses used on a current and regular basis to transport students; any vehicle designed to transport 16 or more passengers including the driver, except school buses used on a current and regular basis to transport students; and any vehicle of any size that is being used in the transportation of hazardous materials as defined in Virginia Code § 46.2-341.4 on the streets in the CPD.

No such CPD shall apply to (i) any commercial vehicle when discharging passengers or when temporarily parked pursuant to the performance of work or service at a particular location or (ii) utility generators located on trailers and being used to power network facilities during a loss of commercial power or (iii) restricted vehicles temporarily parked on a public street within any such CPD for a maximum of 48 hours for the purpose of loading, unloading, or preparing for a trip or (iv) restricted vehicles that are temporarily

parked on a public street within any such CPD for use by federal, state, or local public agencies to provide services.

Pursuant to Fairfax County Code Section 82-5B-3, the Board may establish a large area CPD if the proposed District contains all of a magisterial district, excluding certain areas that meet minimum size requirements. In this case, the proposed District will encompass the entire Mason District.

In fall 2014, Supervisor Gross began public outreach in consideration of a large area CPD for Mason District to gauge community support. This outreach has included consulting with the commanders of the Mason, Franconia, and West Springfield District Stations of the Fairfax County Police Department, publishing articles in district-wide and monthly newsletters and a column in the Falls Church News Press, presentation by FCDOT staff and the Police Department's parking enforcement supervisor during the annual Winter Leadership Series for Civic and Homeowners Association Presidents, as well as numerous communications with individual community members and homeowners and civic association board members. As a result of this outreach effort, Supervisor Gross has requested FCDOT review the proposed district boundaries and process the request. All of the requirements for a large area CPD have been met. Therefore, FCDOT has prepared documents to authorize advertisement of a public hearing and scheduled a public hearing date to consider the large area Mason CPD to encompass the entire Mason Magisterial District.

If approved, the proposed Mason large area CPD would be the fifth non-petition based CPD established in the County. Existing CPD signs within the Pinecrest and Old Columbia Pike CPDs that are within the new district will not be removed. However, these existing signs would not be eligible for maintenance or replacement should they become damaged or fail to comply with Federal Highway Administration (FHWA) standards.

Pursuant to Fairfax County Code Section 82-5B-5, the effective date of a large area CPD without signage shall be 30 days after approval of the District. The parking prohibition identified above for the Mason CPD is proposed to be in effect seven days per week, 24 hours per day.

FISCAL IMPACT:
The recommended changes should have minimal fiscal impact. Signs will not be installed.

Board Agenda Item
June 23, 2015

ENCLOSED DOCUMENTS:
Attachment I: Amendment to the Fairfax County Code, Appendix M (CPD Restrictions)
Attachment II: Area Map of Proposed Mason CPD

STAFF:
Tom Biesiadny, Director, Fairfax County Department of Transportation (FCDOT)
Eric Teitelman, Division Chief, Capital Projects and Operations Division, FCDOT
Neil Freschman, Section Chief, Traffic Operations Section, FCDOT
Maria Turner, Sr. Transportation Planner, FCDOT
Charisse Padilla, Transportation Planner, FCDOT

Attachment I

PROPOSED CODE AMENDMENT

THE CODE OF THE COUNTY OF FAIRFAX, VIRGINIA
APPENDIX M

M-85 Mason Community Parking District

(a) *District Designation*.

(1) The restricted parking area is designated as the Mason Community Parking District.

(2) Blocks included in the Mason Community Parking District are described below:

All public secondary streets in residential areas within the Mason Magisterial District. This includes the previously established CPDs of Pinecrest and Old Columbia Pike.

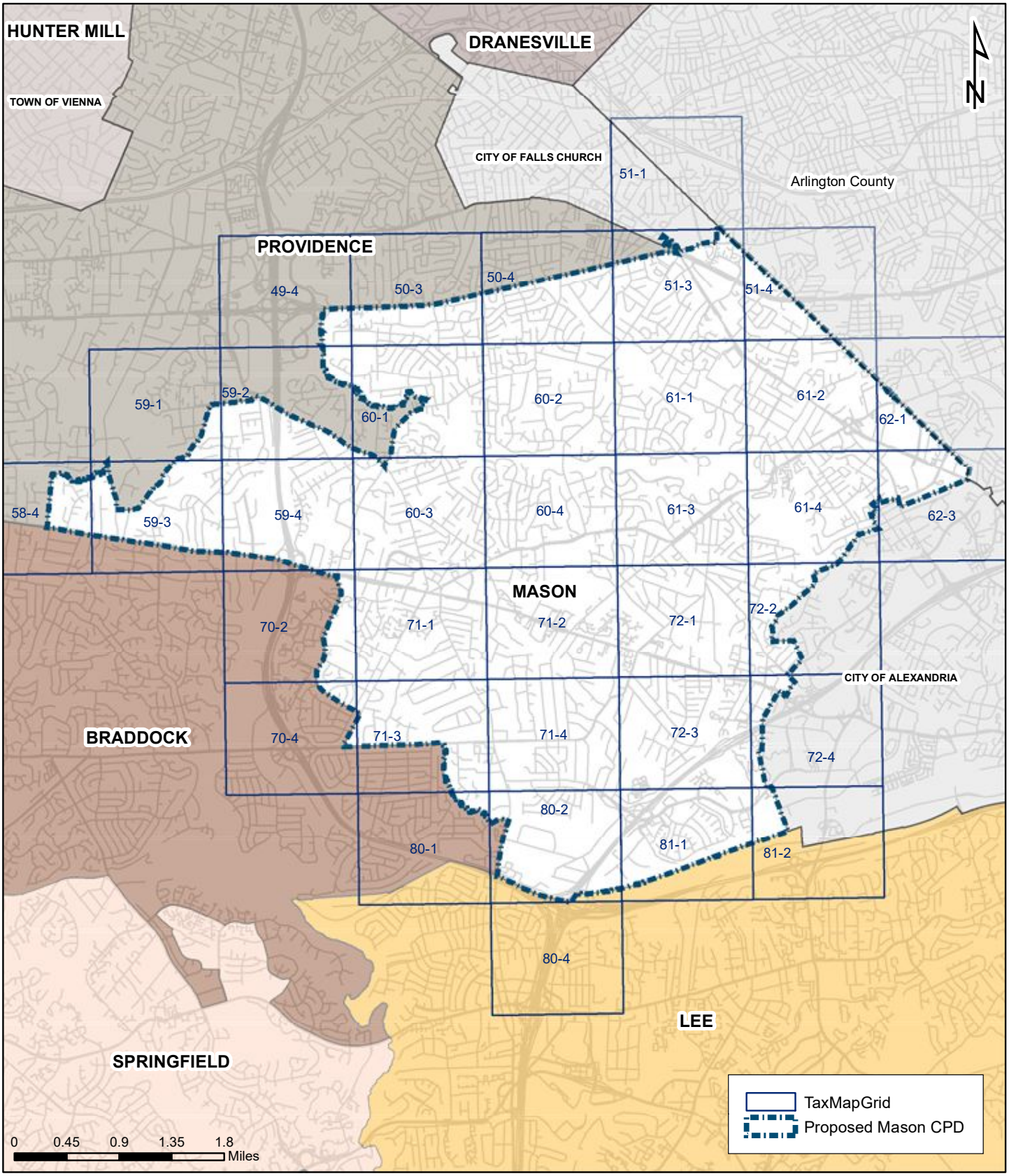
(b) *District Provisions*.

(1) This District is established in accordance with and is subject to the provisions set forth in Article 5B of Chapter 82.

(2) Parking of watercraft; boat trailers; motor homes; camping trailers; any other trailer or semi-trailer, regardless of whether such trailer or semi-trailer is attached to another vehicle; any vehicle with three or more axles; any vehicle that has a gross vehicle weight rating of 12,000 or more pounds except school buses used on a current and regular basis to transport students; any vehicle designed to transport 16 or more passengers including the driver, except school buses used on a current and regular basis to transport students; and any vehicle of any size that is being used in the transportation of hazardous materials as defined in Virginia Code § 46.2-341.4 is prohibited at all times on the streets within the Mason Community Parking District.

(3) These District provisions shall not apply to (i) any commercial vehicle when discharging passengers or when temporarily parked pursuant to the performance of work or service at a particular location or (ii) utility generators located on trailers and being used to power network facilities during a loss of commercial power or (iii) restricted vehicles temporarily parked on a public street within the Mason Community Parking District for a maximum of 48 hours for the purpose of loading, unloading, or preparing for a trip.

(c) *Signs*. Signs delineating the Mason Community Parking District will not be installed.



Fairfax County Department of Transportation
Traffic Operations Section
COMMUNITY PARKING DISTRICT
PROPOSED MASON CPD
Mason District

June, 2015

Board Agenda Item
June 23, 2015

4:30 p.m.

Public Hearing on Amendments to the Code of the County of Fairfax, Chapter 82, Motor Vehicles and Traffic, Section 82-1-6, Adoption of State Law

ISSUE:
Public hearing to amend Chapter 82, Motor Vehicles and Traffic. These amendments adopt actions of the 2015 General Assembly into Chapter 82 of the *Code of the County of Fairfax, Virginia*.

RECOMMENDATION:
The County Executive recommends that the Board adopt the proposed amendments to Chapter 82.

TIMING:
Board of Supervisors authorized the advertisement of a public hearing on the proposed amendments on June 2, 2015; Board of Supervisors' public hearing scheduled for June 23, 2015, at 4:30 p.m. If approved, these amendments will become effective July 1, 2015.

BACKGROUND:
As a housekeeping measure to update Chapter 82, portions of Section 82-1-6 (Adoption of State Law) have been amended to reflect changes made to the *Code of Virginia* by the 2015 General Assembly. A summary of all changes is provided in Attachment 2.

FISCAL IMPACT:
None

ENCLOSED DOCUMENTS:
Attachment 1 - Proposed Amendments to Chapter 82, Motor Vehicles and Traffic
Attachment 2 - Summary of 2015 General Assembly Amendments Affecting Chapter 82, Motor Vehicles and Traffic

STAFF:
David M. Rohrer, Deputy County Executive
Colonel Edwin C. Roessler Jr., Chief of Police
Karen L. Gibbons, Senior Assistant County Attorney

ATTACHMENT 1

Proposed Amendments to
Chapter 82, Motor Vehicles and Traffic

Section 82-1-6. Adoption of State Law

Pursuant to the authority of Section 46.2-1313 of the Virginia Code, all provisions and requirements of the following sections of the Code of Virginia, as in effect on July 1, ~~2014~~ 2015, except those provisions and requirements the violation of which constitutes a felony, are hereby incorporated into the Fairfax County Code by reference, effective July 1, ~~2014~~ 2015~~, except where noted~~.

18.2-266	18.2-269	46.2-203.1
18.2-266.1	18.2-270	46.2-218
18.2-267	18.2-270.01	46.2-300
18.2-268.1	18.2-270.1	46.2-301
18.2-268.2	18.2-271	46.2-301.1
18.2-268.3	18.2-271.1	46.2-302
18.2-268.4	18.2-272	46.2-329
18.2-268.5	46.2-100	46.2-334.001
18.2-268.6	46.2-102	46.2-341.20:5
18.2-268.7	46.2-104	46.2-341.21
18.2-268.8	46.2-108	46.2-346
18.2-268.9	46.2-109	46.2-349
18.2-268.10	46.2-110	46.2-357
18.2-268.11	46.2-111	46.2-371
18.2-268.12	46.2-112	46.2-373

46.2-376
46.2-379
46.2-380
46.2-391.01
46.2-391.2
46.2-391.3
46.2-392
46.2-393
46.2-398
46.2-602.3
46.2-613
46.2-616
46.2-617
46.2-618
46.2-704
46.2-715
46.2-716
46.2-724
46.2-730
46.2-800
46.2-801
46.2-802
46.2-803
46.2-804
46.2-805
46.2-806
46.2-807
46.2-808
46.2-808.1
46.2-810
46.2-811
46.2-812
46.2-814
46.2-816
46.2-817
46.2-818
46.2-819.4
46.2-820
46.2-821
46.2-822
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46.2-824
46.2-825
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46.2-827
46.2-828
46.2-828.2
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46.2-830
46.2-831
46.2-832
46.2-833
46.2-833.1
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46.2-838
46.2-839
46.2-841
46.2-842
46.2-842.1
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46.2-846
46.2-848
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46.2-863
46.2-864
46.2-865
46.2-865.1
46.2-866
46.2-868
46.2-868.1
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46.2-870
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46.2-877
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46.2-905
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46.2-908.1
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46.2-942
46.2-1001.1
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46.2-1002
46.2-1003
46.2-1004
46.2-1010
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46.2-1077
46.2-1077.01
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46.2-1093
46.2-1102
46.2-1105
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46.2-1111
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46.2-1115
46.2-1116
46.2-1118
46.2-1120
46.2-1121
46.2-1130
46.2-1137
46.2-1150
46.2-1151
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46.2-1155
46.2-1156
46.2-1157
46.2-1158
46.2-1158.01
46.2-1158.02
46.2-1158.1
46.2-1172
46.2-1173
46.2-1218
46.2-1219.2
46.2-1234
46.2-1240
46.2-1242
46.2-1250
46.2-1309
46.2-1508.2
46.2-1552
46.2-1561
46.2-2812
46.2-2910

References to "highways of the state" contained in such provisions and requirements hereby adopted shall be deemed to refer to the streets, highways and other public ways within the County. Such provisions and requirements are hereby adopted, mutatis mutandis, and made a part of this chapter as fully as though set forth at length herein; and it shall be unlawful for any person, within the county, to violate or fail, neglect or refuse to comply with any provision of Title 46.2 or Title 18.2-266, 18.2-266.1, 18.2-267, 18.2-268.1 through 18.2-268.12, 18.2-269, 18.2-270, 18.2-270.01, 18.2-270.1, 18.2-271, 18.2-271.1 and 18-2.272 of the *Code of Virginia* which is adopted by this section; provided, that in no event shall the penalty imposed for the violation of any provision or requirement hereby adopted exceed the penalty imposed for a similar offense under Title 46.2 or Title 18.2-266, 18.2-266.1, 18.2-267, 18.2-268.1 through 18.2-268.12, 18.2-269, 18.2-270, 18.2-270.01, 18.2-271, 18.2-270.1, 18.2-271.1 and 18.2-272 of the *Code of Virginia*.

ATTACHMENT 2

SUMMARY OF 2015 GENERAL ASSEMBLY
AMENDMENTS AFFECTING CHAPTER 82

The information presented below summarizes changes to Title 18.2 and Title 46.2 of the *Code of Virginia*, portions of which are adopted by reference into Chapter 82 of the *Code of the County of Fairfax*.

An Act to amend and reenact §§ 18.2-271.1 and 46.2-391.01 of the Code of Virginia, relating to DUI; persons convicted under laws of other states or federal law; restricted license; ignition interlock. DUI; persons convicted under laws of other states or federal law; restricted license; ignition interlock. Provides that a person convicted in a federal court of an offense substantially similar to Virginia's DUI law may petition the general district court that he be assigned to a certified alcohol safety program and issued a restricted driver's license. Currently, only persons convicted in other states of substantially similar DUI offenses may so petition. The bill also requires that, as a condition of a restricted license, a person who has been convicted of a substantially similar DUI offense under the laws of another state or the United States be prohibited from operating a motor vehicle that is not equipped with an ignition interlock system. This bill contains an emergency clause.

An Act to amend and reenact § 46.2-804 of the Code of Virginia, relating to passing with a double yellow line. Passing with a double yellow line. Allows drivers to cross double yellow lines or a solid yellow line immediately adjacent to a broken yellow line in order to pass a pedestrian or a device moved by human power, if such movement can be made safely. The bill also relocates a definition from the end of the section to the beginning for clarity.

An Act to amend and reenact § 46.2-816 of the Code of Virginia, relating to drivers following too closely. The driver of a motor vehicle shall not follow another vehicle, trailer, or semitrailer more closely than is reasonable and prudent, having due regard to the speed of both vehicles and the traffic on, and conditions of, the highway at the time.

An Act to amend and reenact § 46.2-838 of the Code of Virginia, relating to passing when overtaking a stationary mail vehicle. Overtaking stationary mail vehicles; reduce speed. Requires the driver of any motor vehicle overtaking a stationary vehicle used to collect or deliver the United States mail that is displaying a flashing, blinking, or alternating amber light to proceed with due caution and maintain a safe speed.

An Act to amend and reenact § 46.2-838 of the Code of Virginia, relating to passing when overtaking a stationary refuse-collection vehicle. Passing stationary refuse collection vehicles. Requires that, with due regard to safety and traffic conditions, drivers of motor vehicles overtaking stationary vehicles in the process of refuse

collection (i) on a highway of at least four lanes, yield the right of way by a making a lane change into a nonadjacent lane or (ii) on a highway of fewer than four lanes or if changing lanes would be unreasonable or unsafe, decrease speed to 10 mph below the posted speed limit and pass at least two feet to the left of the stationary vehicle.

An Act to amend and reenact § 46.2-873 of the Code of Virginia, relating to changing speed limits in school zones. Speed limits in school zones. Allows counties in Planning District 8 to increase or decrease the speed limits in school zones; current law allows cities and towns to do so.

An Act to amend and reenact § 46.2-909 of the Code of Virginia, relating to standing while riding a motorcycle. Riding on motorcycles. Allows a operator of a motorcycle to stand on the foot pegs, for no longer than is necessary, when dictated by safety concerns.

An Act to amend and reenact § 46.2-1012 of the Code of Virginia, relating to brake lights on motorcycles and autocycles. Brake lights on motorcycles and autocycles. Repeals the five-second maximum duration of increased brightness of motorcycle and autocycle brake lights when the vehicle's brakes are applied.

An Act to amend and reenact § 46.2-1025 of the Code of Virginia, relating to vehicles equipped with flashing amber, purple, or green warning lights. Flashing lights on motor vehicles; "move over" law. Allows vehicles that assist with the management of roadside and traffic incidents or that perform traffic management services along public highways to be equipped with flashing, blinking, or alternating amber warning lights. Virginia's "move over" law applies to such vehicles. A violation of this provision is punishable as a traffic infraction.

Board Agenda Item
June 23, 2015

4:30 p.m.

Public Hearing on RZ 2014-LE-010 (Piney Run Elm Investments LC) to Rezone From R-1 and NR to R-1 and NR to Permit Independent Living Facilities with a Total Density of 5.46 Units/AC and a Waiver of the Minimum Lot Size and Lot Width Requirements, Located on Approximately 47.40 Acres of Land (Lee District)

Also Under the Board's Consideration Will Be the Water Quality Impact Assessment Request # 7239-WQ-002-1 and Resource Protection Area Encroachment Exception Request # 7239-WRPA-004-1 Under Section 118-6-9 (Chesapeake Bay Preservation Ordinance) of Chapter 118 of the Code of the County of Fairfax to Permit Encroachment Within a Resource Protection Area (RPA) for the Purpose of Storm Water Management and Related Improvements.

(Concurrent with SEA 2005-LE-028 and SEA 2005-LE-027-02)

This property is located on the North Side of Telegraph Road Approximately 2,000 Feet East of its Intersection with Beulah Street. Tax Map 100-1 ((1)) 9B pt., 19, 20, 23A, 24, and 25

and

Public Hearing on SEA 2005-LE-027-02 (Piney Run Elm Investments LC) to Amend SEA 2005-LE-027 Previously Approved for Golf Course to Permit Deletion of Land Area and Associated Modifications to Site Design and Development Conditions on Approximately 79.20 Acres of Land Zoned R-1 and NR (Lee District)

(Concurrent with RZ 2014-LE-010 and SEA 20 Piney Run Elm Investments LC 05-LE-028)

This property is located at 7928 and 7836 Telegraph Road, Alexandria, 22315 Tax Map 100-1 ((1)) 9B pt., 17 and 23A pt.

and

Public Hearing on SEA 2005-LE-028 (Piney Run Elm Investments LC) to Amend SE 2005-LE-028 Previously Approved for Independent Living Facility to Permit Increase in Land Area and Associated Modifications to Site Design and Development Conditions, Located on Approximately 47.40 Acres of Land Zoned R-1 and NR (Lee District)

(Concurrent with RZ 2014-LE-010 and SEA 2005-LE-027-02)

Board Agenda Item
June 23, 2015

This property is located at 7906, 7908, 7912, and 7836 Telegraph Road, Alexandria, 22315. Tax Map 100-1 ((1)) 9B pt., 19, 20, 23A, 24, and 25.

PLANNING COMMISSION RECOMMENDATION:
On Thursday, June 11, 2015, the Planning Commission voted 9-0 (Commissioners de la Fe, Lawrence, and Sargeant were absent from the meeting) to recommend the following actions to the Board of Supervisors:

- Approval of RZ 2014-LE-010, subject to Proffers dated June 5, 2015;
- Approval of a waiver of Section 11-302 of the Zoning Ordinance to allow a private street to exceed 600 feet in length as shown on the GDP/SEA Plat.
- Approval of a modification of the transitional screening requirements of Section 13-303 of the Zoning Ordinance and a waiver of the barrier requirements of Section 13-304 of the Zoning Ordinance, to permit the retention of the existing vegetation supplemented by the landscaping shown on the GDP/SEA Plat;
- Approval of SEA 2005-LE-028, subject to the Development Conditions dated June 11, 2015;
- Reaffirmation of the modification of the minimum age restriction for an Independent Living Development from 62 to 55 years of age for SE 2005-LE-028;
- Approval of SEA 2005-LE-027-02, subject to the Development Conditions dated June 11, 2015; and
- Approval of the Water Quality Impact Assessment Request Number 7239-WQ-002-1 and Resource Protection Area Encroachment Exception Request Number 7239-WRPA-004-1, subject to the Development Conditions contained in Exhibit A of Appendix 15 of the Staff Report.

ENCLOSED DOCUMENTS:
Attachment 1: Planning Commission Verbatim Excerpt
Staff Report previously furnished and available online at:
http://ldsnet.fairfaxcounty.gov/ldsnet/ldsdwf/4489083.PDF

STAFF:
Barbara Berlin, Director, Zoning Evaluation Division, Department of Planning and Zoning (DPZ)
Bob Katai, Planner, DPZ

RZ 2014-LE-010/SEA 2005-LE-028/SEA 2005-LE-027-02 – PINEY RUN ELM INVESTMENTS, LC

After Close of the Public Hearing

Chairman Murphy: Public hearing is closed; Mr. Migliaccio.

Commissioner Migliaccio: Thank you, Mr. Chairman. As we heard tonight, this application seeks to provide a 259-unit independent living community for residents over 55 years of age on the current site of the Hilltop Golf Course Driving Range. These 259 units will be a mixture of townhomes, detached single family homes, and multifamily dwellings, and will include 39 affordable dwelling units. As we heard tonight, we have one - we have an extensive proffer package. We will be working on the RPA Northern Virginia Conservation Trust fund proffer to get Plan B in place, just in case we need it. Just to recap a few other items in the proffer package, it includes funding for a trail along Telegraph Road from Hayfield Road to South Kings Highway, which is very much needed. It includes money for bus shelters along Telegraph Road and a substantial contribution to the Park Authority. As was noted earlier, the applicant has received a positive vote at the Lee District Land Use Advisory Committee. Our professional planning staff also recommends approval. Therefore, Mr. Chairman, I have a few motions to make this evening. First, Mr. Chairman, can I get -- Ms. Strobel, can you please come back up? Can you confirm on the record your agreement to the proposed development conditions dated June 11th, 2015, for SEA 2005-LE-028 and for SEA 2005-LE-027-02?

Lynne Strobel, Esquire, Walsh, Colucci, Lubeley, Emrich & Walsh, PC: Yes.

Commissioner Migliaccio: Thank you very much. Mr. Chairman, I MOVE THAT THE PLANNING COMMISSION RECOMMEND THAT THE BOARD OF SUPERVISORS APPROVE RZ 2014-LE-010, SUBJECT TO THE PROFFERS DATED JUNE 5TH, 2015.

Commissioner Litzenberger: Second.

Chairman Murphy: Seconded by Mr. Litzenberger. Is there any discussion of the motion? All those in favor of the motion to recommend to the Board of Supervisors that it approve RZ 2014-LE-010, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries. Mr. Migliaccio.

Commissioner Migliaccio: Thank you. Mr. Chairman, I MOVE THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS approval – APPROVAL OF THE MODIFICATIONS AND WAIVERS AS LISTED IN THE HANDOUT DATED JUNE 11TH, 2014 – 2014, THAT WAS PROVIDED TO YOU TONIGHT AND WHICH SHALL BE MADE A PART OF THE RECORD OF THIS CASE.

Commissioners Flanagan and Litzenberger: Second.

Chairman Murphy: Seconded by Mr. Flanagan and Mr. Litzenberger. Is there a discussion of that motion? All those in favor of the motion to recommend to the Board of Supervisors that it approve SEA 2005-LE-028, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

Commissioner Migliaccio: And also, Mr. Chairman, I'd like to get a REAFFIRMATION OF THE MODIFICATION OF THE MINIMUM AGE RESTRICTION FOR AN INDEPENDENT LIVING DEVELOPMENT FROM 62 TO 55 YEARS OF AGE FOR SE 2005-LE-028.

Commissioner Litzenberger: Second.

Chairman Murphy: Seconded by Mr. Litzenberger. Discussion? All those in favor of that motion, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

Commissioner Migliaccio: Thank you, Mr. Chairman. I MOVE THAT THE PLANNING COMMISSION RECOMMEND THAT THE BOARD OF SUPERVISORS APPROVE SEA 2005-LE-028, SUBJECT TO THE CONDITIONS DATED JUNE 11TH, 2015, AS REVISED AT THIS MEETING.

Commissioner Litzenberger: Second.

Chairman Murphy: Seconded by Mr. Litzenberger. Is there any discussion of that motion? All those in favor of the motion, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

Commissioner Migliaccio: I MOVE THAT THE PLANNING COMMISSION RECOMMEND THAT THE BOARD OF SUPERVISORS APPROVE SEA 2014-LE-027-02 [*sic*], subject to conditions dated June 11th, 2015, as listed in the staff report.

Cathy Lewis, Department of Planning and Zoning: Mr. Migliaccio, I think you mean "2005-LE-027-02." Sorry about that. Your motion is wrong. Sorry about that.

Commissioner Migliaccio: Okay, SEA 2005-LE-027-02, SUBJECT TO CONDITIONS DATED JUNE 11TH, 2015, AS LISTED IN THE STAFF REPORT.

Commissioner Litzenberger: Second.

Chairman Murphy: Seconded by Mr. Litzenberger. Discussion? All those in favor of that motion, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

Commissioner Migliaccio: And finally, Mr. Chairman, I MOVE THAT THE PLANNING COMMISSION RECOMMEND THAT THE BOARD OF SUPERVISORS APPROVE WATER QUALITY IMPACT ASSESSMENT REQUEST NUMBER 7239-WQ-002-1 AND RESOURCE PROTECTION AREA ENCROACHMENT EXCEPTION REQUEST NUMBER 7239-WRPA-004-1, subject to the – SUBJECT TO THE PROPOSED DEVELOPMENT CONDITIONS CONTAINED IN EXHIBIT A OF APPENDIX 15 OF THE STAFF REPORT.

Commissioner Litzenberger: Second.

Chairman Murphy: Seconded by Mr. Litzenberger. Discussion? All those in favor of that motion, say aye.

Commissioners: Aye.

Chairman Murphy: Opposed? Motion carries.

//

(Each motion carried by a vote of 9-0. Commissioners de la Fe, Lawrence, and Sargeant were absent from the meeting.)

JN

Board Agenda Item
June 23, 2015

4:30 p.m.

Public Hearing to Consider an Ordinance to Amend and Readopt Fairfax County Code Sections 7-2-7, 7-2-10, 7-2-12, and 7-2-13 Relating to Election Precincts and Polling Places

ISSUE:
Public hearing to consider an ordinance that proposes to amend and readopt Chapter 7 of the Fairfax County Code to (1) divide Pioneer precinct to add a new precinct and establish its polling place; (2) combine Thoreau and Stenwood precincts; (3) adjust the boundary between Clearview and Sugarland precincts; (4) relocate polling places for Vienna No. 2, Chesterbrook, Hunters Branch, Lees Corner No. 1, and Kinross East precincts; (5) rename Lees Corner No. 1, Lees Corner No. 2, Kinross East and Kinross West precincts; and (6) amend the description of University precinct to change the name of the polling place building.

RECOMMENDATION:
The County Executive recommends adoption of the proposed ordinance.

TIMING:
On June 2, 2015, the Board authorized a public hearing to be held on June 23, 2015, at 4:30 p.m. to consider this ordinance.

BACKGROUND:
Virginia Code permits the governing body of each county and city to establish by ordinance as many precincts as it deems necessary with one polling place for each precinct. The Board of Supervisors is authorized to change precinct boundaries and polling place locations subject to the requirements of Virginia Code Sections 24.2-305, 24.2-307, 24.2-310 and 24.2-310.1. All registered voters who are affected by a change in their precinct or polling place will be mailed a notice in advance of the November general election.

(1) In Braddock District, staff recommends amending the description of University precinct to change the name of the polling place building from “University Hall” to “Merten Hall.” In 2014, George Mason University renamed the building to honor Alan and Sally Merten, the University’s fifth president and his wife.

(2) In Hunter Mill District, staff recommends temporarily moving the polling place for Vienna No. 2 precinct from the Vienna Community Center located at 120 Cherry Street, SE, Vienna, to the nearby Vienna Elementary School located at 128 Center Street, S, Vienna. The Vienna Community Center is scheduled to close in June 2015 for major renovations and will remain closed for 15-18 months.

(3) In Dranesville District, staff recommends moving the polling place for Chesterbrook precinct from Saint Dunstan's Episcopal Church located at 1830 Kirby Road, McLean, to the Arleigh Burke Pavilion located at 1739 Kirby Road, McLean. Saint Dunstan's kindly offered the use of their fellowship hall as a temporary polling place while the Arleigh Burke and Vinson Hall assisted living and retirement facilities were undergoing expansion and renovation.

(4) In Dranesville District, staff recommends adjusting the boundary between Clearview and Sugarland precincts to move 343 voters from Clearview into Sugarland. The proposed change will help reduce the number of voters at Clearview which experienced long lines in November 2012. In addition, this move will be a positive change for the voters moving to Sugarland since these voters live closer to their new polling place located at Herndon High School than to their old polling place at Clearview Elementary School.

(5) In Lee District, staff recommends dividing the Pioneer precinct which currently has over 5,200 registered voters. This proposal will create a new precinct to be named "Forestdale" and its polling place will be established at the Forestdale Elementary School located at 6530 Elder Avenue, Springfield. The new precinct will reduce the size of Pioneer precinct by about 1,200 voters. The polling place for Pioneer voters will remain at Lee High School.

(6) In Providence District, staff recommends moving the polling place for Hunters Branch precinct from the Regent's Park Clubhouse located at 9333 Clocktower Place, Fairfax, to the newly dedicated Providence Community Center located at 3001 Vaden Drive, Fairfax. Regent's Park kindly allowed their facility to be used as a polling place while the Providence Community Center was under construction.

(7) In Providence District, staff recommends combining two small precincts, Thoreau and Stenwood, to conserve resources. The consolidated precinct will retain the name "Thoreau" and the polling place will remain at the Thoreau Middle School.

(8) In Sully District, staff recommends moving the polling place for Lees Corner No. 1 which is currently co-located with Lees Corner No. 2 and renaming the two precincts. The original proposal was to move Lees Corner No. 1 from the Lees Corner Elementary School located at 13500 Hollinger Avenue, Fairfax, to the Chantilly Regional Library located at 4000 Stringfellow Road, Chantilly, and to rename the precinct "Stringfellow."

After receiving constituent feedback related to traffic and safety concerns in the area around the Chantilly Library, Supervisor Frey asked the Board to also advertise the Franklin Middle School as an alternative. After obtaining additional feedback and reviewing both alternatives, staff is now recommending that the polling place for Lees Corner No. 1 move to the Franklin Middle School located at 3300 Lees Corner Road, Chantilly, and that the precinct be renamed "Armfield."

Lees Corner No. 2 will be renamed "Lees Corner" and its polling place will remain at the Lees Corner Elementary School.

(9) In Sully District, staff recommends moving the polling place for Kinross East which is currently co-located with Kinross West and renaming the two precincts. The proposal will move Kinross East from Oak Hill Elementary School located at 3210 Kinross Circle, Herndon, to The Episcopal Church of the Epiphany located at 3301 Hidden Meadow Drive, Herndon, and will rename the precinct "Hidden Meadow." Kinross West will be renamed "Oak Hill" and its polling place will remain at the Oak Hill Elementary School.

FISCAL IMPACT:
Insignificant. Funding for precinct and polling place change notifications is provided in the agency's FY 2016 Adopted Budget.

ENCLOSED DOCUMENTS:
Attachment 1 – Virginia Code Pertaining to Election Precincts and Polling Places
Attachment 2 – Summary of Proposed Changes
Attachment 3 – Descriptions and Maps of Proposed Changes
Attachment 4 – Proposed Ordinance

STAFF:
Cameron Quinn, General Registrar
Corinne N. Lockett, Assistant County Attorney

§ 24.2-305. Composition of election districts and precincts.

A. Each election district and precinct shall be composed of compact and contiguous territory and shall have clearly defined and clearly observable boundaries.

B. A "clearly observable boundary" shall include (i) any named road or street, (ii) any road or highway which is a part of the federal, state primary, or state secondary road system, (iii) any river, stream, or drainage feature shown as a polygon boundary on the TIGER/line files of the United States Bureau of the Census, or (iv) any other natural or constructed or erected permanent physical feature which is shown on an official map issued by the Virginia Department of Transportation, on a United States Geological Survey topographical map, or as a polygon boundary on the TIGER/line files of the United States Bureau of the Census. No property line or subdivision boundary shall be deemed to be a clearly observable boundary unless it is marked by a permanent physical feature that is shown on an official map issued by the Virginia Department of Transportation, on a United States Geological Survey topographical map or as a polygon boundary on the TIGER/line files of the United States Bureau of the Census.

(1986, c. 593, § 24.1-40.7; 1990, c. 500; 1992, c. 425; 1993, c. 641; 2001, c. 814.)

§ 24.2-307. Requirements for county and city precincts.

The governing body of each county and city shall establish by ordinance as many precincts as it deems necessary. Each governing body is authorized to increase or decrease the number of precincts and alter precinct boundaries subject to the requirements of this chapter.

At the time any precinct is established, it shall have no more than 5,000 registered voters. The general registrar shall notify the governing body whenever the number of voters who voted in a precinct in an election for President of the United States exceeds 4,000. Within six months of receiving the notice, the governing body shall proceed to revise the precinct boundaries, and any newly established or redrawn precinct shall have no more than 5,000 registered voters.

At the time any precinct is established, each precinct in a county shall have no fewer than 100 registered voters and each precinct in a city shall have no fewer than 500 registered voters.

Each precinct shall be wholly contained within any election district used for the election of one or more members of the governing body or school board for the county or city.

The governing body shall establish by ordinance one polling place for each precinct.

(Code 1950, §§ 24-45, 24-46; 1954, c. 375; 1956, c. 378; 1962, cc. 185, 536; 1970, c. 462, §§ 24.1-36, 24.1-37; 1971, Ex. Sess., c. 119; 1976, c. 616; 1977, c. 30; 1978, c. 778; 1980, c. 639; 1992, c. 445; 1993, c. 641; 1999, c. 715.)

§ 24.2-310. Requirements for polling places.

A. The polling place for each precinct shall be located within the county or city and either within the precinct or within one mile of the precinct boundary. The polling place for a county precinct may be located within a city (i) if the city is wholly contained within the county election district served by the precinct or (ii) if the city is wholly contained within the county and the polling place is located on property owned by the county. The polling place for a town precinct may be located within one mile of the precinct and town boundary. For town elections held in November, the town shall use the polling places established by the county for its elections.

B. The governing body of each county, city, and town shall provide funds to enable the electoral board to provide adequate facilities at each polling place for the conduct of elections. Each polling place shall be located in a public building whenever practicable. If more than one polling place is located in the same building, each polling place shall be located in a separate room or separate and defined space.

C. Polling places shall be accessible to qualified voters as required by the provisions of the Virginians with Disabilities Act (§ 51.5-1 et seq.), the Voting Accessibility for the Elderly and Handicapped Act (42 U.S.C. § 1973ee et seq.), and the Americans with Disabilities Act relating to public services (42 U.S.C. § 12131 et seq.). The State Board shall provide instructions to the local electoral boards and general registrars to assist the localities in complying with the requirements of the Acts.

D. If an emergency makes a polling place unusable or inaccessible, the electoral board shall provide an alternative polling place and give notice of the change in polling place, including to all candidates, or such candidate's campaign, appearing on the ballot to be voted at the alternative polling place, subject to the prior approval of the State Board. The electoral board shall provide notice to the voters appropriate to the circumstances of the emergency. For the purposes of this subsection, an "emergency" means a rare and unforeseen combination of circumstances, or the resulting state, that calls for immediate action.

E. It shall be permissible to distribute campaign materials on the election day on the property on which a polling place is located and outside of the building containing the room where the election is conducted except as specifically prohibited by law including, without limitation, the prohibitions of § 24.2-604 and the establishment of the "Prohibited Area" within 40 feet of any entrance to the polling place. However, and notwithstanding the provisions of clause (i) of subsection A of § 24.2-604, and upon the approval of the local electoral board, campaign materials may be distributed outside the polling place and inside the structure where the election is conducted, provided that the "Prohibited Area" (i) includes the area within the structure that is beyond 40 feet of any entrance to the polling place and the area within the structure that is within 40 feet of any entrance to the room where the election is conducted and (ii) is maintained and enforced as provided in § 24.2-604. The local electoral board may approve campaigning activities inside the building where the election is conducted when an entrance to the building is from an adjoining building, or if establishing the 40-foot prohibited area outside the polling place would hinder or delay a qualified voter from entering or leaving the building.

F. Any local government, local electoral board, or the State Board may make monetary grants to any non-governmental entity furnishing facilities under the provisions of § 24.2-307 or 24.2-308 for use as a polling place. Such grants shall be made for the sole purpose of meeting the accessibility requirements of this section. Nothing in this subsection shall be construed to obligate any local government, local electoral board, or the State Board to appropriate funds to any non-governmental entity.

(Code 1950, §§ 24-45, 24-46, 24-171, 24-179 through 24-181; 1954, c. 375; 1956, c. 378; 1962, cc. 185, 536; 1970, c. 462, §§ 24.1-36, 24.1-37, 24.1-92, 24.1-97; 1971, Ex. Sess., c. 119; 1976, c. 616; 1977, c. 30; 1978, c. 778; 1980, c. 639; 1981, c. 425; 1984, c. 217; 1985, c. 197; 1986, c. 558; 1992, c. 445; 1993, cc. 546, 641; 1994, c. 307; 2003, c. 1015; 2004, c. 25; 2005, c. 340; 2008, cc. 113, 394; 2010, cc. 639, 707; 2012, cc. 488, 759.)

§ 24.2-310.1. Polling places; additional requirement.

The requirement stated in this section shall be in addition to requirements stated in §§ 24.2-307, 24.2-308, and 24.2-310, including the requirement that polling places be located in public buildings whenever practical. No polling place shall be located in a building which serves primarily as the headquarters, office, or assembly building for any private organization, other than an organization of a civic, educational, religious, charitable, historical, patriotic, cultural, or similar nature, unless the State Board has approved the use of the building because no other building meeting the accessibility requirements of this title is available.

(1993, c. 904, § 24.1-37.1; 1993, c. 641.)

Attachment 2: Summary of Proposed Changes

2015 PROPOSED PRECINCT BOUNDARY and POLLING PLACE CHANGES

SUPERVISOR DISTRICT	EXISTING PRECINCT(S)	CURRENT REGISTERED VOTERS*	EXISTING POLLING PLACE(S)	PROPOSED PRECINCT(S)	PROJECTED REGISTERED VOTERS	PROPOSED POLLING PLACE(S)	NOTES ON CHANGES
BRADDOCK	UNIVERSITY	3,121	GMU - University Hall	UNIVERSITY	3,121	GMU – Merten Hall	Updates description to reflect the new name of the building. (Location does not change.)
HUNTER MILL	VIENNA #2	3,198	Vienna Community Center	VIENNA #2	3,198	Vienna Elementary School	Temporarily moves the polling place due to construction at the Vienna Community Center.
DRANESVILLE	CHESTERBROOK	2,695	St. Dunstan's Episcopal Ch.	CHESTERBROOK	2,695	Arleigh Burke Pavilion	Moves polling place from a temporary location to original polling place.
DRANESVILLE	CLEARVIEW SUGARLAND	4,800 3,267	Clearview Elem. School Herndon High School	CLEARVIEW SUGARLAND	4,167 3,994	Clearview Elem. School Herndon High School	Adjusts precinct boundaries to reduce the number of voters in Clearview precinct.
LEE	PIONEER	5,271	Lee High School	PIONEER "FORESTDALE"	4,053 1,218	Lee High School Forestdale Elementary School	Divides and adds a precinct to reduce the number of voters in Pioneer precinct.
PROVIDENCE	HUNTERS BRANCH	2,165	Regent's Park Clubhouse	HUNTERS BRANCH	2,165	Providence Community Center	Moves polling place from a small private facility to a new larger county facility.
PROVIDENCE	THOREAU STENWOOD	1,787 1,053	Thoreau Middle School Stenwood Elem. School	THOREAU	2,840	Thoreau Middle School	Consolidates two small precincts to conserve resources.
SULLY (Alternative 1)	LEES CORNER #1 LEES CORNER #2	2,036 2,279	Lees Corner Elem. School Lees Corner Elem. School	"STRINGFELLOW" "LEES CORNER"	2,036 2,279	Chantilly Regional Library Lees Corner Elem. School	Renames precincts and moves a precinct to eliminate co-located polling places.
SULLY (Alternative 2)	LEES CORNER #1 LEES CORNER #2	2,036 2,279	Lees Corner Elem. School Lees Corner Elem. School	"ARMFIELD" "LEES CORNER"	2,036 2,279	Franklin Middle School Lees Corner Elem. School	Renames precincts and moves a precinct to eliminate co-located polling places.
SULLY	KINROSS EAST KINROSS WEST	2,461 2,337	Oak Hill Elementary School Oak Hill Elementary School	"HIDDEN MEADOW" "OAK HILL"	2,461 2,337	Episcopal Ch. of the Epiphany Oak Hill Elementary School	Renames precincts and moves a precinct to eliminate co-located polling places.

* Registered voters as of April 1, 2015

Commonwealth of Virginia

COUNTY OF FAIRFAX

Braddock District

PRECINCT 134: UNIVERSITY

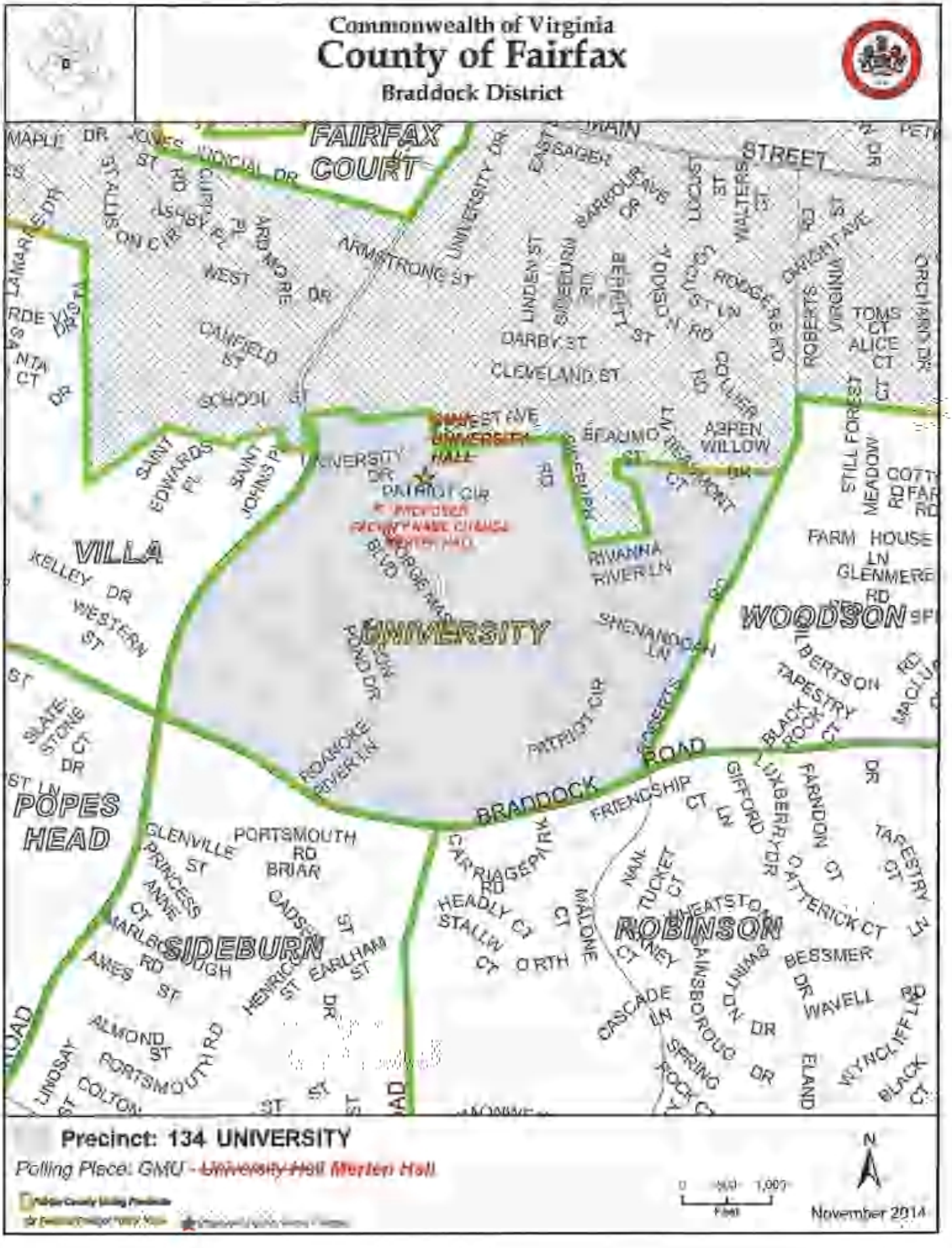
CONGRESSIONAL DISTRICT:	**ELEVENTH**
VIRGINIA SENATORIAL DISTRICT:	**THIRTY-FOURTH**
HOUSE OF DELEGATES DISTRICT:	**THIRTY-SEVENTH**

DESCRIPTION:
Beginning at the intersection of Ox Road (Route 123) and the south corporate boundary of the City of Fairfax, thence with the corporate boundary of the City of Fairfax in a generally northeasterly direction to its intersection with Roberts Road, thence with Roberts Road in a southwesterly direction to its intersection with Braddock Road, thence with Braddock Road in a generally westerly direction to its intersection with Ox Road, thence with Ox Road in a northeasterly direction to its intersection with the south corporate boundary of the City of Fairfax, point of beginning.

POLLING PLACE: GMU – ~~University Hall~~ Merten Hall
4441 George Mason Boulevard, Fairfax

MAP GRIDS: 57-3, 57-4, 68-1, 68-2

NOTES: Established July 2011
Polling place facility renamed – June 2015


Commonwealth of Virginia
County of Fairfax
Braddock District
FAIRFAX COURT
UNIVERSITY
VILLA
WOODSON
POPES HEAD
SIDEBURN
ROBINSON
BRADDOCK ROAD
Precinct: 134 UNIVERSITY
Polling Place: GMU - University Hall Merten Hall
November 2014

Commonwealth of Virginia

COUNTY OF FAIRFAX

Hunter Mill District

PRECINCT 214: VIENNA NO. 2

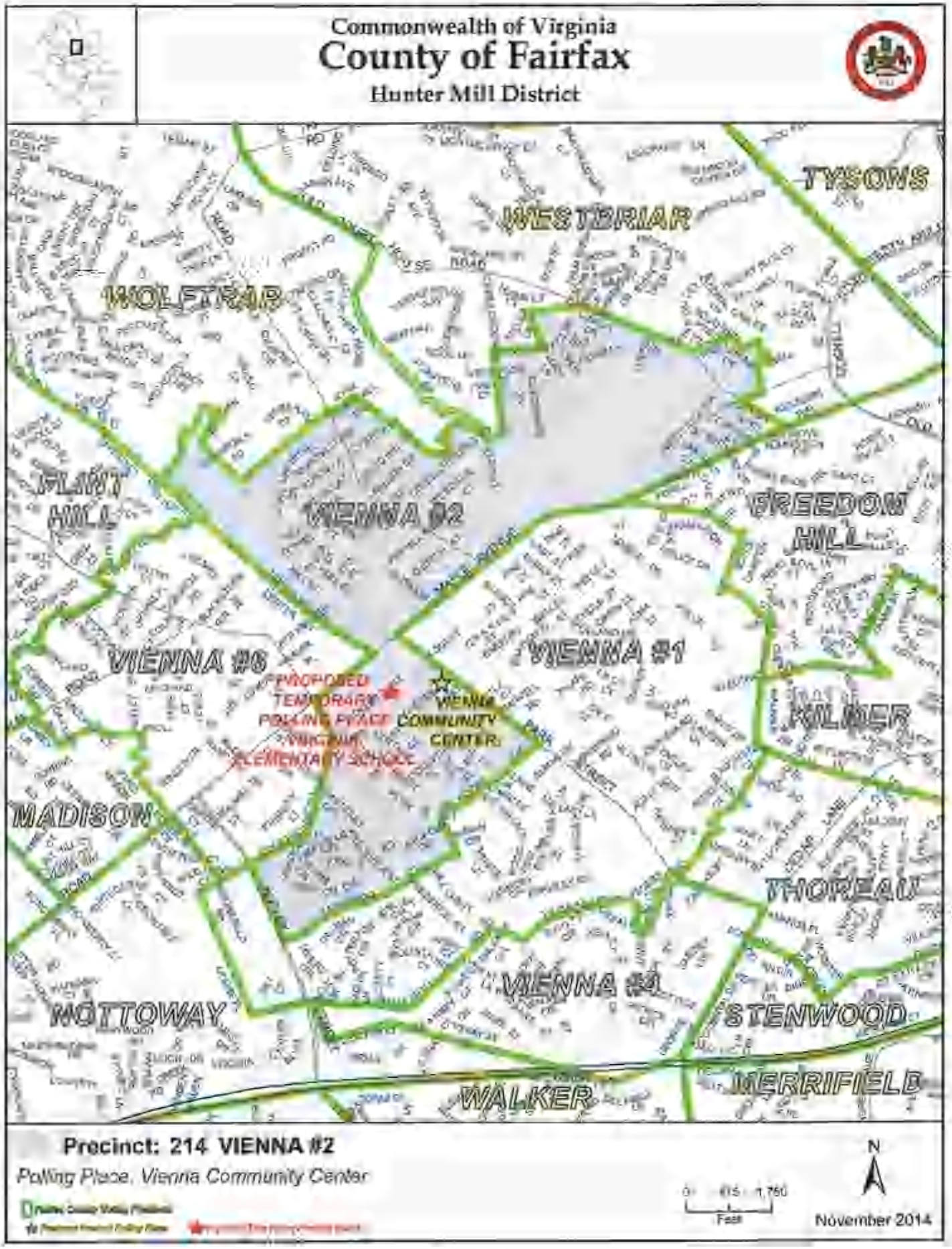
CONGRESSIONAL DISTRICT:	ELEVENTH
VIRGINIA SENATORIAL DISTRICT:	THIRTY-FOURTH
HOUSE OF DELEGATES DISTRICT:	THIRTY-FIFTH

DESCRIPTION:
Beginning at the intersection of the Washington and Old Dominion Railroad Regional Park (trail) and the west corporate boundary of the Town of Vienna, thence with the corporate boundary of the Town of Vienna in a generally easterly direction to its intersection with Maple Avenue (Route 123), thence with Maple Avenue in a southwesterly direction to its intersection with Park Street, thence with Park Street in a southeasterly direction to its intersection with Moore Avenue, thence with Moore Avenue in a southwesterly direction to its intersection with Cottage Street, thence with Cottage Street in a southerly direction to its intersection with Tapawingo Road, thence with Tapawingo Road in a southwesterly direction to its intersection with Nutley Street, thence with Nutley Street in a northwesterly direction to its intersection with Courthouse Road, thence with Courthouse Road in a generally northeasterly direction to its intersection with Maple Avenue, thence with Maple Avenue in a northeasterly direction to its intersection with the Washington and Old Dominion Railroad Regional Park, thence with the Washington and Old Dominion Railroad Regional Park in a northwesterly direction to its intersection with the west corporate boundary of the Town of Vienna, point of beginning.

POLLING PLACE: ~~Vienna Community Center 120 Cherry Street, SE~~ Vienna Elementary School 128 Center Street, S, Vienna

MAP GRIDS: 28-4, 29-3, 38-1, 38-2, 38-4, 39-1, 48-2

NOTES:
Established 1957
Combined with Vienna #3 - September 1992
The Washington and Old Dominion Railroad Regional Park (trail) is the abandoned Washington and Old Dominion Railroad right-of-way
Precinct description revised and readopted – March 2003
Polling place moved temporarily – June 2015


Commonwealth of Virginia
County of Fairfax
Hunter Mill District
TYSONS
WESTBRIAR
WOLFTRAP
FLINT HILL
VIENNA #2
FREEDOM HILL
VIENNA #3
VIENNA #1
PROPOSED TEMPORARY POLLING PLACE
VIENNA COMMUNITY CENTER
KILMER
MADISON
THOREAU
VIENNA #4
NOTTOWAY
STENWOOD
MERRIFIELD
WALKER
Precinct: 214 VIENNA #2
Polling Place: Vienna Community Center
N
November 2014

Commonwealth of Virginia

COUNTY OF FAIRFAX

Dranesville District

PRECINCT 302: CHESTERBROOK

CONGRESSIONAL DISTRICT:	**EIGHTH**
VIRGINIA SENATORIAL DISTRICT:	**THIRTY-FIRST**
HOUSE OF DELEGATES DISTRICT:	**FORTY-EIGHTH**

DESCRIPTION:

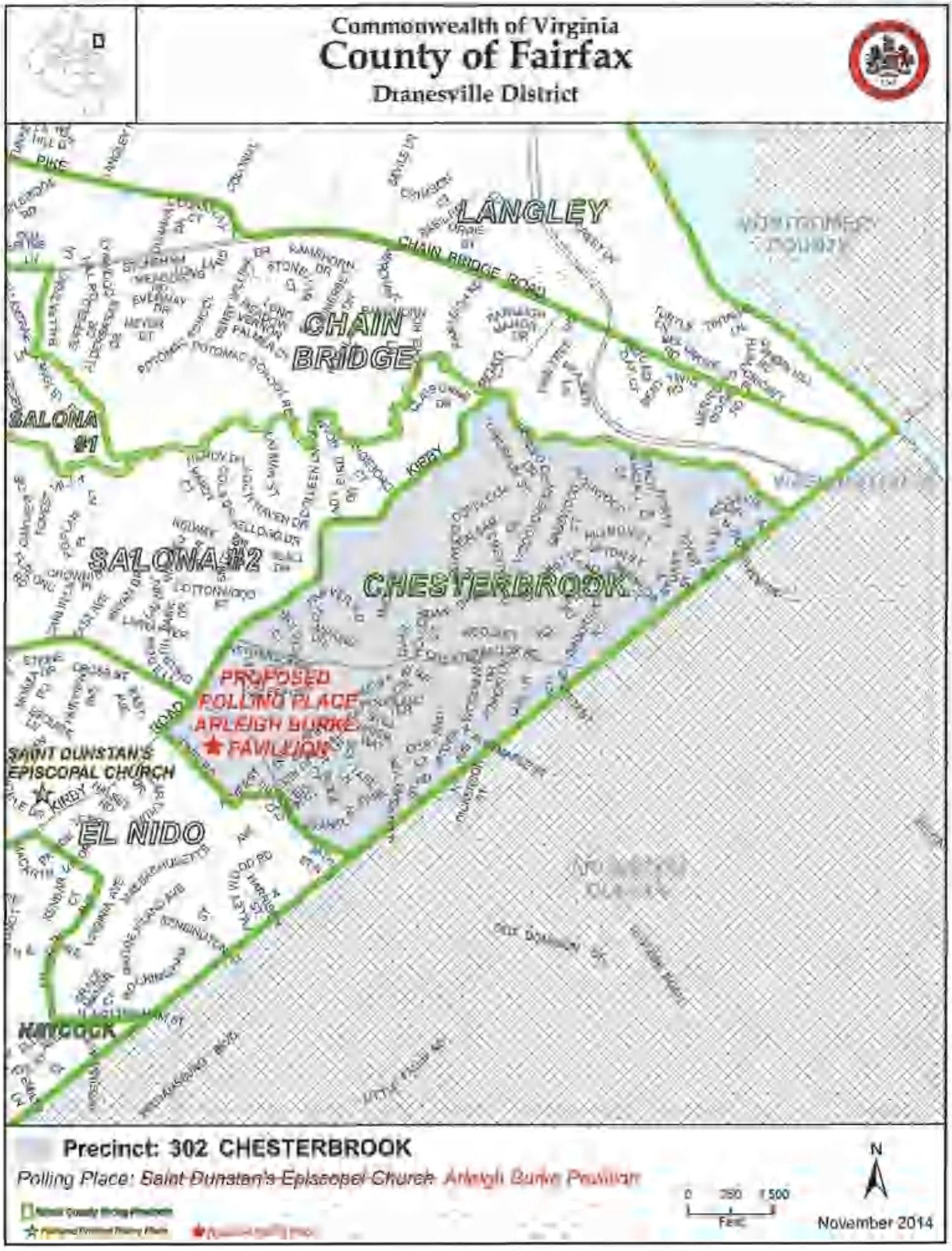
Beginning at the intersection of Kirby Road and Pimmit Run (stream), thence with the meanders of Pimmit Run in a southeasterly direction to its intersection with the Arlington County/Fairfax County Line, thence with the Arlington County/Fairfax County Line in a southwesterly direction to its intersection with Old Dominion Drive, thence with Old Dominion Drive in a northwesterly direction to its intersection with Park Road, thence with Park Road in a westerly, then northwesterly direction to its intersection with Kirby Road, thence with Kirby Road in a generally northeasterly direction to its intersection with Pimmit Run, point of beginning.

POLLING PLACE: ~~Saint Dunstan's Episcopal Church~~ Arleigh Burke Pavilion ~~1830 Kirby Road,~~ 1739 Kirby Road, McLean

MAP GRIDS: 31-2, 31-3, 31-4, 41-1, 41-2

NOTES:

Established December 1976
Precinct description revised and readopted – March 2003
Senate District changed from 32nd to 31st – July 2011
Delegate District changed from 34th to 48th – July 2011
Polling place temporarily moved – January 2012
Congressional District changed from 10th to 8th – January 2012
Polling place returned to original location – June 2015


Commonwealth of Virginia
County of Fairfax
Dranesville District
LANGLEY
CHAIN BRIDGE
SALONA #1
SALONA #2
CHESTERBROOK
PROPOSED
POLLING PLACE
ARLEIGH BURKE
PAVILLION
SAINT DUNSTAN'S
EPISCOPAL CHURCH
EL NIDO
KIRBY
CHAIN BRIDGE ROAD
Precinct: 302 CHESTERBROOK
Polling Place: Saint Dunstan's Episcopal Church Arleigh Burke Pavilion
0 750 1,500
Feet
N
November 2014

Commonwealth of Virginia

COUNTY OF FAIRFAX

Dranesville District

PRECINCT 321: CLEARVIEW

CONGRESSIONAL DISTRICT: TENTH
VIRGINIA SENATORIAL DISTRICT: THIRTY-FIRST
HOUSE OF DELEGATES DISTRICT: EIGHTY-SIXTH

DESCRIPTION:
Beginning at the intersection of the Loudoun County/Fairfax County Line and Leesburg Pike (Route 7), thence with Leesburg Pike in a southeasterly direction to its intersection with Dranesville Road, thence with Dranesville Road in a southerly direction to its intersection with Folly Lick Branch (stream), thence with the meanders of Folly Lick Branch in a southwesterly direction to its intersection with the north corporate boundary of the Town of Herndon, thence with the corporate boundary of the Town of Herndon in a ~~northwesterly, then~~ southwesterly, then northwesterly direction to its intersection with the Loudoun County/Fairfax County Line, thence with the Loudoun County/Fairfax County Line in a northeasterly direction to its intersection with Leesburg Pike, point of beginning.

POLLING PLACE: Clearview Elementary School
12635 Builders Road, Herndon

MAP GRIDS: 5-4, 6-3, 10-1, 10-2, 10-3, 10-4

NOTES: Established June 1981
Precinct description revised and readopted – March 2003
Senate District changed from 32nd to 31st – July 2011
Delegate District changed from 34th to 86th – July 2011
Boundary adjusted with Sugarland – June 2015

Commonwealth of Virginia

COUNTY OF FAIRFAX

Dranesville District

PRECINCT 327: SUGARLAND

CONGRESSIONAL DISTRICT:	**TENTH**
VIRGINIA SENATORIAL DISTRICT:	**THIRTY-FIRST**
HOUSE OF DELEGATES DISTRICT:	**EIGHTY-SIXTH**

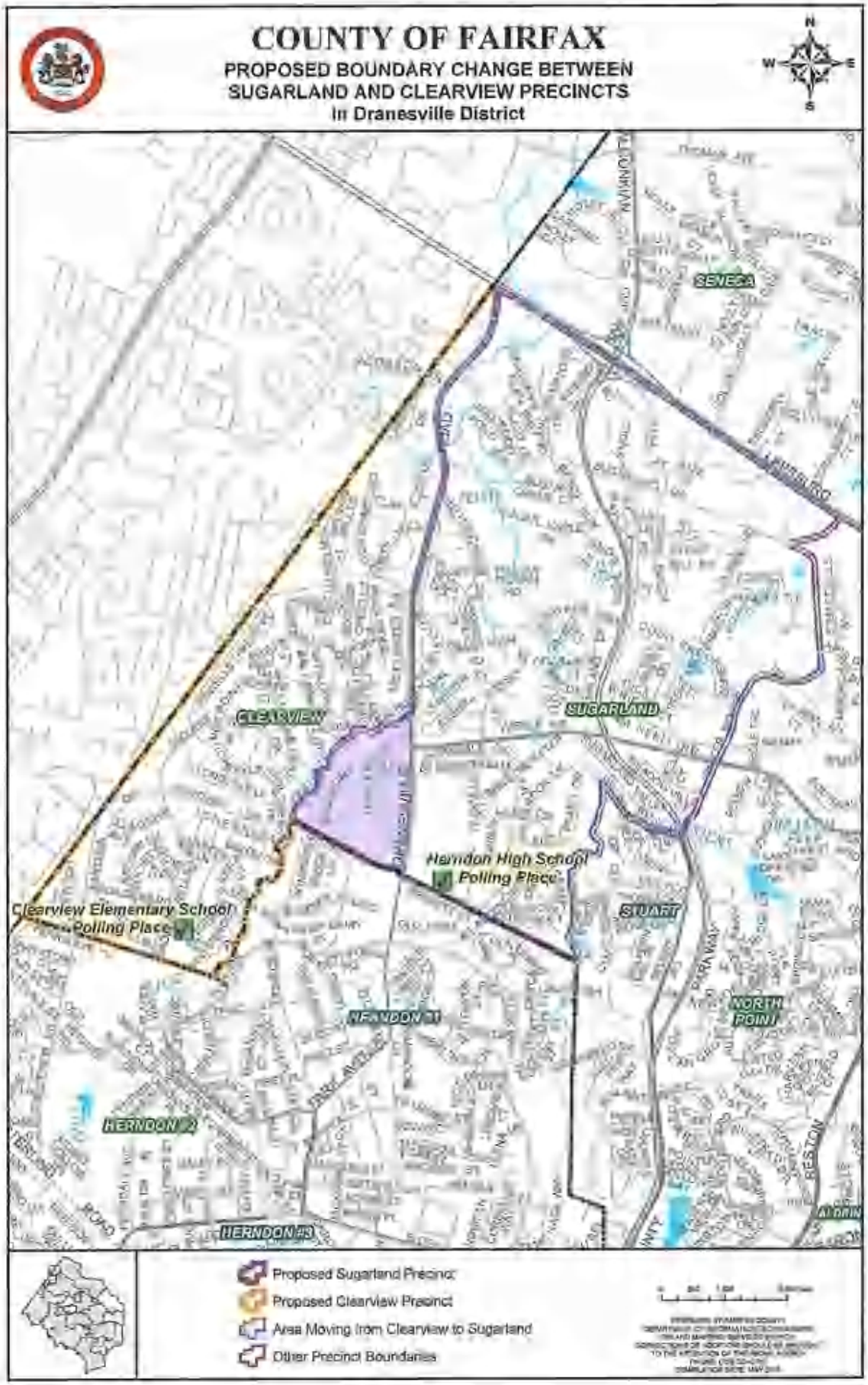
DESCRIPTION:

Beginning at the intersection of Dranesville Road and Leesburg Pike (Route 7), thence with Leesburg Pike in a southeasterly direction to its intersection with Sugarland Road, thence with Sugarland Road in a southwesterly direction to its intersection with Shaker Woods Road, thence with Shaker Woods Road and a projection of Shaker Woods Road to its intersection with Rosiers Branch (stream) at the Fairfax County Parkway (Route 286), thence with the meanders of Rosiers Branch in a northwesterly direction to its intersection with Sugarland Run (stream), thence with the meanders of Sugarland Run in a southerly direction to its intersection with the north corporate boundary of the Town of Herndon, thence with the corporate boundary of the Town of Herndon in a northwesterly direction to its intersection with Folly Lick Branch (stream), thence with the meanders of Folly Lick Branch in northeasterly direction to its intersection with Dranesville Road, thence with Dranesville Road in a northerly direction to its intersection with Leesburg Pike, point of beginning.

POLLING PLACE: Herndon High School
700 Bennett Street, Herndon

MAP GRIDS: 5-4, 6-3, 6-4, 10-2, 10-4, 11-1, 11-2, 11-3

NOTES:
Established June 1991
The portion of Stuart Road north of the Fairfax County Parkway was renamed Shaker Woods Road in 2001. Shaker Woods Road dead-ends at the Fairfax County Parkway.
Precinct description revised and readopted – March 2003
Senate District changed from 32nd to 31st – July 2011
Delegate District changed from 34th to 86th – July 2011
Boundary adjusted with Clearview – June 2015


COUNTY OF FAIRFAX
PROPOSED BOUNDARY CHANGE BETWEEN
SUGARLAND AND CLEARVIEW PRECINCTS
In Dranesville District
N
W
E
S
SENECA
FURNACE RD
CLEARVIEW
SUGARLAND
Herndon High School
Polling Place
Clearview Elementary School
Polling Place
STUART
NORTH
POINT
HERNDON #1
HERNDON #2
HERNDON #3
RESTON
Proposed Sugarland Precinct
Proposed Clearview Precinct
Area Moving from Clearview to Sugarland
Other Precinct Boundaries

Commonwealth of Virginia

COUNTY OF FAIRFAX

Lee District

PRECINCT 403: FORESTDALE

CONGRESSIONAL DISTRICT:	**EIGHTH**
VIRGINIA SENATORIAL DISTRICT:	**THIRTY-NINTH**
HOUSE OF DELEGATES DISTRICT:	**THIRTY-NINTH**

DESCRIPTION:
Beginning at the intersection of Frontier Drive and Franconia Road, thence with Franconia Road in an easterly direction to its intersection with the Richmond, Fredericksburg and Potomac Railroad, thence with the Richmond, Fredericksburg and Potomac Railroad in a generally southwesterly direction to its intersection with the Franconia-Springfield Parkway, thence with Franconia-Springfield Parkway (Route 289) in a northwesterly direction to its intersection with Frontier Drive, thence with Frontier Drive in a northerly direction to its intersection with Franconia Road, point of beginning.

POLLING PLACE: Forestdale Elementary School
6530 Elder Avenue, Springfield

MAP GRIDS: 81-3, 90-2, 91-1

NOTES: Established 2015

Commonwealth of Virginia

COUNTY OF FAIRFAX

Lee District

PRECINCT 409: PIONEER

CONGRESSIONAL DISTRICT:	**EIGHTH**
VIRGINIA SENATORIAL DISTRICT:	**THIRTY-NINTH**
HOUSE OF DELEGATES DISTRICT:	**THIRTY-NINTH**

DESCRIPTION:

Beginning at the intersection of the Shirley Memorial Highway (I-395/I-95) and the Norfolk Southern Railroad, thence with the Norfolk Southern Railroad in a northeasterly direction to its intersection with the west corporate boundary of the City of Alexandria, thence with the corporate boundary of the City of Alexandria in a southerly direction to its intersection with the Richmond, Fredericksburg and Potomac Railroad, thence with the Richmond, Fredericksburg and Potomac Railroad in a generally southwesterly direction to its intersection with Franconia Road, thence with Franconia Road in a westerly direction to its intersection with Frontier Drive, thence with Frontier Drive in a southerly direction to its intersection with the Franconia-Springfield Parkway (Route 289), thence with the Franconia-Springfield Parkway in a southeasterly direction to its intersection with the Richmond, Fredericksburg and Potomac Railroad, thence with the Richmond, Fredericksburg and Potomac Railroad in a generally southwesterly direction to its intersection with Newington Road, thence with Newington Road in a southwesterly direction to its intersection with the Shirley Memorial Highway, thence with the Shirley Memorial Highway in a northerly direction to its intersection with the Norfolk Southern Railroad, point of beginning.

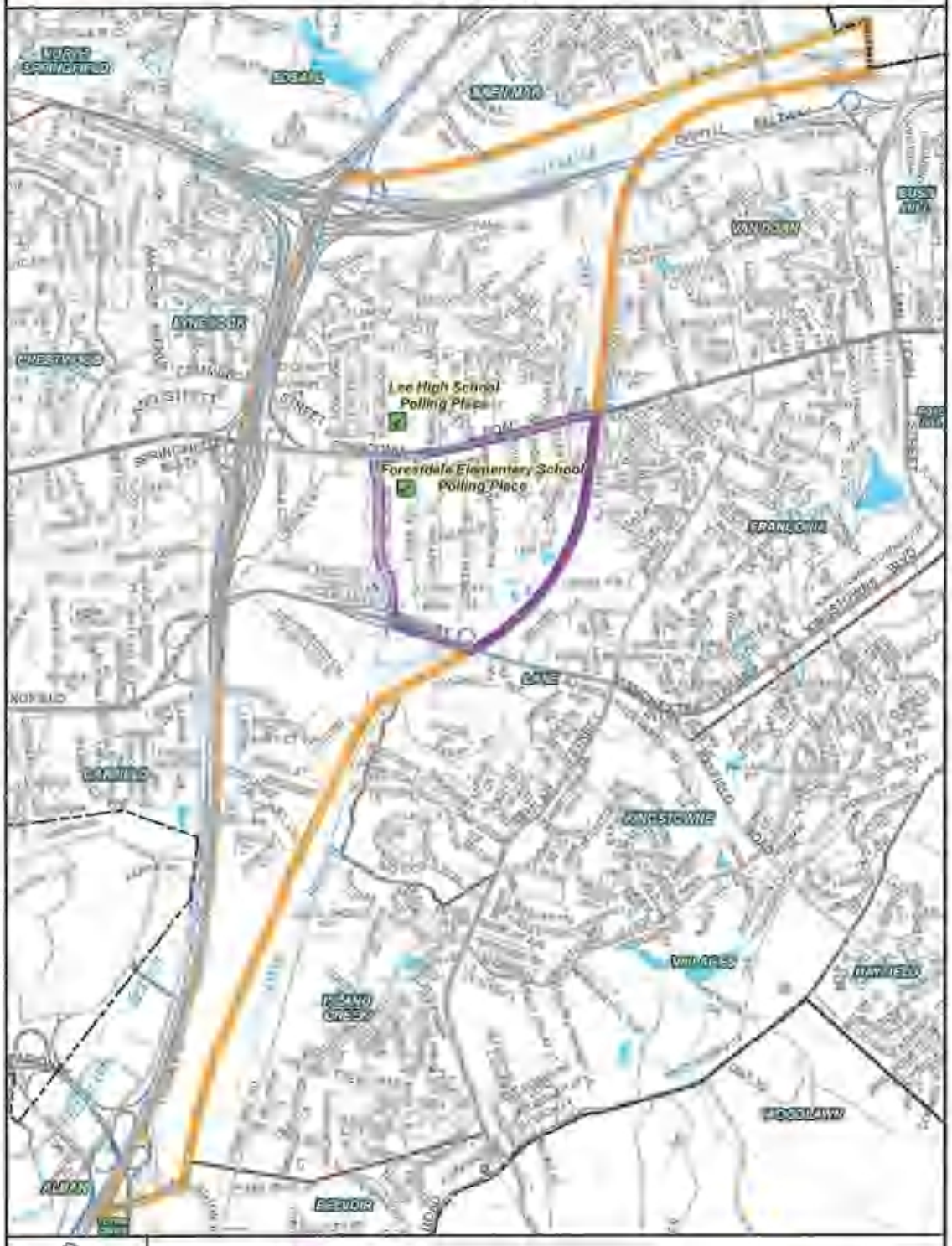
POLLING PLACE: Lee High School
6540 Franconia Road, Springfield

MAP GRIDS: 80-2, 80-4, 81-1, 81-2, 81-3, 90-2, 90-4, 91-1, 99-1, 99-2

NOTES:
Established 1960
Combined with Forest precinct - May 1994
Precinct description revised and readopted – March 2003
Delegate District changed from 43rd to 39th – July 2011
Precinct divided – June 2015

COUNTY OF FAIRFAX

PROPOSED CREATION OF FORESTDALE PRECINCT FROM PIONEER PRECINCT in Lee District



Commonwealth of Virginia

COUNTY OF FAIRFAX

Providence District

PRECINCT 734: HUNTERS BRANCH

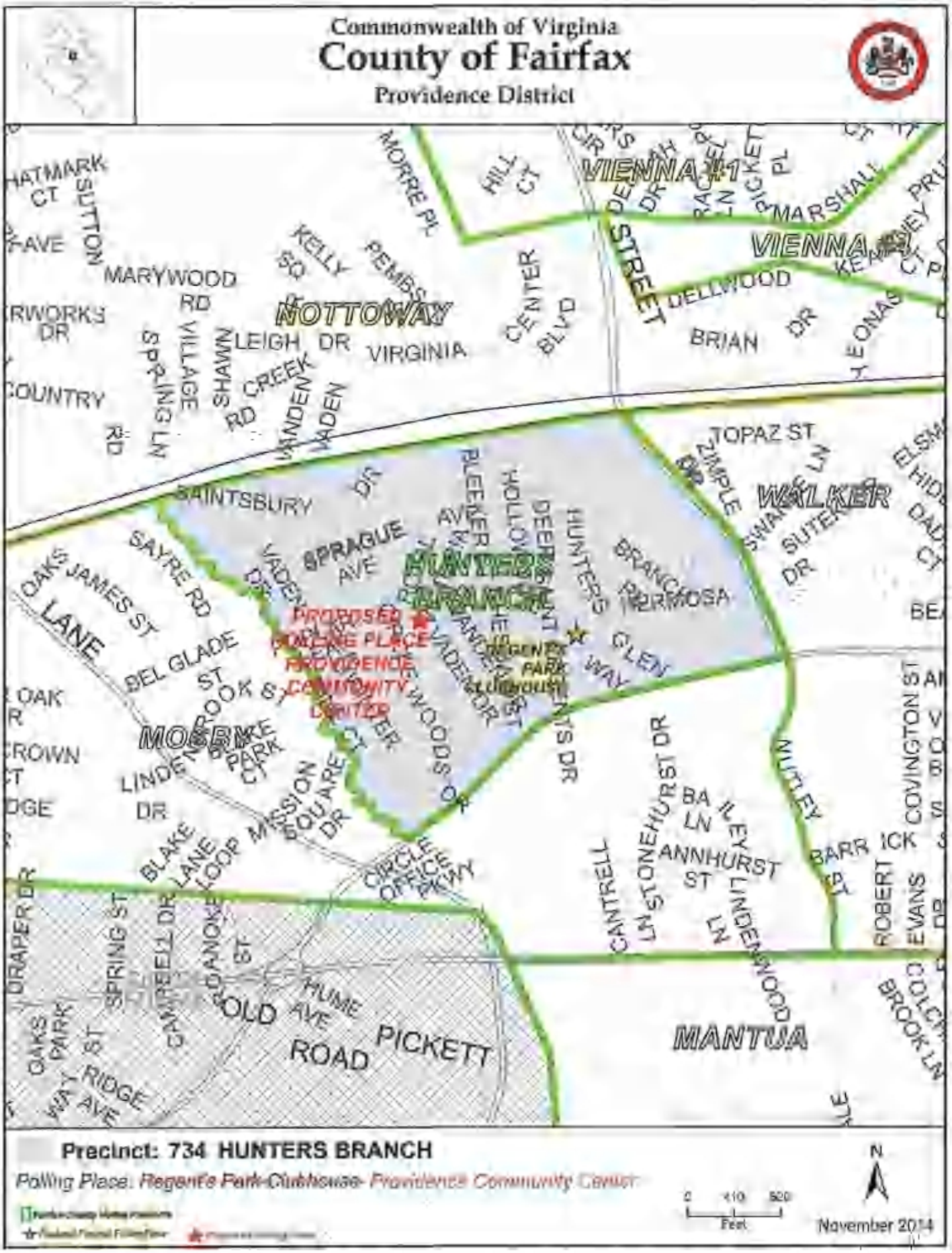
CONGRESSIONAL DISTRICT:	**ELEVENTH**
VIRGINIA SENATORIAL DISTRICT:	**THIRTY-FORTH**
HOUSE OF DELEGATES DISTRICT:	**THIRTY-FIFTH**

DESCRIPTION:
Beginning at the intersection of Hatmark Branch (stream) and Interstate 66, thence with Interstate 66 in a northeasterly direction to its intersection with Nutley Street, thence with Nutley Street in a southeasterly direction to its intersection with Lee Highway (Route 29), thence with Lee Highway in a southwesterly direction to its intersection with Hatmark Branch, thence with the meanders of Hatmark Branch in a northwesterly direction to its intersection with Interstate 66, point of beginning.

POLLING PLACE: ~~Regent's Park Clubhouse~~ Providence Community Center
~~9333 Clocktower Place,~~ 3001 Vaden Drive, Fairfax

MAP GRIDS: 48-1, 48-2, 48-3, 48-4

NOTES: Established July 2011
Polling place moved – June 2015


Commonwealth of Virginia
County of Fairfax
Providence District
PROPOSED POLLING PLACE PROVIDENCE COMMUNITY CENTER
Precinct: 734 HUNTERS BRANCH
Polling Place: Regent's Park Clubhouse Providence Community Center
0 410 820
Feet
N
November 2014

Commonwealth of Virginia

COUNTY OF FAIRFAX

Providence District

PRECINCT 720: THOREAU

CONGRESSIONAL DISTRICT:	ELEVENTH
VIRGINIA SENATORIAL DISTRICT:	THIRTY-FOURTH
HOUSE OF DELEGATES DISTRICT:	THIRTY-FIFTH

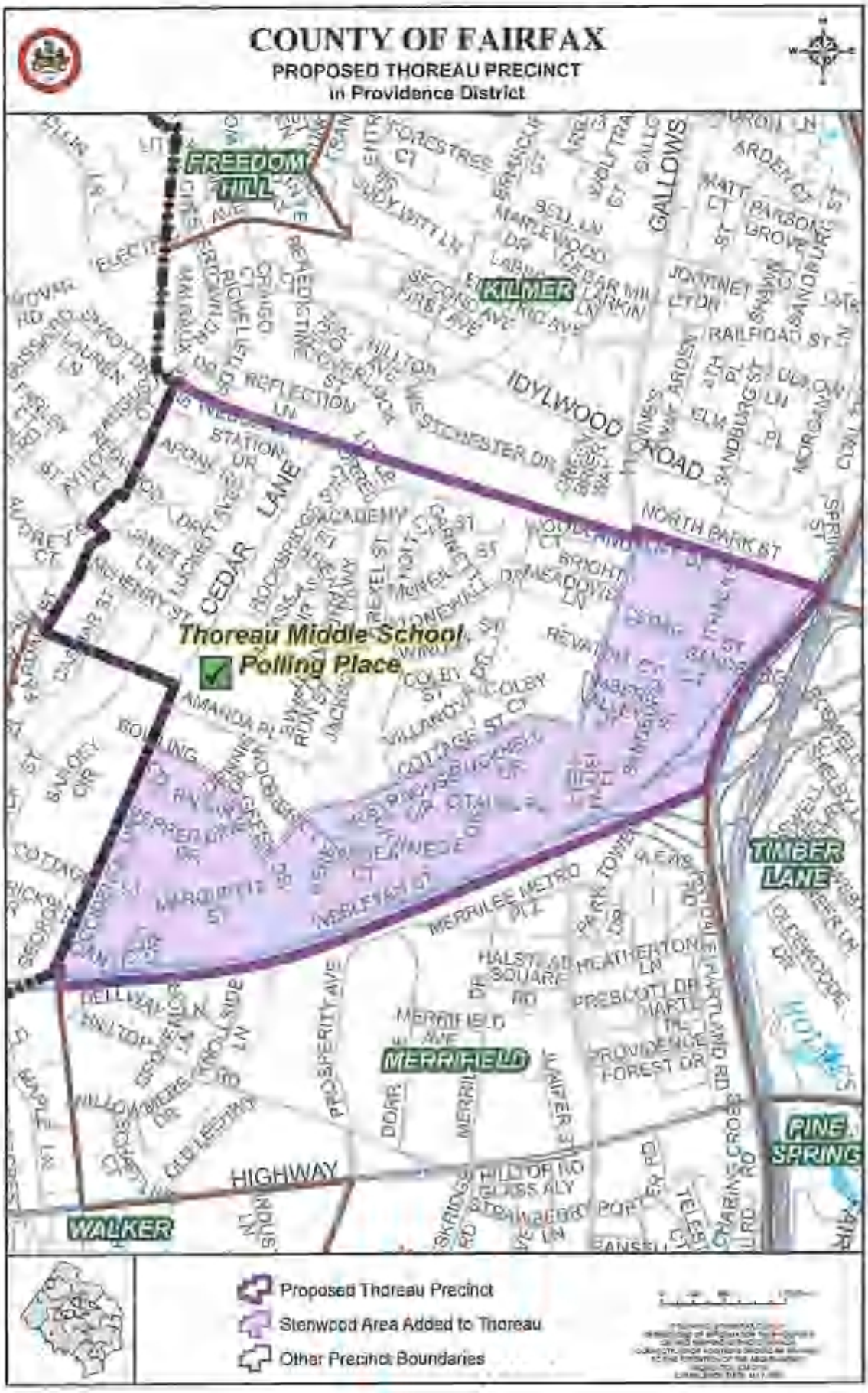
DESCRIPTION:

Beginning at the intersection of the east corporate boundary of the Town of Vienna and the Washington and Old Dominion Railroad Regional Park (trail), thence with the Washington and Old Dominion Railroad Regional Park in a southeasterly direction to its intersection with ~~Gallows Road, thence with Gallows Road in a southwesterly direction to its intersection with Cottage Street, thence with Cottage Street in a generally southwesterly direction to its intersection with Bowling Green Drive, thence with Bowling Green Drive in a northwesterly direction to its intersection~~ the Capital Beltway (I-495), thence with the Capital Beltway in a southwesterly direction to its intersection with Interstate 66, thence with Interstate 66 in a southwesterly direction to its intersection with the east corporate boundary of the Town of Vienna, thence with the corporate boundary of the Town of Vienna in a northeasterly, then northwesterly, then northeasterly direction to its intersection with the Washington and Old Dominion Railroad Regional Park, point of beginning.

POLLING PLACE: Thoreau Middle School
2505 Cedar Lane, Vienna

MAP GRIDS: 39-3, 39-4, 49-1, 49-2

NOTES:
Established July 1981
The Washington and Old Dominion Railroad Regional Park (trail) is the abandoned Washington and Old Dominion Railroad right-of-way
Precinct description revised and readopted – March 2003
Delegate District changed from 53rd to 35th - July 2011
Precinct combined with Stenwood – June 2015


COUNTY OF FAIRFAX
PROPOSED THOREAU PRECINCT
in Providence District
Thoreau Middle School
Polling Place
FREEDOM HILL
KILMER
IDYLWOOD ROAD
CEDAR LANE
NORTH PARK ST
TIMBER LANE
MERRIFIELD
PINE SPRING
WALKER
HIGHWAY
GALLOWS
RAILROAD ST
Proposed Thoreau Precinct
Stenwood Area Added to Thoreau
Other Precinct Boundaries

Commonwealth of Virginia

COUNTY OF FAIRFAX

Sully District

PRECINCT 927: ~~LEES CORNER NO. 1~~ STRINGFELLOW (alternative 1)

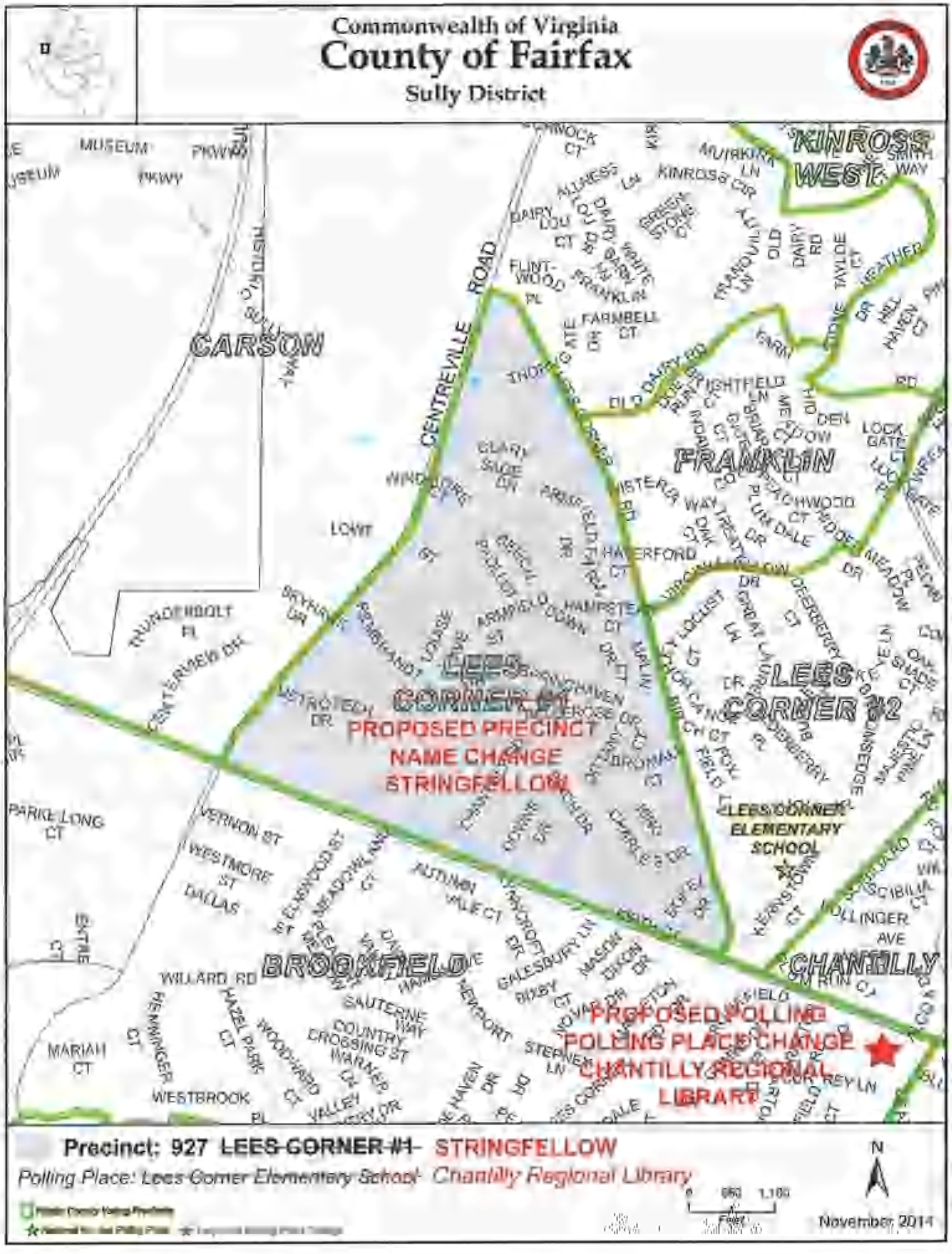
CONGRESSIONAL DISTRICT:	**TENTH**
VIRGINIA SENATORIAL DISTRICT:	**THIRTY-SECOND**
HOUSE OF DELEGATES DISTRICT:	**EIGHTY-SIXTH**

DESCRIPTION:
Beginning at the intersection of the Centreville Road and Lees Corner Road, thence with Lees Corner Road in a southeasterly direction to its intersection with the Lee-Jackson Memorial Highway (Route 50), thence with the Lee-Jackson Memorial Highway in a northwesterly direction to its intersection with Centreville Road, thence with Centreville Road in a northeasterly direction to its intersection with Lees Corner Road, point of beginning.

POLLING PLACE: ~~Lees Corner Elementary School~~
~~13500 Hollinger Avenue, Fairfax~~
Chantilly Regional Library
4000 Stringfellow Road, Chantilly

MAP GRIDS: 34-2, 34-4, 35-3, 45-1

NOTES: Established March 2003
Precinct divided and renamed – July 2011
Precinct renamed and polling place moved – June 2015


Commonwealth of Virginia
County of Fairfax
Sully District
CARSON
CENTREVILLE ROAD
FRANKLIN
KINROSS WEST
LEES CORNER #1
PROPOSED PRECINCT
NAME CHANGE
STRINGFELLOW
LEES CORNER #2
LEES CORNER ELEMENTARY SCHOOL
BROOKFIELD
CHANTILLY
PROPOSED POLLING
POLLING PLACE CHANGE
CHANTILLY REGIONAL
LIBRARY
Precinct: 927 LEES CORNER #1 STRINGFELLOW
Polling Place: Lees Corner Elementary School Chantilly Regional Library
N
November 2014

Commonwealth of Virginia

COUNTY OF FAIRFAX

Sully District

PRECINCT 927: ~~LEES CORNER NO. 1~~ ARMFIELD (alternative 2)

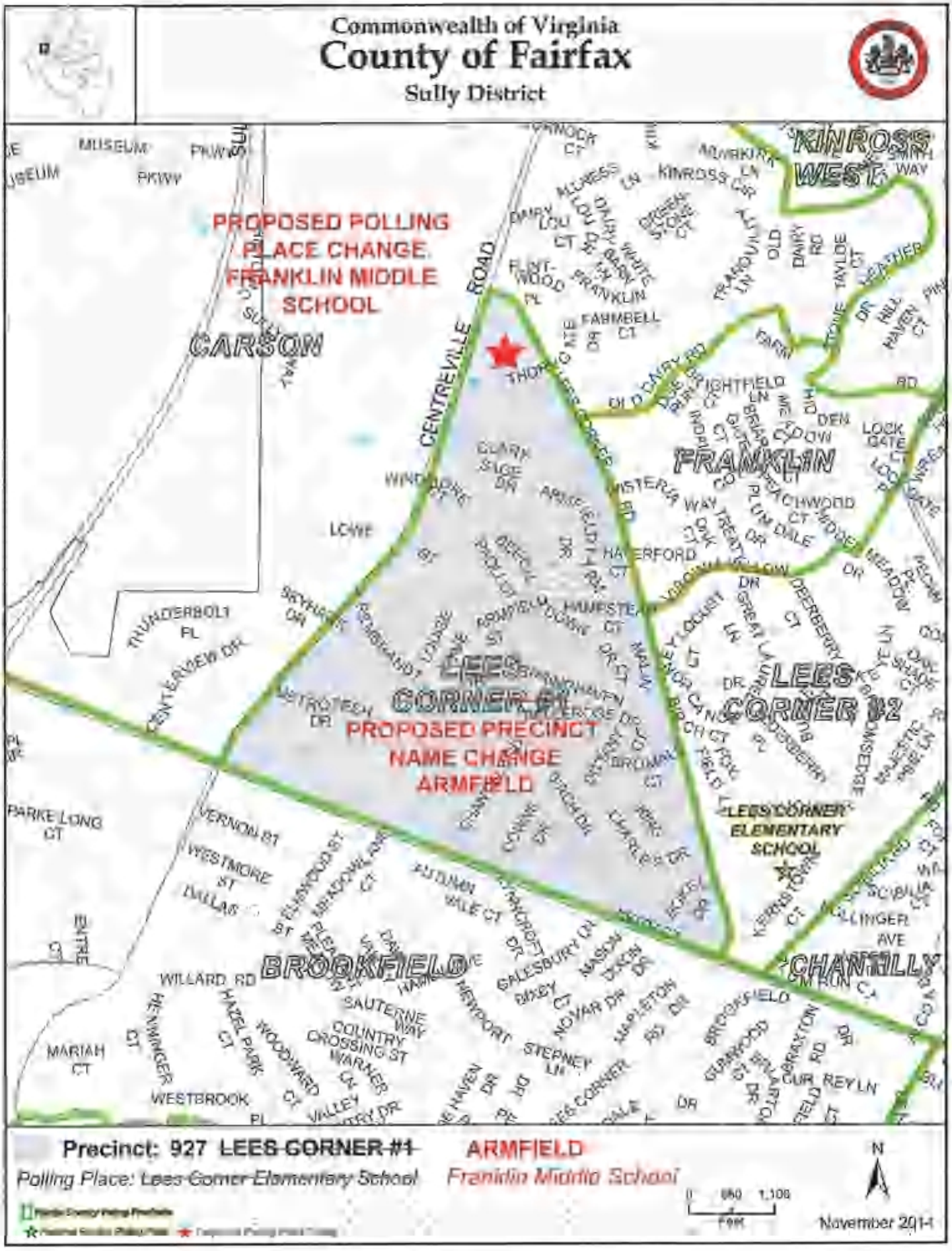
CONGRESSIONAL DISTRICT:	**TENTH**
VIRGINIA SENATORIAL DISTRICT:	**THIRTY-SECOND**
HOUSE OF DELEGATES DISTRICT:	**EIGHTY-SIXTH**

DESCRIPTION:
Beginning at the intersection of the Centreville Road and Lees Corner Road, thence with Lees Corner Road in a southeasterly direction to its intersection with the Lee-Jackson Memorial Highway (Route 50), thence with the Lee-Jackson Memorial Highway in a northwesterly direction to its intersection with Centreville Road, thence with Centreville Road in a northeasterly direction to its intersection with Lees Corner Road, point of beginning.

POLLING PLACE: ~~Lees Corner Elementary School~~
~~13500 Hollinger Avenue, Fairfax~~
Franklin Middle School
3300 Lees Corner Road, Chantilly

MAP GRIDS: 34-2, 34-4, 35-3, 45-1

NOTES: Established March 2003
Precinct divided and renamed – July 2011
Precinct renamed and polling place moved – June 2015


Commonwealth of Virginia
County of Fairfax
Sully District
PROPOSED POLLING PLACE CHANGE FRANKLIN MIDDLE SCHOOL
PROPOSED PRECINCT NAME CHANGE ARMFIELD
CARSON
FRANKLIN
KINROSS WEST
LEES CORNER #1
LEES CORNER #2
BROOKFIELD
CHANTILLY
LEES CORNER ELEMENTARY SCHOOL
CENTREVILLE ROAD
Precinct: 927 LEES CORNER #1 ARMFIELD
Polling Place: Lees Corner Elementary School Franklin Middle School
N
November 2014

Commonwealth of Virginia

COUNTY OF FAIRFAX

Sully District

PRECINCT 930: LEES CORNER ~~NO. 2~~

CONGRESSIONAL DISTRICT:	**TENTH**
VIRGINIA SENATORIAL DISTRICT:	**THIRTY-SECOND**
HOUSE OF DELEGATES DISTRICT:	**SIXTY-SEVENTH**

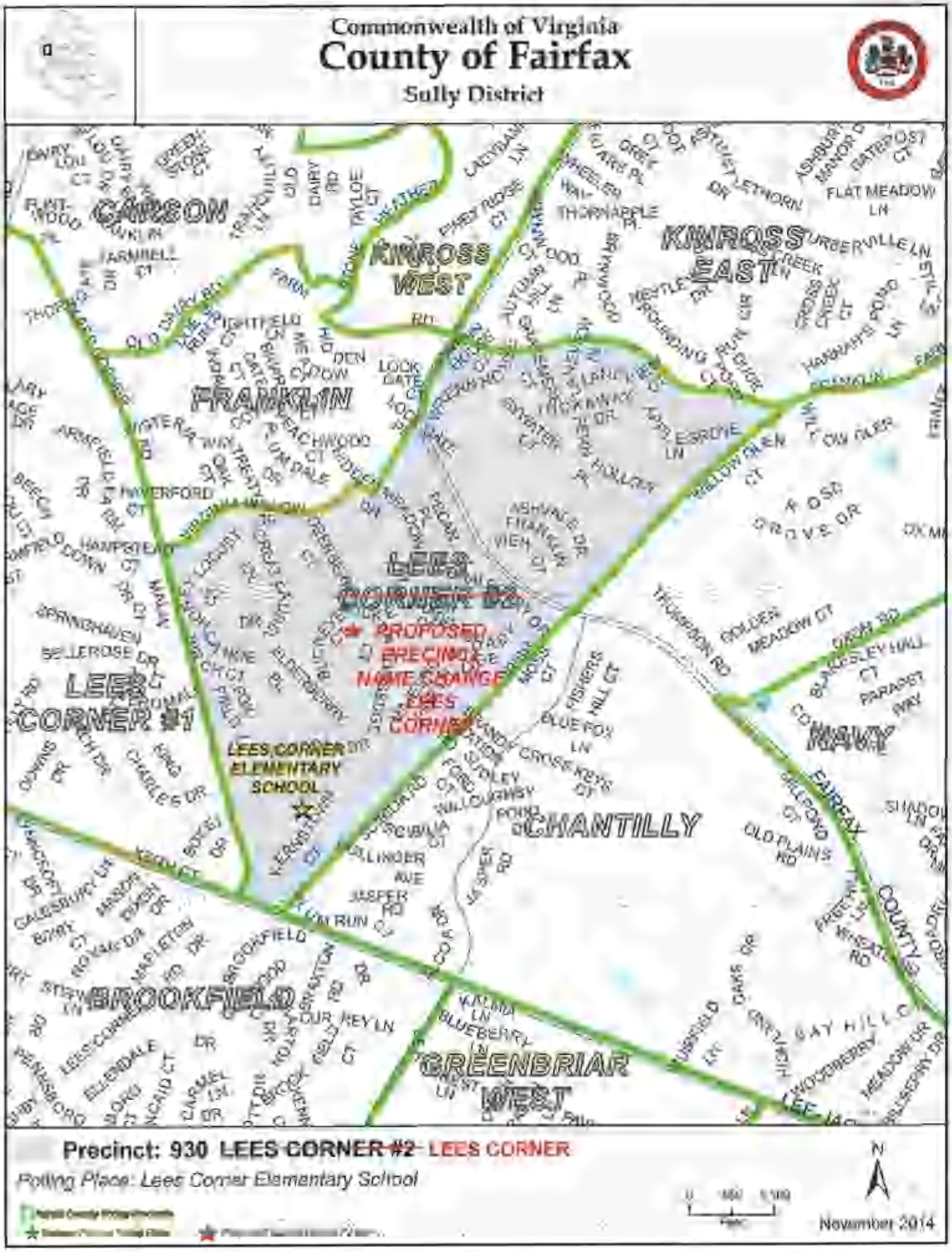
DESCRIPTION:

Beginning at the intersection of the Fairfax County Parkway (Route 286) and Franklin Farm Road, thence with Franklin Farm Road in a generally easterly direction to its intersection with the Transcontinental Gas Pipeline Easement, thence with the Transcontinental Gas Pipeline Easement in a southwesterly direction to its intersection with the Lee Jackson Memorial Highway (Route 50), thence with the Lee Jackson Memorial Highway in a northwesterly direction to its intersection with Lees Corner Road, thence with Lees Corner Road in a northwesterly direction to its intersection with Virginia Willow Drive, thence with Virginia Willow Drive in a generally northeasterly direction to its intersection with Hidden Meadow Drive, thence with Hidden Meadow Drive in a southeasterly direction to its intersection with the Colonial Pipeline Company Easement, thence with the Colonial Pipeline Company Easement in a northeasterly direction to its intersection with the Fairfax County Parkway, thence with the Fairfax County Parkway in a northerly direction to its intersection with Franklin Farm Road, point of beginning.

POLLING PLACE: Lees Corner Elementary School
13500 Hollinger Avenue, Fairfax

MAP GRIDS: 35-1, 35-2, 35-3, 45-1

NOTES: Established July 2011
Precinct renamed – June 2015


Commonwealth of Virginia
County of Fairfax
Sully District
CAMEOW
KINROSS WEST
KINROSS EAST
FRANKLIN
LEES CORNER #2
PROPOSED PRECINCT NAME CHANGE LEES CORNER
LEES CORNER #1
LEES CORNER ELEMENTARY SCHOOL
CHANTILLY
MAVY
BROOKFIELD
GREENBRIAR WEST
Precinct: 930 LEES CORNER #2 LEES CORNER
Polling Place: Lees Corner Elementary School
N
November 2014

Commonwealth of Virginia

COUNTY OF FAIRFAX

Sully District

PRECINCT 908: ~~KINROSS EAST~~ HIDDEN MEADOW

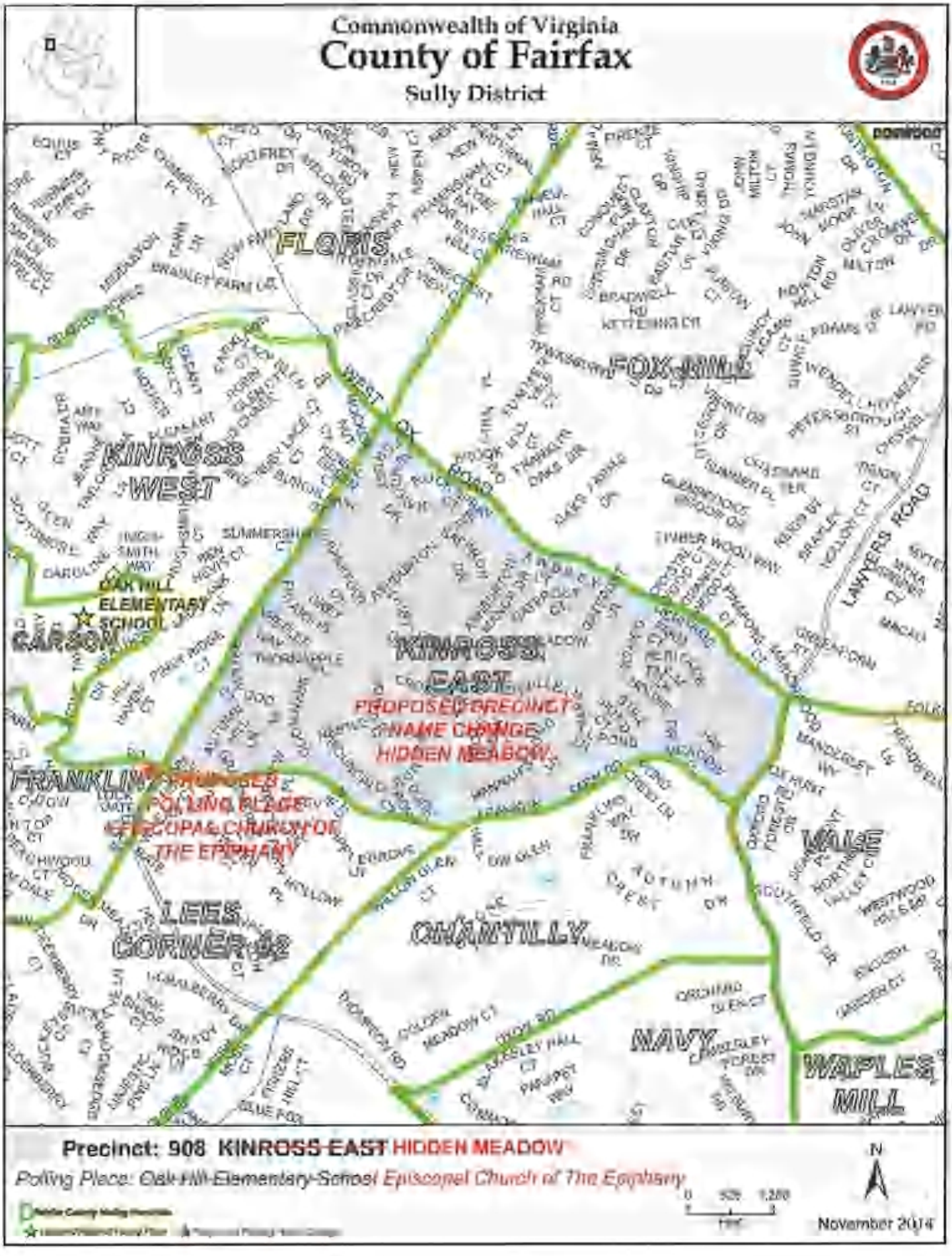
CONGRESSIONAL DISTRICT: TENTH
VIRGINIA SENATORIAL DISTRICT: THIRTY-SECOND
HOUSE OF DELEGATES DISTRICT: SIXTY-SEVENTH

DESCRIPTION:
Beginning at the intersection of the Fairfax County Parkway (Route 286) and West Ox Road, thence with West Ox Road in a southeasterly, then southerly direction to its intersection with Franklin Farm Road, thence with Franklin Farm Road in a generally westerly direction to its intersection with the Fairfax County Parkway, thence with the Fairfax County Parkway in a northeasterly direction to its intersection with West Ox Road, point of beginning.

POLLING PLACE:
~~Oak Hill Elementary School~~
~~3210 Kinross Circle, Herndon~~
The Episcopal Church of the Epiphany
3301 Hidden Meadow Drive, Herndon

MAP GRIDS: 25-3, 25-4, 35-1, 35-2

NOTES:
Established May 1995
Boundary adjusted to conform to House of Delegates Districts - August 2001
Precinct description revised and readopted – March 2003
Senate District changed from 33rd to 32nd – July 2011
Precinct divided and renamed – July 2011
Precinct renamed and polling place moved – June 2015


Commonwealth of Virginia
County of Fairfax
Sully District
FLORIS
FOX MILL
KINROSS WEST
OAK HILL ELEMENTARY SCHOOL
CARSON
KINROSS EAST
PROPOSED PRECINCT NAME CHANGE HIDDEN MEADOW
FRANKLIN
POLLING PLACE EPISCOPAL CHURCH OF THE EPIPHANY
LEES CORNER
CHANTILLY
NAVY
WAPLES MILL
LAWYERS ROAD
WEST OX ROAD
Precinct: 908 KINROSS EAST HIDDEN MEADOW
Polling Place: Oak Hill Elementary School Episcopal Church of The Epiphany
N
November 2014

Commonwealth of Virginia

COUNTY OF FAIRFAX

Sully District

PRECINCT 909: ~~KINROSS WEST~~ OAK HILL

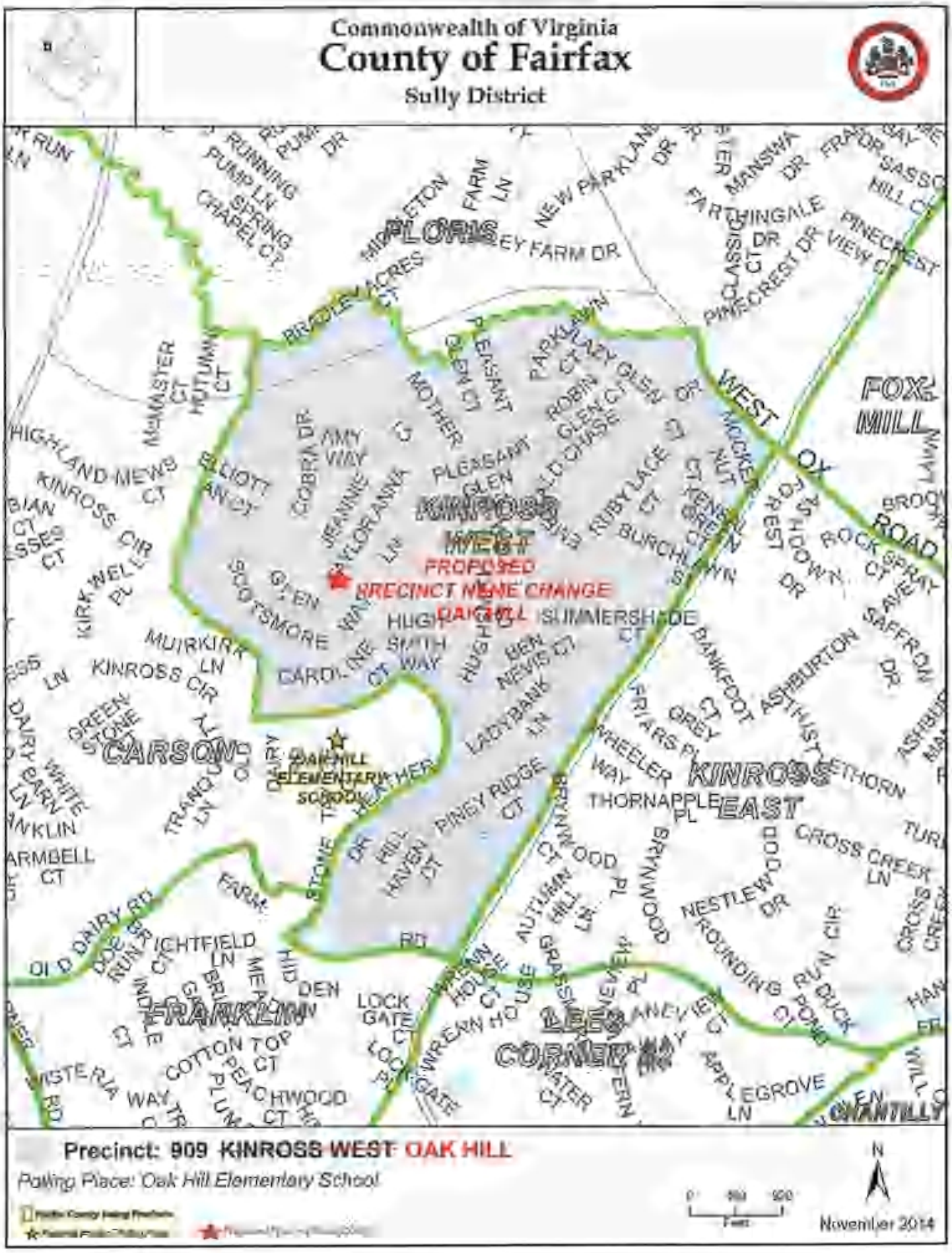
CONGRESSIONAL DISTRICT: TENTH
VIRGINIA SENATORIAL DISTRICT: THIRTY-SECOND
HOUSE OF DELEGATES DISTRICT: EIGHTY-SIXTH

DESCRIPTION:
Beginning at the intersection of an unnamed stream (east of Highland Mews) and Horsepen Run (stream), thence with the meanders of Horsepen Run in a generally easterly direction to its intersection with West Ox Road, thence with West Ox Road in a southeasterly direction to its intersection with the Fairfax County Parkway (Route 286), thence with the Fairfax County Parkway in a southwesterly direction to its intersection with Franklin Farm Road, thence with Franklin Farm Road in a generally westerly direction to its intersection with Stone Heather Drive, thence with Stone Heather Drive in a northeasterly, then northwesterly direction to its intersection with Kinross Circle, thence with Kinross Circle in a westerly direction to its intersection with an unnamed stream, thence with meanders of the unnamed stream in a generally northerly direction to its intersection with Horsepen Run, point of beginning.

POLLING PLACE: Oak Hill Elementary School
3210 Kinross Circle, Herndon

MAP GRIDS: 25-3, 35-1

NOTES: Established July 2011
Precinct renamed – June 2015


Commonwealth of Virginia
County of Fairfax
Sully District
PROPOSED
PRECINCT NAME CHANGE
OAK HILL
KINROSS WEST
KINROSS EAST
FOX MILL
CARSON
FRANKLIN
CORNER
OAK HILL ELEMENTARY SCHOOL
Precinct: 909 KINROSS WEST OAK HILL
Polling Place: Oak Hill Elementary School
N
November 2014

PROPOSED ORDINANCE TO AMEND AND READOPT SECTIONS OF CHAPTER 7 OF THE FAIRFAX COUNTY CODE TO DIVIDE AND ESTABLISH A NEW PRECINCT IN THE LEE DISTRICT, ADJUST PRECINCT BOUNDARIES AND MOVE A PRECINCT FROM A TEMPORARY LOCATION BACK THE ORIGINAL POLLING PLACE IN DRANESVILLE DISTRICT, TEMPORARILY RELOCATE POLLING PLACES IN HUNTER MILL DISTRICT, MOVE A POLLING PLACE AND CONSOLIDATE TWO PRECINCTS IN THE PROVIDENCE DISTRICT, AMEND THE DESCRIPTION OF A PRECINCT IN BRADDOCK DISTRICT, AND RENAME FOUR PRECINCTS AND MOVE TWO PRECINCTS IN THIS SULLY DISTRICT

AN ORDINANCE to amend and readopt Sections 7-2-7, 7-2-10, 7-2-12 and 7-2-13 of the Fairfax County Code to reflect election precinct adjustments for Braddock, Hunter Mill, Dranesville, Lee, Providence, and Sully Districts, and division, relocation, boundary adjustments, and renaming of polling places for certain precincts.

Be it ordained that the Board of Supervisors of Fairfax County:

1. That Sections 7-2-7, 7-2-10, 7-2-12, and 7-2-13 of the Fairfax County Code are amended and readopted:

Section 7-2-7. Lee District.

The Lee District shall consist of these election precincts: Bush Hill, Cameron, Clermont, Crestwood, Fairfield, Forestdale, Franconia, Garfield, Greenspring, Groveton, Hayfield, Huntley, Hybla Valley, Island Creek, Kingstowne, Lane, Lynbrook, Mount Eagle, Pinewood, Pioneer, Rose Hill, Van Dorn, Villages, and Virginia Hills.

Section 7-2-10. Providence District.

The Providence District shall consist of these election precincts: Blake, Fairfax Court (that part of Fairfax County containing the governmental complex which is surrounded by Fairfax City), Fort Buffalo, Freedom Hill, Graham-Greenway, Hunters Branch, Kilmer, Magarity, Mantua, Marshall, Merrifield, Mosby, Nottoway, Oak Marr, Oakton, Penderbrook, Pine Ridge, Pine Spring, Price, Shreve, Stenwood, Thoreau, Timber Lane, Tysons, Walker, and Woodburn.

Section 7-2-12. Sully District.

The Sully District shall consist of these election precincts: Armfield, Brookfield, Bull Run, Carson, Centre Ridge, Centreville, Chantilly, Compton, Cub Run, Deer Park, Difficult Run, Dulles, Franklin, Green Trails, Hidden Meadow, ~~Kinross East, Kinross West,~~ Lees Corner, ~~Lees Corner No. 1, Lees Corner No. 2,~~ London Towne, Navy, Oak Hill, Old Mill, Poplar Tree, Powell, Rocky Run, Spindle, Stone North, Stone South, Vale, Virginia Run, and Waples Mill.

Section 7-2-13. General provisions.

All references to election precincts shall refer to those precincts, together with the descriptions and maps of the boundaries and polling places for each of those precincts, which were adopted by the Board of Supervisors on March 24, 2003, as amended on March 8, 2004, March 21, 2005, March 27, 2006, March 26, 2007, September 10, 2007, March 10, 2008, January 12, 2009, March 9, 2010, July 27, 2010, April 26, 2011, July 26, 2011, January 10, 2012, July 10, 2012, March 19, 2013, and July 9, 2013, September 9, 2014, and June 23, 2015, and kept on file with the clerk to the Board of Supervisors. Whenever a road, a stream, or other physical feature describes the boundary of a precinct, the center of such road, stream, or physical feature shall be the dividing line between that precinct and any adjoining precinct.

2. Polling place locations for the following precincts identified in the first clause of this ordinance are established at:

Supervisor District	Precinct	Polling Place
Lee	Forestdale (new precinct)	Forestdale Elementary School 6530 Elder Avenue Springfield, Virginia 22150
Braddock	University (updated description)	From: GMU–University Hall 4441 George Mason Boulevard Fairfax, Virginia 22030 To: GMU–Merten Hall 4441 George Mason Boulevard Fairfax, Virginia 22030
Hunter Mill	Vienna No. 2 (polling place relocated)	From: Vienna Community Center 120 Cherry Street, SE Vienna, Virginia 22180 To: Vienna Elementary School 128 Center Street, S Vienna, Virginia 22180
Dranesville	Chesterbrook	From:

	(polling place relocated)	Saint Dunstan's Episcopal Church 1830 Kirby Road McLean, Virginia 22101 To: Arleigh Burke Pavilion 1739 Kirby Road McLean, Virginia 22101
Providence	Hunters Branch (polling place relocated)	From: Regent's Park Clubhouse 9333 Clocktower Place Fairfax, Virginia 22031 To: Providence Community Center 3001 Vaden Drive Fairfax, Virginia 22031
Sully	Armfield (renamed, polling place relocated)	From: Lees Corner Elementary School 13500 Hollinger Avenue Fairfax, Virginia 22033 To: Franklin Middle School 3300 Lees Corner Road Chantilly, Virginia 20151
Sully	Hidden Meadow (renamed, polling place relocated)	From: Oak Hill Elementary School 3210 Kinross Circle Herndon, Virginia 20171 To: The Episcopal Church of the Epiphany 3301 Hidden Meadow Drive Herndon, Virginia 20171

3. That two precincts will be combined:

Providence	Thoreau and Stenwood (now collectively renamed Thoreau)	Polling place: Thoreau Middle School 2505 Cedar Lane Vienna, Virginia 22180

4. That the following precincts are renamed:

Supervisor District	Precinct	Polling Place
Sully	Lees Corner formerly (formerly Lees Corner #2)	Lees Corner Elementary School 13500 Hollinger Avenue Fairfax, Virginia 22033
Sully	Oak Hill (formerly Kinross West)	Oak Hill Elementary School 3210 Kinross Circle Herndon, Virginia 20171

4. That this ordinance shall become effective upon adoption.

GIVEN under my hand this _____ day of June, 2015.

_____
Catherine A. Chianese
Clerk to the Board of Directors

Board Agenda Item
June 23, 2015

5:00 p.m.

Public Comment from Fairfax County Citizens and Businesses on Issues of Concern