

**FAIRFAX COUNTY
BOARD OF SUPERVISORS
July 16, 2024**

AGENDA

9:30	Done	Presentations
10:00	Done	Matters Presented by Board Members
10:00	Done	Items Presented by the County Executive

**ADMINISTRATIVE
ITEMS**

1	Approved	Approval of “\$200 Additional Fine for Speeding” Signs as Part of the Residential Traffic Administration Program – Newington Road (Mount Vernon District)
2	Approved	Approval of a Resolution Endorsing Projects Being Submitted for State Funding Through the Commonwealth Transportation Board's FY 2026-2031 Smart Scale Program (Braddock, Dranesville, Franconia, Hunter Mill, and Providence Districts)

ACTION ITEMS

1	Approved	Approval of a Lake Accotink Sediment Monitoring Initiative – Fairfax County Partnership with the United States Geological Survey for Quantifying Sediment Mass Balance in Lake Accotink and Identifying Sources and Sinks of Sediment in Accotink Creek
2	Approved	Approval of a Resolution Authorizing Execution of a Project Agreement Between the Virginia Department of Rail and Public Transportation (DRPT) and Fairfax County for Fairfax Connector Route 798 Service Between Tysons West Park Transit Center and Bethesda Metrorail Station (Dranesville, Hunter Mill and Providence Districts)
3	Approved	Approval of FY 2025 Fare Changes for Fairfax Connector and Associated Fare Equity Analysis
4	Approved	Approval of Changes to the Fairfax County Purchasing Resolution

CLOSED SESSION

Held	Closed Session
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**FAIRFAX COUNTY
BOARD OF SUPERVISORS
July 16, 2024**

**PUBLIC
HEARINGS**

3:30	Approved	Public Hearing on SE 2024-HM-00004 (ST Wiehle LLC) (Hunter Mill District)
3:30	Approved	Public Hearing to Consider Proposed Amendments to the Uniformed Retirement Systems Ordinances
4:00	Approved	Public Hearing on Proposed Plan Amendment 2023-CW-1CP, For-Sale Workforce Dwelling Unit Policy and Program
4:00	Decision Deferred to 07/30/2024	Public Hearing on a Proposed Zoning Ordinance Amendment Re: Data Centers



Fairfax County, Virginia

BOARD OF SUPERVISORS

AGENDA

Tuesday
July 16, 2024

9:30 a.m.

PRESENTATIONS

- RESOLUTION — To recognize William “Bill” Curran for his decades of service to Fairfax County Public Schools and the athletic community. Requested by Supervisor Herrity.
- RESOLUTION — To recognize the 60th anniversary of the Northern Virginia Transportation Commission. Requested by Chairman McKay and Supervisors Alcorn, Bierman, Palchik, Storck and Walkinshaw.
- PROCLAMATION — To designate July 2024 as Park and Recreation Month. Requested by Chairman McKay.
- RESOLUTION — To recognize the 85th anniversary of Fairfax County Public Libraries. Requested by Chairman McKay.

STAFF:

Tony Castrilli, Director, Office of Public Affairs
Jeremy Lasich, Office of Public Affairs

Board Agenda Item
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10:00 a.m.

Matters Presented by Board Members

Board Agenda Item
July 16, 2024

10:00 a.m.

Items Presented by the County Executive

Board Agenda Item
July 16, 2024

ADMINISTRATIVE - 1

Approval of “\$200 Additional Fine for Speeding” Signs as Part of the Residential Traffic Administration Program – Newington Road (Mount Vernon District)

ISSUE:

Board endorsement of “\$200 Additional Fine for Speeding” signs as part of the Residential Traffic Administration Program (RTAP).

RECOMMENDATION:

The County Executive recommends approval of the resolution (Attachment I) for the installation of “\$200 Additional Fine for Speeding” signs on the following road:

- Newington Road from Telegraph Road to Cinder Bed Road (Mount Vernon District)

In addition, the County Executive recommends that the Fairfax County Department of Transportation (FCDOT) request VDOT to schedule the installation of the approved “\$200 Additional Fine for Speeding” signs (Attachment II) as soon as possible.

TIMING:

Board action is requested on July 16, 2024, to help facilitate a prompt installation of the proposed signage.

BACKGROUND:

Section 46.2-878.2 of the Code of Virginia permits a maximum fine of \$200, in addition to other penalties provided by law, to be levied on persons exceeding the speed limit on appropriately designated residential roadways. These residential roadways must have a posted speed limit of 35 mph or less and must be shown to have an existing speeding problem. To determine that a speeding problem exists, staff performs an engineering review to ascertain that certain speed and volume criteria are met.

Newington Road (Mount Vernon District) meets the RTAP requirements for posting the “\$200 Additional Fine for Speeding” signs. On May 22, 2024, FCDOT received verification from the Mount Vernon District Supervisor’s office confirming community support.

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EQUITY IMPACT:

None.

FISCAL IMPACT:

For the "\$200 Additional Fine for Speeding" signs, \$500 is to be paid out of the VDOT secondary road construction budget.

ENCLOSED DOCUMENTS:

Attachment I: "\$200 Additional Fine for Speeding" Signs Resolution – Newington Road
Attachment II: Area Map of Proposed "\$200 Additional Fine for Speeding" Signs – Newington Road

STAFF:

Gregg Steverson, Acting Director, Fairfax County Department of Transportation (FCDOT)

Eric Teitelman, Chief, Active Transportation, Capital Projects and Traffic Engineering Division, FCDOT

Neil Freschman, Chief, Traffic Engineering Section, FCDOT

Steven K. Knudsen, Transportation Planner, Traffic Engineering Section, FCDOT

Nicole Machacuay, Transportation Planner, Traffic Engineering Section, FCDOT

RESOLUTION

FAIRFAX COUNTY DEPARTMENT OF TRANSPORTATION
RESIDENTIAL TRAFFIC ADMINISTRATION PROGRAM (RTAP)
\$200 ADDITIONAL FINE FOR SPEEDING SIGNS
NEWINGTON ROAD
MOUNT VERNON DISTRICT

At a regular meeting of the Board of Supervisors of Fairfax County, Virginia, held in the Board Auditorium of the Government Center in Fairfax, Virginia, on Tuesday, July 16, 2024, at which a quorum was present and voting, the following resolution was adopted:

WHEREAS, Section 46.2-878.2 of the *Code of Virginia* enables the Board of Supervisors to request by resolution signs alerting motorists of enhanced penalties for speeding on residential roads; and

WHEREAS, the Fairfax County Department of Transportation has verified that a bona-fide speeding problem exists on Newington Road from Telegraph Road to Cinder Bed Road. Such road also being identified as a Major Collector Road; and

WHEREAS, community support has been verified for the installation of "\$200 Additional Fine for Speeding" signs on Newington Road.

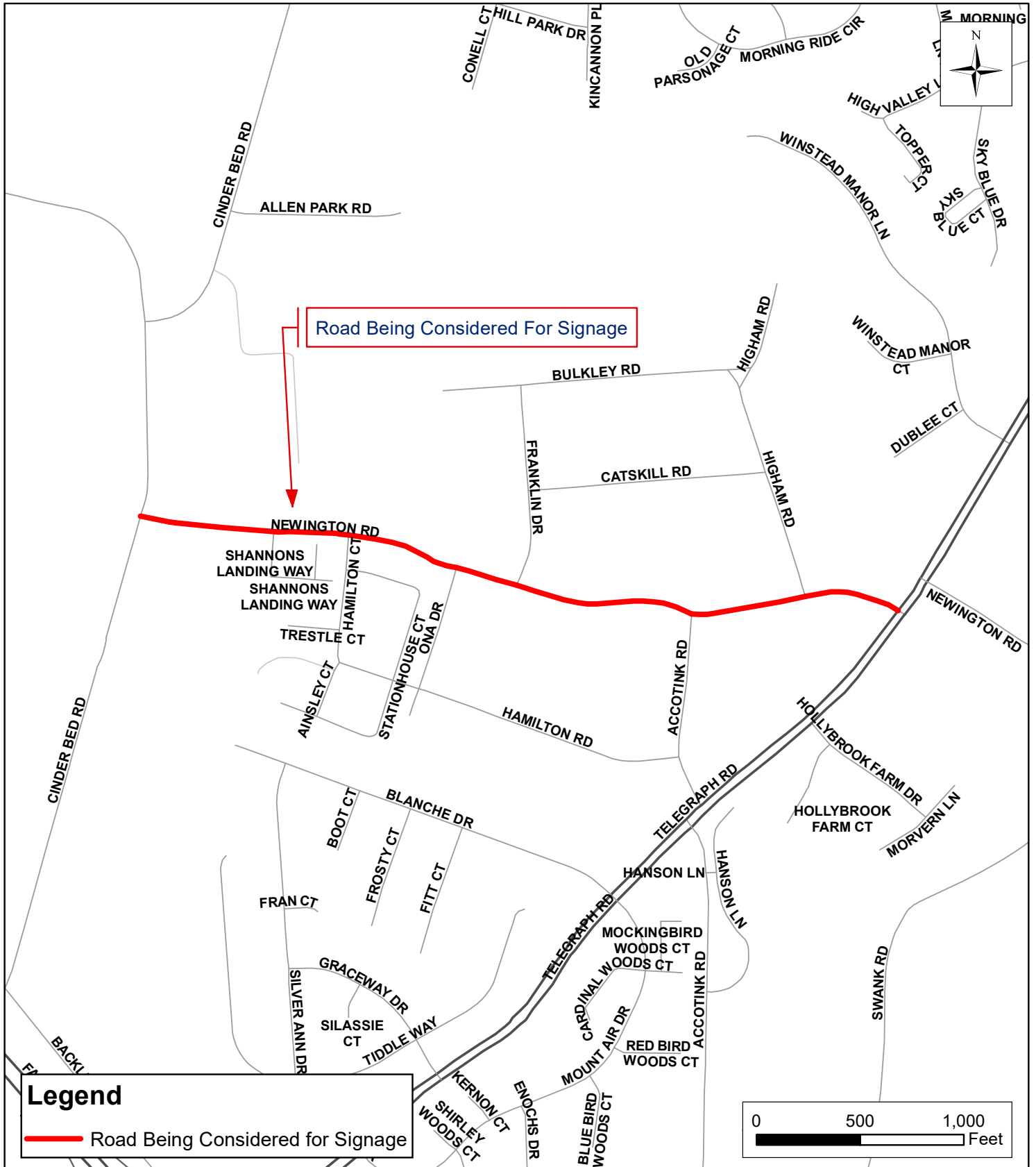
NOW, THEREFORE BE IT RESOLVED that "\$200 Additional Fine for Speeding" signs are endorsed for Newington Road from Telegraph Road to Cinder Bed Road.

AND FURTHER, the Virginia Department of Transportation is requested to allow the installation of the "\$200 Additional Fine for Speeding" signage, and to maintain same, with the cost of each sign to be funded from the Virginia Department of Transportation's secondary road construction budget.

ADOPTED this 16th day of July, 2024.

A Copy Teste:

Jill G. Cooper
Clerk for the Board of Supervisors



Tax Map: 99-2 & 99-4

May 2024

**Fairfax County Department of Transportation
Residential Traffic Administration Program
Proposed \$200 Additional Fine for Speeding
Newington Road
Mount Vernon District**



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ADMINISTRATIVE - 2

Approval of a Resolution Endorsing Projects Being Submitted for State Funding Through the Commonwealth Transportation Board's FY 2026-2031 Smart Scale Program (Braddock, Dranesville, Franconia, Hunter Mill, and Providence Districts)

ISSUE:

Board of Supervisors' approval of a resolution (Attachment 1) endorsing Fairfax County projects for consideration in the Commonwealth Transportation Board's (CTB) FY 2026–2031 Smart Scale Program.

RECOMMENDATION:

The County Executive recommends that the Board of Supervisors approve Attachment 1 endorsing Fairfax County projects for submission to the CTB's FY 2026-2031 Smart Scale Program.

TIMING:

Board approval is requested on July 16, 2024, to meet the Smart Scale submission deadline of August 1, 2024.

BACKGROUND:

During the 2014 Legislative Session, the General Assembly passed HB 2, which directed the development of a prioritization process (now called Smart Scale) for projects funded by the CTB. The Smart Scale process was used for the first time in the development of the FY2016-FY2021 Six-Year Improvement Program (SYIP).

The Smart Scale process mainly considers congestion mitigation, accessibility, safety, environmental quality, and economic development to rank candidate projects. Land use is also considered, albeit to a lesser extent. The CTB can weigh the scores for each of these factors, with the exception of land use, differently in each of the Commonwealth's transportation districts. In Northern Virginia, as well as Hampton Roads, Smart Scale requires the congestion mitigation score to be weighted highest. Scores related to accessibility, safety, environmental quality, and economic development provide the remaining weighting factors, in that order. The land use score is converted to a multiplier that is applied to the total score of the other five factors. The Weighting Framework for Northern Virginia (as well as Hampton Roads) is:

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- Congestion Mitigation: 45%
- Accessibility: 25%
- Safety: 15%
- Environmental Quality: 10%
- Economic Development: 5%
- Land Use: Multiplier to the sum of the other factors

This process is used for both the Statewide High-Priority Projects Program (HPP) and District Grant Program (DGP). The HPP focuses on projects that address a transportation need identified for a corridor of statewide significance or a regional network in VTrans (Virginia's Transportation Plan). In this program, projects compete for funding statewide. The DGP focuses on projects that address a need for a corridor of statewide significance, regional network, improvements to promote urban development areas, or safety improvements identified in VTrans. DGP projects compete for funding within each highway construction district.

Staff reviewed projects included in the Board's Transportation Priorities Plan (TPP) adopted in December 2019, or previous transportation priority documents, and used several factors to prioritize projects for Smart Scale submission. These factors included:

- Projects previously submitted through Smart Scale
- Ability to address Smart Scale criteria
- Project readiness
- Projects that leverage other funds (e.g. Northern Virginia Transportation Authority (NVTA) regional funding, local, or private funds)
- Transportation Priorities Plan (TPP) implementation timelines
- Geographic balance in funding allocations

Staff then worked with the Virginia Department of Transportation (VDOT) to submit pre-applications for County projects to ensure strong final submissions.

Table 1 below contains the projects (described in Attachment 2) recommended by staff for Smart Scale submission for FY2026-2031, along with the recommended "not to exceed" amounts for the funding request.

Table 1. Recommended Projects for FY 2026-2031 Smart Scale Submission

Rank	Project	Smart Scale Request (Not to Exceed) (in millions)
1.	Frontier Drive Extension	\$197.0
2.	Route 7 Widening (I-495 to I-66) for Bus Rapid Transit	\$296.8
3.	Braddock Road Phase II	\$161.6
4.	Town Center Parkway Underpass	\$363.3

As described in the calculations shown in Attachment 2, the Smart Scale funding requests shown above represent a higher number than simply the difference between the current cost estimate and the existing secured funding. To develop the proposed funding requests shown in Table 1, staff specifically took the current cost estimate and added 15 percent to that cost before subtracting the existing funds that have already been secured for the project. Staff is recommending this approach because FCDOT is expecting VDOT to provide updated (higher) cost estimates on these projects prior to the application submission date. Staff expects further increases (potentially significant) in project cost estimates to be proposed by the Office of Intermodal Planning and Investment after applications are submitted (this has occurred in previous Smart Scale rounds). Including this increase in the “not to exceed” amounts will provide staff some flexibility when finalizing applications, should it be needed.

EQUITY IMPACT:

It is difficult to evaluate the singular equity impact of submitting funding requests for these four specific projects, as submitting funding requests to the Smart Scale program is a recurring process that helps the county facilitate the implementation of the Board’s existing approved Transportation Priorities Plan (TPP) over time. During the creation of the TPP, staff considered various criteria, including, but not limited to, congestion reduction, countywide balance, economically disadvantaged populations, economic development, safety, and school and park access. The TPP went through a robust community outreach/engagement and input process. When funding the TPP, the attempt is made to match projects to the various available funding sources/programs based on the parameters of those sources/programs, with the result being funding and implementing projects that are geographically and modally balanced across Fairfax County over time. The projects proposed to be submitted to Smart Scale as a part of this Board action, as well as those previously submitted and those that will be submitted in the future, provide a balance to meet the county’s commitment to promote fairness/justice resulting in all residents having an opportunity to fully participate in the region’s economic vitality. Based on this information, staff believes that the overall implementation of the Transportation Priorities Plan has the potential to advance equity.

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FISCAL IMPACT:

Requests for state funding for the FY2026-FY2031 Smart Scale program are shown, by project, in Table 1 above. No cash match is required for these requests. If awarded funding, staff will return to the Board to secure approvals for project funding agreements as needed. There is no impact to the General Fund.

ENCLOSED DOCUMENTS:

Attachment 1 – Resolution of Endorsement of Projects to be Submitted for Funding from the FY 2026- FY2031 Smart Scale Program

Attachment 2 – List of Recommended Projects for FY 2026-2031 Smart Scale Submission (with descriptions)

STAFF:

Gregg Steverson, Acting Director, Fairfax County Department of Transportation (FCDOT)

Noelle Dominguez Chief, Coordination and Funding Division, FCDOT

Eric Teitelman, Chief, Active Transportation, Capital Projects and Traffic Engineering Division, FCDOT

Todd Minnix, Chief, Transportation Design Division, FCDOT

Jeff Hermann, Chief, Site Analysis and Transportation Planning Division, FCDOT

Michael Guarino, Chief, Capital Projects Section, FCDOT

Brent Riddle, Chief, Coordination Section, FCDOT

Ray Johnson, Chief, Funding Section, FCDOT

RESOLUTION

PROJECT ENDORSEMENT RESOLUTION

At a regular meeting of the Board of Supervisors of Fairfax County, Virginia, held in the Board Auditorium of the Government Center at 12000 Government Center Parkway, Fairfax, Virginia, on Tuesday, July 16, 2024, at which meeting a quorum was present and voting, the following resolution was adopted:

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of Fairfax County, Virginia, hereby approves the submission of requests for funding from the Commonwealth Transportation Board's FY 2026-2031 Smart Scale Program for the projects shown below, with the following "not to exceed" amounts:

- Frontier Drive Extension (Franconia-Springfield Metrorail Station to Loisdale Road) - \$197,000,000
- Route 7 Widening (I-495 to I-66) for Bus Rapid Transit - \$296,800,000
- Braddock Road Phase II - \$161,600,000
- Town Center Parkway Underpass - \$363,300,000

ADOPTED this 16th day of July 2024

A Copy Teste:

Jill G. Cooper
Clerk for the Board of Supervisors

List of Recommended Projects for FY 2026-2031 Smart Scale Submission

PROJECT	PROJECT DESCRIPTION	CURRENT COST ESTIMATE (in millions)	CURRENT COST ESTIMATE + 15% (in millions)	SECURED FUNDING TO DATE (in millions)	SMART SCALE REQUEST (UP TO) (in millions)
Frontier Drive Extension (Franconia-Springfield Metrorail Station to Loisdale Road)	The Frontier Drive Extension will extend Frontier Drive from its terminus south of the Franconia-Springfield Parkway to Loisdale Road, including improved access to the Franconia-Springfield Metrorail Station and braided ramps to and from the Franconia-Springfield Parkway. The project will also provide on-street parking along Frontier Drive as well as pedestrian and bicycle accommodations.	\$241.6	\$277.8	\$80.8	\$197.0
Route 7 Widening (I-495 to I-66) for Bus Rapid Transit (BRT)	The project will widen approximately 1 mile of Route 7 between I-495 and I-66 by one lane in each direction specifically for the provision of BRT. The project includes installation of shared used paths. Intersection improvements will be required at 5 signals within the project limits to facilitate the widening.	\$267.2	\$307.3	\$10.5	\$296.8
Braddock Road Phase II	The Braddock Road Intersection Improvements project has the following goals: addressing anticipated traffic congestion due to increased vehicular demand and improving pedestrian access/safety along the corridor. Phase II of this project, between Humphries Drive and Southampton Drive, includes intersection improvements, signalization improvements, access management improvements, pedestrian and bicycle facilities along the limits of the project, turn lane improvements, and removal of the signal at Braddock Road/Kings Park Drive. The construction of a shared used path will require additional right-of-way and utilities to be moved. Bus stops will be consolidated and relocated to be closer to signalized intersections.	\$140.5	\$161.6	\$0	\$161.6
Town Center Parkway Underpass	The project will extend the existing Town Center Parkway by constructing a new roadway (approximately 0.4-mile-long) between Sunrise Valley Drive and Sunset Hills Road under the Dulles Toll Road and Metrorail Silver Line Tracks.	\$315.9	\$363.3	\$0	\$363.3

ACTION – 1

Approval of a Lake Accotink Sediment Monitoring Initiative – Fairfax County Partnership with the United States Geological Survey for Quantifying Sediment Mass Balance in Lake Accotink and Identifying Sources and Sinks of Sediment in Accotink Creek

ISSUE:

Board of Supervisors (Board) authorization is requested for Fairfax County (County) to enter into the Joint Funding Agreement (JFA) with the United States Geological Survey (USGS) to generate data that will inform future management strategies for Lake Accotink. The sediment monitoring study will focus on two elements: a lake sedimentation study and a stream study.

Objectives of the sediment studies are as follows:

The Lake Study:

1. Generate the requisite data to compute annual loads of suspended sediment transported below Lake Accotink
2. Generate the requisite data to compute bedload above Lake Accotink
3. Compute annual total sediment load above Lake Accotink and suspended sediment load below Lake Accotink using methods which permit rapid computation of loads, and
4. Develop a sediment mass-balance for Lake Accotink

The Stream Study:

5. Identify and quantify sources and sinks of sediment in Accotink Creek
6. Monitor changes in channel form at multiple locations in Accotink Creek
7. Develop a sediment budget for Accotink Creek
8. Generate the requisite data to compute annual loads of nutrients (nitrogen and phosphorus) and major ions (specifically chloride) transported below Lake Accotink, and
9. Compute annual loads of nutrients and major ions below Lake Accotink

These two studies will build upon existing monitoring networks and take advantage of locations and data already being collected by the Fairfax-USGS partnership.

The Board's January 23rd joint matter on Preserving Lake Accotink noted, "[w]e do not know with certainty how much sediment is entering Lake Accotink, how much sediment is settling in Lake Accotink, and how much sediment is flowing downstream from Lake Accotink. That information is necessary to inform future dredging and maintenance dredging intervals, our understanding of the Lake's evolution over time, and sediment impacts on downstream areas." These two studies are designed in tandem (and

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concurrent with consultant-supported hydrologic and hydraulic modeling efforts) to specifically reduce this uncertainty and to better characterize sediment transport dynamics in the upper Accotink Creek watershed—with specific emphasis on the Lake—providing sound scientific basis for informing future implementation scenarios.

RECOMMENDATION:

The County Executive recommends the Board authorize a four-year JFA between the County and the USGS in the amount of \$1,140,200 for FY 2025 through FY 2028. This agreement combines the tasks for the Lake Sedimentation Study and the Stream Study within the USGS proposal (Attachment 1).

TIMING:

Board action is requested on July 16, 2024.

BACKGROUND:

Rapid urbanization in the Accotink Creek watershed since the 1950s has caused considerable sediment erosion and transport within Accotink Creek. Sixty-five percent of the Accotink Creek watershed drains to Lake Accotink, a 55-acre lake that holds substantial environmental, socioeconomic, and recreational value to the local community. The substantial sediment load delivered from Accotink Creek has caused an increase in sediment deposition in Lake Accotink over numerous decades. These developments have led to a discussion of options to maintain the lake in a variety of forms.

In 2023, Fairfax County Department of Public Works and Environmental Services (DPWES) staff recommended that Lake Accotink not be dredged due to significant community and environmental impacts and excessive cost. Following this recommendation, a task force was established to ensure that all possible options have been considered to preserve Lake Accotink in the most sustainable, equitable, and cost-effective manner possible. After receiving the task force's findings, on January 23, 2024, the Board directed DPWES to conduct a sedimentation rate study along with a feasibility study for preserving a smaller lake (20 to 40 acres).

Due to previous experience assessing the health of Fairfax County watersheds, our colleagues at USGS are the preferred option to study the sedimentation of Lake Accotink. Since 2007, the County has worked with USGS on a long-term water quality and quantity monitoring effort to evaluate and report on the benefits of the projects implemented under the watershed improvement program. In September 2021, this partnership was expanded to include assessing reach and watershed-scale responses to the planned, large-scale restoration of the Long Branch tributary sub-watershed of Accotink Creek. This tributary was identified by the Commonwealth as impaired for

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excessive sediments and chloride and the County must meet pollution reduction targets. Among the goals for the Long Branch restoration is the long-term sustainability of Lake Accotink.

The additional monitoring being proposed would build on the nearly 20-year partnership between Fairfax County and USGS and will reduce data uncertainty and inform the feasibility study. Data collected from existing and a new stream monitoring station downstream of Lake Accotink at Old Keene Mill Road will enable development of a sediment mass balance for the system. This analysis will account for material entering and leaving the lake.

Additional monitoring elements will be employed to investigate sources and sinks of sediment in Accotink Creek, which will be used to develop a sediment budget for the watershed (above Old Keene Mill Road). Collectively, this new information will greatly enhance our understanding of sediment dynamics in the lake and upper watershed and will better inform management and planning options for this public resource. All data collected and publications produced under this study will be publicly available.

USGS has performed its obligations under previous JFAs with the County in a professional and proficient manner, including annual updates to the County staff and published reports assessing the data collected during the years of monitoring. Publication by USGS has multiple benefits, including outreach to stakeholders and the general public, and using observed pollutant loadings for comparison to model pollutant loads and potential Total Maximum Daily Load (TMDL) allocations, such as the Accotink Creek and the Chesapeake Bay TMDLs.

This JFA allows the County and USGS to agree to modify the scope of work; but only if the modifications result in no funding increase.

Funding for this project (other than a USGS contribution for equipment) will be provided by the County. Funds (not to exceed a total of \$1,140,200) will be allocated annually over the four-year JFA term as indicated in the table below.

Annual Budget for Proposed Work					
Item/Task	FY 2025	FY 2026	FY 2027	FY 2028	Total
Lake Sedimentation Study	\$254,000	\$211,000	\$218,000	-	\$683,000
Stream Study	\$164,000	\$111,200	\$116,000	-	\$391,200
Final Analysis and Reporting	-	-	-	\$66,000	\$66,000
Fairfax County Total	\$418,000	\$322,200	\$334,000	\$66,000	\$1,140,200

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In total, USGS will contribute \$50,000 to this effort and will be responsible for project management, scientific analysis, interpretation, and reporting - including all equipment, operation and maintenance of the monitoring network, and the management of all data collected or generated from this study. An annual inflationary increase of 3.5 percent has been applied to the County contribution to offset actual increases in the costs of materials, instrumentation, salary, and travel.

EQUITY IMPACT:

None.

FISCAL IMPACT:

Funding is available to award this Joint Funding Agreement in Project SD-000041, Lake Accotink Dredging, Fund 40100, Stormwater Services. Funds will be allocated annually over the four-year JFA term as noted above and in Attachment 1.

ENCLOSED DOCUMENTS:

Attachment 1: USGS Proposal – *Quantifying Sediment Mass Balance in Lake Accotink and Identifying Sources and Sinks of Sediment in Accotink Creek*

Attachment 2: FY 2025 – FY 2028 USGS Joint Funding Agreement

STAFF:

Christopher Herrington, Director, Department of Public Works and Environmental Services (DPWES)

Eleanor Ku Coddling, Deputy Director, Stormwater and Wastewater Divisions, DPWES

Joni Calmbacher, Division Director, Stormwater Planning Division, DPWES

ASSIGNED COUNSEL:

Marc Gori, Assistant County Attorney



Quantifying Sediment Mass Balance in Lake Accotink and Identifying Sources and Sinks of Sediment in Accotink Creek

U.S. Geological Survey
Virginia and West Virginia Water Science Center

Introduction

Accotink Creek is a 51-mi² watershed with 25 miles of main channel that suffers from the “urban stream syndrome” (Meyer and others, 2005). Symptoms of the urban stream syndrome include a flashy hydrograph, elevated concentrations of nutrients, sediment, and other contaminants, and altered channel morphology (Walsh and others, 2005). These symptoms act in a cyclical loop further degrading the stream channel. As a result of rapid urbanization in the watershed since the 1950s, sediment erosion and transport in Accotink Creek is considerable. Sixty five percent of the Accotink Creek watershed is above Lake Accotink, a 55-acre lake that holds substantial environmental, socioeconomic, and recreational value to the local community. The substantial sediment load delivered from Accotink Creek has led to an increase in sediment deposition in Lake Accotink in recent decades.

In 2019, the Fairfax County Board of Supervisors (BOS) approved a plan to dredge most of the lake’s 55-acres, followed by regular maintenance dredging to maintain its volume into the future. In 1985, 211,000 cubic yards were dredged, and in 2008 another 193,000 cubic yards were removed. Due to rising cost of dredging, alternative options have been explored, and in 2023 the Fairfax County Department of Public Works and Environmental Services (DPWES) recommended halting dredging, instead allowing the lake to infill, and transition to a wetland complex. A task force was established to review existing sediment-loading data and previous dredging studies to determine the most sustainable, equitable, and cost-effective manner for managing the future of Lake Accotink. After receiving the task force’s findings, the BOS voted to direct the county to conduct a feasibility study for maintaining the lake at about half its current area. A key finding from the task force was that additional data is needed to quantify the rate of infill in the lake, the lake’s sediment trapping efficiency, and how often maintenance dredging would be required under the proposed scenarios for the lake’s future design (e.g., 55-acre lake, 20-acre lake, wetland complex).

In 2007, Fairfax County initiated a cooperative water-resources monitoring program with the US Geological Survey (USGS). The goals of this effort are to establish baseline characterizations of water-quality and streamflow conditions in county streams, to determine sediment and nutrient trends and loadings in those streams, and to evaluate relations between the observed water-resources conditions and Best Management Practice (BMP) implementation activities in the monitored watersheds. In 2021, an intensive monitoring effort in the Long Branch watershed was initiated to evaluate the Long Branch Central Watershed Management Area Project. As part of a separate monitoring effort, the USGS has operated a streamgage since 1947 and water-quality monitoring station since 2011 on Accotink Creek approximately 1 mile upstream of Lake Accotink. This station serves as one of the 123 Chesapeake Bay Non-tidal Network stations, which collectively are used to calibrate the Chesapeake Bay Watershed

Model; the model used to track progress towards the Chesapeake Bay TMDL goals. Data collected at the monitoring stations on Accotink Creek and Long Branch support the computation of annual loads of sediment and nutrients. The summation of loads from these two stations represents the majority of the watershed of Lake Accotink. Additional monitoring is proposed herein which would build on the nearly 20-year partnership between Fairfax County and USGS and provide data to inform the knowledge gap identified by the task force and the BOS. A new monitoring station to be located downstream of Lake Accotink, coupled with the existing upstream stations, will allow for the development of a sediment mass balance for the lake. Additional monitoring elements will be employed to investigate sources and sinks of sediment in Accotink Creek. Accotink Creek extends from headwaters to its outlet at Accotink Bay; however, only the upper portion of the watershed above Old Keene Mill Road will be monitored for this study. For simplicity, this upper portion will be referred to as “Accotink Creek” and the “Accotink Creek watershed” herein.

Objectives

This proposal outlines an approach for two separate, but related studies. The primary study is designed to inform the Lake Accotink Sedimentation study and the questions posed by the public and the task force by computing a mass-balance of sediment for Lake Accotink. For clarity, this will hereafter be referred to as the “Lake Sedimentation Study” and will be accomplished by leveraging two existing monitoring stations above the lake and a proposed additional third station below the lake. The second study called the “Stream Study”, is designed to enhance understanding of Lake Accotink and the potential effects of future implementation scenarios for the lake. Management actions taken above the lake likely will alter the availability of sources of sediment in the watershed, the timing of transport, and the load of sediment delivered to the lake. This study also will inform the county’s TMDL action plans to meet the local suspended sediment and chloride TMDLs, and the Chesapeake Bay TMDL for nutrients and sediment. Additionally, this study will enhance and support the major objectives of the existing countywide 21 station, 16+ year-old USGS-Fairfax County monitoring network and the stream restoration monitoring effort in Long Branch. Information gathered from this effort also will aid in ground-truthing LiDAR analyses and hydrologic modeling efforts in the Accotink Creek watersheds. This effort can be conducted at a significantly reduced cost by leveraging the work proposed for the Lake Sedimentation Study. For the Stream Study, geomorphic measurements will be collected over space and time to investigate sources and sinks of sediment in Accotink Creek, and annual loads of nutrients and major ions will be computed above and below the lake. Specifically, the objectives of these studies are:

For the Lake Sedimentation Study:

1. Generate the requisite data to compute annual loads of suspended sediment transported below Lake Accotink, and
2. Generate the requisite data to compute bedload above Lake Accotink,
3. Compute annual total sediment load above Lake Accotink and suspended sediment load below Lake Accotink using methods which permit rapid computation of loads; and
4. Develop a sediment mass-balance for Lake Accotink.

For the Stream Study:

5. Identify and quantify sources and sinks of sediment in Accotink Creek, and
6. Monitor changes in channel form at multiple locations in Accotink Creek, and
7. Develop a sediment budget for Accotink Creek, and
8. Generate the requisite data to compute annual loads of nutrients (nitrogen and phosphorus) and major ions (specifically chloride) transported below Lake Accotink, and
9. Compute annual loads of nutrients and major ions below Lake Accotink.

Approach

The approach for monitoring at the proposed new location on Accotink Creek at Old Keene Mill Road, situated below Lake Accotink, will mirror the existing USGS streamgage on Accotink Creek (USGS Station number: 01654000), located near Braddock Road and Wakefield Chapel Road, approximately 1 stream mile above Lake Accotink (Fig 1). Following each project element name are the studies for which it is required (i.e., Lake Sedimentation Study or Stream Study). The monitoring elements include:

1. Continuous-record streamgage – Lake Sedimentation Study and Stream Study

A new USGS streamgage will be installed and operated at Old Keene Mill Road for the collection of stage (water level above a surveyed datum) and streamflow at 5-minute intervals. Streamflow is foundational to the assessment of sediment and nutrient transport as hydrologic variability is a primary driver of loading; thus, accurate streamflow monitoring is required. Streamflow will be measured according to published USGS methods for the operation of streamgages (Sauer and others, 2010; Turnipseed and others, 2010). Both stage and streamflow data are served on the internet approximately 1 hour after the data are collected (<https://waterdata.usgs.gov/va/nwis/rt>). Precipitation data, valuable for informing analyses of watershed hydrology, are currently available near the current and proposed monitoring stations on Accotink Creek. These data are collected at a Fairfax County funded monitoring station at Little Run Elementary School, located in the Long Branch watershed, a tributary of Accotink Creek. This effort will leverage those existing data.

2. Continuous-record water-quality monitor – Lake Sedimentation Study and Stream Study

A water-quality monitoring sonde will be installed and operated near the new streamgaging location to measure turbidity (water clarity), pH, specific conductance, dissolved oxygen, and water temperature at 15-minute intervals and will be operated in accordance with published USGS methods (Wagner and others, 2006). These water-quality parameters are served on the internet approximately 1 hour after the data are collected. Continuous data are critical to understanding water-quality conditions in these highly dynamic urban streams, and when coupled with surrogate modeling approaches allow the computation of a continuous record of nutrient and sediment concentrations. In small flashy streams, the surrogate regression modeling approach provides a more accurate estimate of concentration during stormflow events than can be achieved by traditional approaches relying solely on discrete sample collection and a high-frequency record of streamflow. Use of these high-frequency records of concentration and streamflow in load computations results in load estimates with greatly reduced uncertainty (Jastram and others, 2010). For a comprehensive description of surrogate regression modeling methods used to

compute sediment and nutrient loads in Fairfax County streams please see Porter and others (2020) and Jastram (2014).

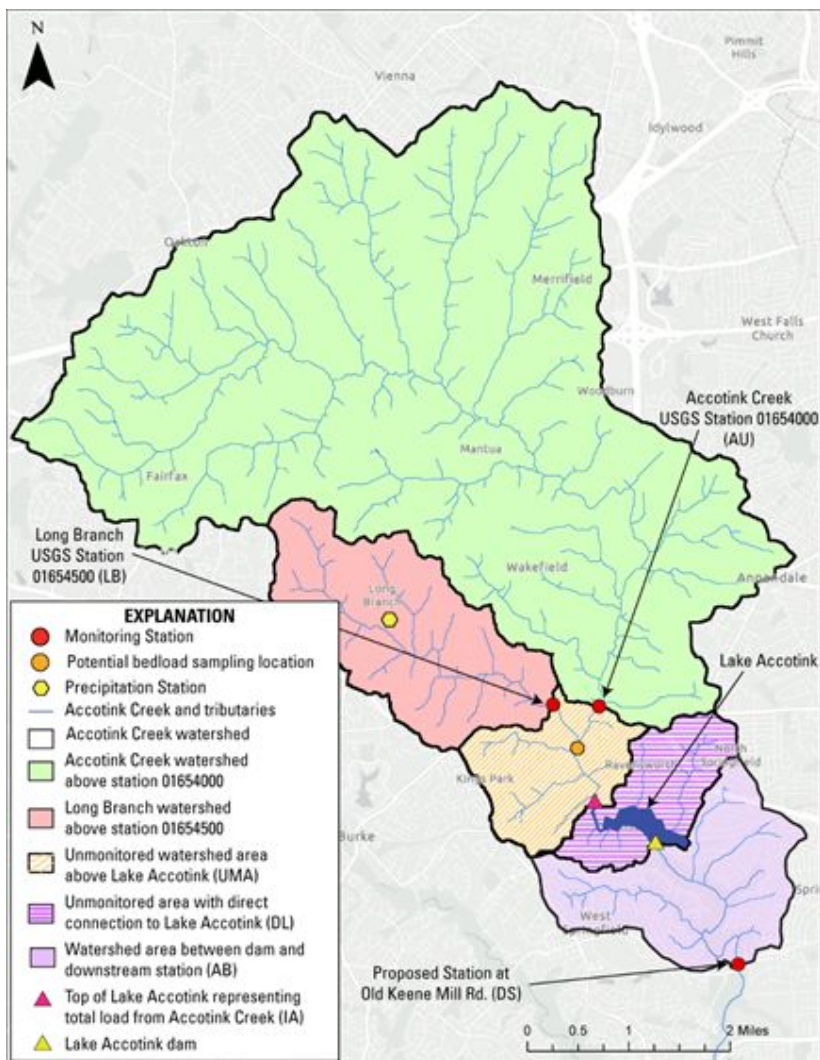


Figure 1. Map of Accotink Creek and current and proposed monitoring stations. Acronyms in explanation are referenced in sediment mass balance equations.

3. Suspended sediment sampling – Lake Sedimentation Study and Stream Study

Samples to be analyzed for suspended sediment (Table 1) will be collected on a scheduled monthly basis (12 per year) and during stormflow events (8 per year), consistent with the sampling approach used by the Chesapeake Bay River Input Monitoring Program. Additional suspended-sediment samples (up to 4 per year) may be collected during periods of stormflow within the first two years to support rapid development of the surrogate model at Old Keene Mill Road station. Samples will be collected in accordance with the USGS National Field Manual for Collection of Water-Quality Data (U.S. Geological Survey, variously dated). Samples will be collected using width- and depth-integrating techniques to ensure that samples collected are representative of the entire cross section of flow at the sampling

location. Samples will be processed onsite in the controlled environment of a mobile laboratory vehicle. Collected water samples will be analyzed for suspended sediment by a USGS approved laboratory (Table 1). All analytical results will be stored in the USGS National Water Information System and made available to the public on NWISWeb and the existing USGS-Fairfax County Water Resources Monitoring Program website (<https://www.usgs.gov/centers/virginia-and-west-virginia-water-science-center/science/fairfax-county-water-resources>).

4. Nutrient and major ion sampling – Stream Study

Samples analyzed for nutrients and major ions (Table 1) will be collected alongside suspended sediment samples using identical field methods. Collected water samples will be analyzed by a USGS approved laboratory. Similarly, all analytical results will be stored in the USGS National Water Information System and made available to the public on NWISWeb and the existing USGS-Fairfax County Water Resources Monitoring Program website (<https://www.usgs.gov/centers/virginia-and-west-virginia-water-science-center/science/fairfax-county-water-resources>).

Table 1. Sediment, nutrient, and major ion analytes to be measured.

Nutrients	Sediment	Major Ions
Total nitrogen	Suspended sediment concentration	Calcium, dissolved
Total dissolved nitrogen	Suspended sediment, % <0.0625 mm	Chloride, dissolved
Total particulate nitrogen	Bed sediment, mass	Magnesium, dissolved
Nitrate plus nitrite	Bed sediment, particle size distribution	Sodium, dissolved
Dissolved ammonia nitrogen		Sulfate, dissolved
Total Kjeldahl nitrogen		Potassium, dissolved
Dissolved total Kjeldahl nitrogen		Hardness
Total phosphorus		Alkalinity
Total particulate phosphorus		
Total dissolved phosphorus		
Dissolved orthophosphate		

5. Bedload – Lake Sedimentation Study

The computation of bedload requires the approach described below, which is contingent on the ability to sample from a pedestrian bridge located downstream of the confluence of Accotink Creek and Long Branch (Figure 1). Requests for access permissions are ongoing.

Bedload is the sediment that moves by sliding, rolling, or bouncing along the channel bed. The sum of bedload and suspended sediment represents the total sediment load. While it is likely that suspended sediments account for a larger proportion of the total sediment load in Accotink Creek, bed sediments deposited in the lake are unlikely to be resuspended by subsequent storms and therefore can only be removed through dredging. Currently, bedload in Accotink Creek has not been directly measured and is poorly understood. Current estimates of the total annual sediment load delivered to Lake Accotink were made based on the assumption that bedload accounts for 13% of the total load (Lake Accotink Discovery Report, 2023). This value is based on past studies conducted outside of the region, and therefore may be inaccurate.

To address this knowledge gap, samples for analysis of bed sediment will be collected during stormflow conditions. Two to four samples will be targeted per year; however, opportunities to collect these samples are dependent on precipitation, timing of storms, and other logistical considerations. Samples will be collected in accordance with USGS field methods for the measurement of fluvial sediment (Edwards and Glysson, 1999). Samples will be collected using the single equal-width-increment (SEWI) method to integrate channel width and time to ensure that samples collected are representative of the entire cross section of flow at the sampling location. Samples will be composited and shipped to the USGS Cascades Volcano Observatory Sediment Laboratory (CVO-SedLab) in Vancouver, WA. Samples will be analyzed for total dry weight and a full size-distribution will be conducted. Once an appropriate number of samples have been collected to reasonably characterize the range of observed hydrologic conditions, a transport curve will be developed and used to calculate annual bedload. This direct measurement of bedload will provide the best estimate of the proportion of bedload delivered to Lake Accotink. Bedload measurements are only planned at the location upstream of Lake Accotink because it is assumed bedload is not being transported out of the lake.

6. Sediment and Nutrient Loads – Lake Sedimentation Study and Stream Study

Published models currently are available to compute suspended sediment and nutrient loads at the two stations located above the lake (USGS Station: Accotink Creek near Annandale, VA [Upper Accotink] and Long Branch near Annandale, VA [Long Branch]; Mason and others, 2023; Porter and others 2020). Historical loading data at the Upper Accotink station were computed using the Weighted Regressions on Time, Discharge and Season (WRTDS) approach (Hirsch and others, 2010), and are publicly available at <https://doi.org/10.5066/P96H2BDO>. Alternatively, surrogate regression methods are used to compute load at the Long Branch station. To avoid introducing additional variability in the sediment mass balance, a surrogate regression model will be developed for each constituent at the Upper Accotink station, allowing for a direct comparison to loads calculated at the other 2 stations. At the two existing stations, surrogate derived loads will be published in a USGS data release on an annual basis after the first year of the study. Loads are computed annually at the Long Branch and Upper Accotink stations as part of the Fairfax County Water Resources Monitoring Program and Chesapeake Bay Non-tidal Network, respectively. The ability to leverage these two existing stations provides considerable cost savings to this effort.

Upon completion of the first year of data collection, preliminary surrogate models will be developed at the new monitoring station downstream of Lake Accotink to evaluate relations between continuously measured parameters and suspended sediment and nutrient data. Upon completion of the third full water year (Oct – Sept) of data collection, models will be formalized, annual loads will be computed for each of the first 3 years, and results will be published in a USGS data release. Annual load is highly dependent on flow condition and can vary substantially depending on wet or dry years; therefore, additional years of monitoring beyond the 3-years described in this study may be needed to properly calibrate these models but are not included in this scope of work.

Total sediment load, the sum of suspended-sediment load and bedload, above Lake Accotink and the suspended sediment load below Lake Accotink will be used to develop a mass balance of sediment entering and leaving the lake. Methods to collect bed material and compute bedload are discussed in detail in section 5. Bedload will not be measured downstream of the lake as it is assumed bedload cannot

be mobilized out of the lake. Multiple years of loading data will provide refined estimates of the trapping efficiency of the lake, and its evolution over time. In the context of the Chesapeake Bay TMDL, these data will provide information about the lake's function in reducing the sediment load delivered from the watershed, and the effect that altering the form or size of the lake (e.g., wetland complex, smaller lake) may have. To determine the rate of infill of Lake Accotink, sediment load, mass per unit time, will be converted to a volume. These data can be used by Fairfax County to determine the frequency and cost of future dredging projects. To convert sediment load to volume, measures of bulk density will be collected from various sources of sediment in the watershed (e.g., banks, floodplains, channel bed, uplands) by Fairfax County consultants.

Due to logistical and safety constraints, monitoring stations cannot be located immediately upstream or downstream of the lake; therefore, estimates of unmonitored areas will be made based on measured loading rates at each station. Despite these constraints, data generated at these stations will allow for the best available physically based approach to measuring transport upstream and downstream of Lake Accotink, as well as net retention within the lake. The two upstream stations will account for sediment contributed from 94.4% (27.5 mi²) of the watershed above Lake Accotink. The additional sediment load contributed from the 1.67 mi² located between the two existing monitoring stations and the lake (UMA in Figure 1) will be accounted for by applying the loading rate derived at the upstream stations to that land area. Additional sediment loading occurs from several small tributaries that drain directly to the lake (DL in Figure 1). The load from this area will be estimated like the unmonitored area (UMA) between the top of the lake and the two existing monitoring stations.

The new monitoring station will be located approximately 2 stream miles downstream of Lake Accotink dam. Loads measured at this station will represent the mass transported from the lake plus an additional 3 mi² of watershed below the dam (AB in Figure 1). To determine the load delivered from the lake, the additional sediment contributed from the 3 mi² between the dam and the monitoring station will be subtracted from the total load measured at the downstream station. This will be accomplished by applying the average loading rate calculated at the upstream and downstream monitoring locations to the 3 mi² land area. The equations used to calculate the sediment mass balance in Lake Accotink are described below. The load (IA) delivered to Lake Accotink from Accotink Creek will be calculated as,

$$IA = LB + AU + UMA$$

where LB is the load measured at the Long Branch station (01654500), AU is the load measured at Accotink Creek station (01654000), and UMA is the estimated load delivered from the unmonitored area between LB and AU and the top of the lake. The total load delivered to Lake Accotink (TI) will then be calculated as,

$$TI = IA + DL$$

where DL is the load delivered directly to the lake from the watershed labeled DL in Figure 1. The total load delivered from the lake (TO) will be calculated as,

$$TO = DS - AB$$

where DS is the load calculated at the downstream station at Old Keene Mill Road, and AB is the load estimated to be delivered from the land area between the Lake Accotink dam and the Old Keene Mill Road station (AB in Figure 1). The amount of sediment retained within the lake (L) will be calculated as,

$$L = TI - TO$$

7. Geomorphic Measurements – Stream Study

Measurements of sediment deposition, erosion, and processing are necessary to understand system-wide characteristics of sediment transport in Accotink Creek. Geomorphic measurements will include quantification of streambank erosion, quantification of sediment deposition (or erosion) in floodplains, cross-sectional surveys of channel and floodplain dimensions, and quantification of in-channel sediment accumulation. These study elements will be co-located at 10 stream cross-sections spaced approximately equidistant longitudinally from headwaters to the downstream monitoring station (Fig 2). The location of these cross-sections will be selected in consultation with Fairfax County staff and Fairfax County consultants to maximize their effectiveness for supporting not only USGS study objectives but those of the county and contractors performing related modeling work in Accotink Creek.

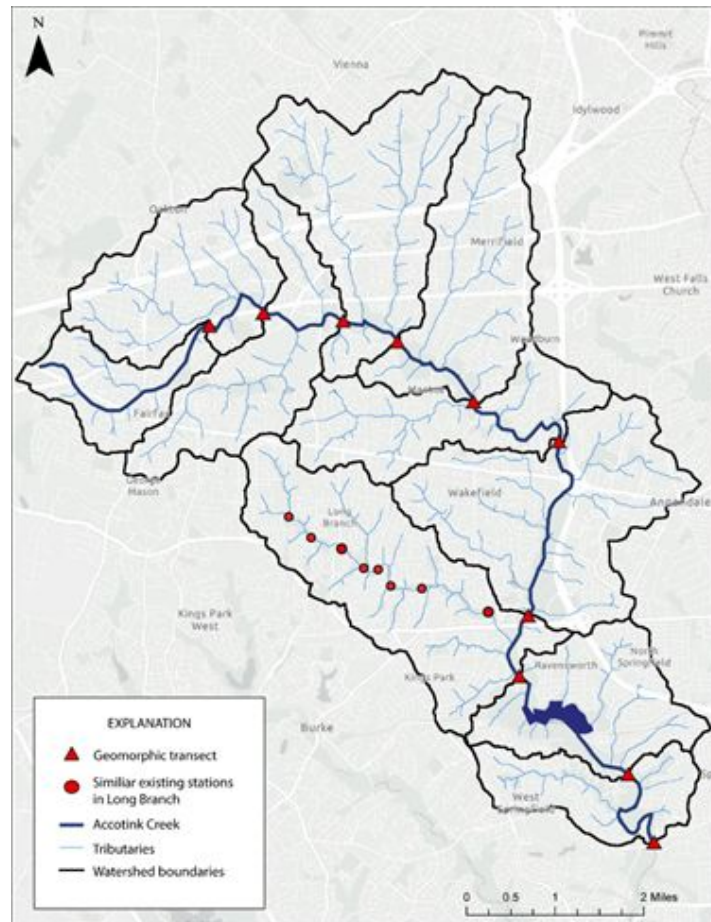


Figure 2. Example locations for geomorphic transects in Accotink Creek. This map is provided for the purpose of describing the approach. Actual transect locations have not yet been selected.

Biannual streambank erosion monitoring will be conducted to quantify the mass and volume of sediment eroded from streambanks. Given the importance of bank erosion on sediment transport – Cashman and others (2018) reported greater than 90% of suspended sediments were derived from bank erosion in the nearby Difficult Run watershed – accurate quantification of bank erosion and depositional processes are key to assessing sediment transport in the Accotink Creek watershed. Streambank erosion will be measured by installing bank pins (rebar) at 10 representative channel cross-sections. Pins will be measured at the time of installation and remeasured biannually to calculate the rate of exposure or burial. Each study cross-section will contain 3 pins, distributed vertically, on the left and right bank, for a total of 6 pins per transect (Fig. 3). This study element will complement the identical approach currently employed in the Long Branch watershed. Measurements of bank erosion will be used in conjunction with estimates of the annual sediment load, floodplain deposition, and in channel storage to compute a sediment budget.

Annual floodplain deposition/erosion monitoring will be conducted to quantify the mass and volume of sediment deposited on or eroded from floodplains. In streams suffering from the urban stream syndrome, channels typically become incised and disconnected from the floodplain. A channel well connected to its adjacent floodplain, a characteristic common among minimally disturbed streams, can serve a key role in limiting the flux of suspended sediments downstream. During periods of overbank flow, this reduction in sediment transport is achieved through a reduction in stream velocity which promotes an increase in sediment retention on the floodplain. While much of the floodplain in Accotink Creek likely has become disconnected from the stream channel over time, quantification of the mass and volume of sediment will provide a baseline assessment of its current function in sediment transport. Monitoring will be conducted by installing transects of rebar pins at various points along the floodplain (Fig 2). Transects will be co-located with streambank erosion pins extending on both sides of the floodplain from the channel edge to the toe slope (i.e., the point of transition from floodplain to upland). Pins will be measured at the time of installation and remeasured each year to determine the rate of change in sediment volume and mass either deposited in or eroded from the floodplain. This study element will complement the identical approach currently employed in the Long Branch watershed. Each pin will protrude approximately 6 in. from the ground surface, be painted a bright color, capped with an orange safety cap, and signage will be installed to enhance safety at each study location.

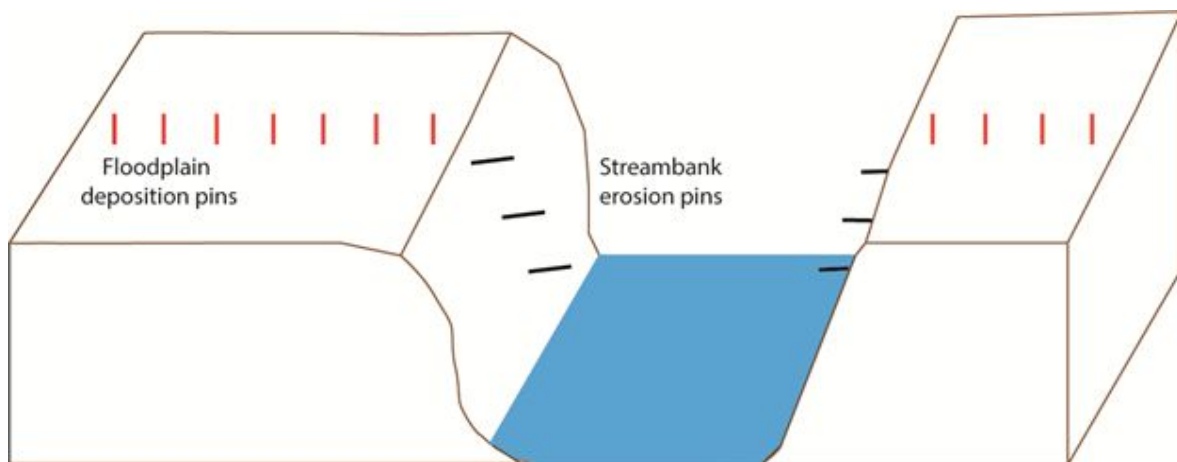


Figure 3. Diagram of bank (black) and floodplain (red) pin installation.

Annual channel cross-sectional surveys will be conducted at the 10 study cross-sections used for streambank erosion and floodplain deposition monitoring. Surveys will be completed with a total station and referenced to datum with GNSS leveling. These measurements will be used to track changes in channel and floodplain dimensions. Surveys will provide data to describe changes in channel bed scour, streambank erosion, and floodplain elevation and width. These data are critical to other project elements such as streambank erosion and floodplain deposition/erosion monitoring. In addition to providing the precise geometric measurements that these elements require, cross-sectional surveys will provide a second approach to quantifying streambank erosion and bed scour and will be used to confirm inputs to the sediment budget. These data also will aid in Fairfax County's efforts to ground-truthing LiDAR analyses and hydrologic modeling efforts in the Accotink Creek watershed and will be shared with Fairfax County collaborators to support those efforts.

Annual in-channel sediment mapping will be conducted to quantify the amount of sediment stored within the Accotink Creek stream channel. Characteristics and abundance of fine-grained depositional areas (point bars) will be made at ten 500m stream reaches, located in approximation to the geomorphic transects. These deposits likely are composed of a complex of sand, silt, and clay and represent sediments that, while currently are in storage, have the potential to be transported to and deposited within Lake Accotink during large storm events. Measurements will be made by walking the length of each study reach to identify each deposit. The location of deposits will be recorded with GPS and the length, width, and average depth of each formation will be measured. These measurements will be used to quantify the number of deposits in each reach, the average volume of deposits, and the total volume of sediment stored in the channel bed in each stream reach. Data will be averaged by each reach and used to interpolate the amount of sediment stored between reaches. Volumetric measurements will be converted to mass with bulk density data from sediment cores provided by collaborating partners LimnoTech, or available literature values for streams in the region). This study element will complement and enhance the identical approach currently employed in the Long Branch watershed. A small subset of deposits will be cored and analyzed for radionuclides (Beryllium-7 [^7Be] and lead-210 [$^{210}\text{Pb}_{\text{xs}}$]) to determine sediment "age." In the context of this analysis, "age" refers to the length of time sediment has been in the stream and therefore can be used to infer residence time and rate of transport downstream. This approach will distinguish "new" sediment recently deposited in stream (<2 years) versus "old" sediment >2 years). Cores will be collected by LimnoTech and provided to USGS for delivery to the laboratory under this scope of work. In-channel sediment storage will be used in conjunction with measures of stream bank erosion, floodplain deposition/erosion, and annual suspended sediment load to develop a sediment budget for Accotink Creek.

Dependencies

Completion of project objectives is contingent on the continued funding and operation of the monitoring stations on Long Branch (USGS Station ID 01654500 – currently funded by Fairfax County) and Accotink Creek (USGS Station ID 01654000 – currently funded by other entities). Significant cost savings will be achieved by leveraging data collected at these two monitoring stations to satisfy the objectives of this study. While the continued operation of both stations is anticipated, if either were to cease, additional funding would be required to support monitoring at those stations to meet the objectives of this study. Computation of nutrient and major ion loads at the station downstream of Lake Accotink, a

component of the Stream Study, is contingent on the operation of the continuous streamgage and water quality monitor at that location (to initially be supported by the Lake Sedimentation Study).

Timeline

The proposed effort is based upon an initial three-year monitoring timeline with a fourth year for data analysis and publication of results (Fig. 4); however, it is anticipated that longer term work may be needed to fully satisfy the needs of Fairfax County. This initial 3-year monitoring plan is intended to rapidly determine and document loading rates in Accotink Creek and sediment infill in Lake Accotink. The Lake Sedimentation Study will culminate in a publication in a peer-reviewed journal. The full 3 years will be required for data collection and all data will not be available for analysis until after the completion of year 3; therefore the 4th year will be required to perform analyses, draft a manuscript, and publish this work. The Stream Study will begin building the foundation for the long-term dataset needed to understand the sources and transport of sediment and nutrients in Accotink Creek and evaluate future management activities in the watershed. While great insight will be gained by conducting the Stream Study for the initial 3-years described by this scope of work, the value of these data will be maximized by continuing this work through a subsequent agreement.

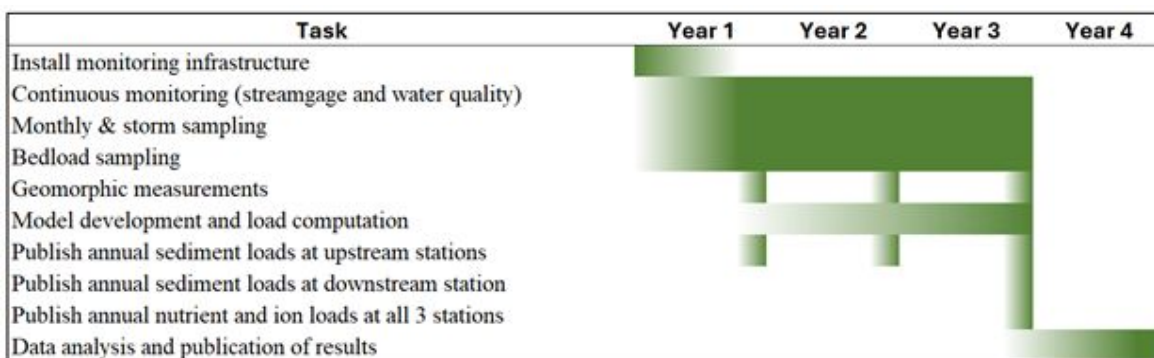


Figure 4. Timeline for proposed work.

Deliverables

All data will be made publicly available on the USGS National Water Information Service Website (NWISWeb) and through the current USGS-maintained project-specific USGS-Fairfax County Water Resources Monitoring Program website, which can be accessed at <https://www.usgs.gov/centers/virginia-and-west-virginia-water-science-center/science/fairfax-county-water-resources>. A Lake Accotink project-specific webpage will be developed to describe this work and be housed within the existing USGS-Fairfax County webpage. Additionally, quarterly progress reports will be provided to the county at the time of billing.

For the Lake Sedimentation Study, sediment loads will be calculated annually at two locations above the lake and one below. At the two existing stations above the lake, loads will be published annually in a USGS data release beginning in year 1. A surrogate regression model to compute suspended sediment

load at the station downstream of Lake Accotink will be published after enough samples are collected to properly characterize the range of observed conditions and USGS policy requirements for publication are met, most likely at the conclusion of year 3. These policy considerations include monitoring duration, number of samples collected, and model review and approval following Fundamental Science Practices. The sediment load above and below the lake will be used to compute a sediment mass balance for the lake. Results will be published in a peer-reviewed scientific journal.

For the Stream Study, nutrient and chloride loads will be calculated annually at two locations above the lake and one below. At the two existing stations above the lake, nutrient loads will be published annually in a USGS data release beginning in year 1. A surrogate regression model to compute nutrient and loads at the station downstream of Lake Accotink and chloride loads at all 3 stations will be published after enough samples are collected to properly characterize the range of observed conditions and USGS policy requirements for publication are met, most likely at the conclusion of year 3. Sediment load and geomorphic measures will be used to compute a sediment budget for the watershed. After year 3, data will be analyzed, and results shared with Fairfax County. While a 3-year study has great value unto itself, a longer-term study that allows for continued data collection, supports a more thorough analysis of these data, and supports the development of an interpretative product to publish results in a peer-reviewed scientific journal will maximize the insights gained from this effort.

Budget

The annual funding required to support the Lake Sedimentation Study is presented in Table 2 and the Stream Study in Table 3; total project costs are presented in Table 4; itemized costs for fiscal year 2025 are presented in Table 5. Although elements of the Lake Sedimentation Study, such as the streamgage, continuous water-quality monitor, and sample collection, also will be used to satisfy the objectives of the Stream Study, the full cost of each element is shown in the Lake Sedimentation Study budget (Table 2). Without the Lake Sedimentation Study, those costs would be transferred to the Stream Study budget. Annual increases are based on an 3.5% annual rate of inflation. The budget for the proposed effort includes startup costs, annual operation and maintenance costs, and salary for scientists and technicians supporting the work. Startup costs include the purchase of necessary instrumentation, station infrastructure components, and station construction.

Table 2. Annual budget for proposed work for Lake Sedimentation Study. Years are based on the county fiscal year (July 1 through June 30).

Item/Task	2025	2026	2027	2028
Instrument Purchase and Install	\$100,000	-	-	-
Continuous Streamgage and Water Quality Monitor O&M	\$58,000	\$60,000	\$62,000	-
Suspended Sediment: Sample Collection/Lab	\$41,000	\$42,500	\$44,000	-
Bedload Sediment: Sample Collection/Lab	\$45,000	\$46,500	\$48,000	-
Project Management, Scientific Analysis, Interpretation, and Reporting	\$60,000	\$62,000	\$64,000	\$66,000
USGS Contribution for Equipment Purchase	(\$50,000)	-	-	-
Total	\$254,000	\$211,000	\$218,000	\$66,000

Table 3. Annual budget for proposed work for Stream Study. Costs are contingent on the Lake Sedimentation Study being funded. Years are based on the county fiscal year (July 1 through June 30).

Item/Task	2025	2026	2027
Instrument Purchase and Install	\$5,000	-	-
Nutrients and Ions: Lab	\$13,000	\$13,500	\$14,000
Geomorphic Measurements – Sediment Budget	\$36,000	\$37,000	\$39,000
Cross-sectional Surveys	\$90,000	\$40,000	\$41,500
Preliminary Scientific Analysis, Interpretation, and Reporting	\$20,000	\$20,700	\$21,500
Total	\$164,00	\$111,200	\$116,000

Table 4. Annual budget for proposed work for both the Lake Sedimentation Study and Stream Study

	2025	2026	2027	2028
Lake Sedimentation Study	\$254,000	\$211,000	\$218,000	\$66,000
Stream Study	\$164,000	\$111,200	\$116,000	-
Total	\$418,000	\$322,200	\$334,000	\$66,000

Table 5. Itemized costs and description of proposed data collection elements for county fiscal year 2025

Fiscal Year 2025 Data Collection Costs	
Item and Description	Cost
Stage-Discharge Streamgauge - includes technician salary and travel for the operation and maintenance of continuous-record streamgages in accordance with USGS protocols. Tasks include scheduled maintenance and measurement visits (every 8 weeks), unscheduled visits for stormflow measurements, surveying for datum maintenance and indirect peak flow measurements, maintenance of real-time data relay, and streamflow record computation. Deliverable is continuous (5-minute interval) streamflow and water level data, and basic summary statistics, publicly available in online in near real-time.	\$22,000
Continuous Water-Quality Monitor includes technician salary, travel, and supplies for the operation and maintenance of continuous-record 5-parameter water-quality monitor in accordance with USGS protocols. Tasks include scheduled maintenance and measurement visits (monthly), unscheduled visits for sensor fouling, maintenance of real-time data relay, and record computation. Deliverable is continuous (15-minute interval) temperature, dissolved oxygen, specific conductance, pH, and turbidity data, and basic summary statistics, publicly available online in near real-time. These data are required to support computation of nutrient and sediment loads in these flashy urban streams.	\$36,000
Water Quality Sampling - includes technician salary, travel, and supplies for the manual collection of monthly sediment, nutrient. And ion samples, technician salary for data entry, laboratory analysis of suspended sediment samples, and hydrologist salary for laboratory data review. Annual deliverable for the monthly samples is 12 routinely scheduled samples and 8 storm targeted samples collected by USGS staff.	\$36,000

Table 5 continued. Itemized costs and description of proposed work for fiscal year 2025

Fiscal Year 2025 Data Collection Costs	
Item and Description	Cost
Bedload Sampling - includes technician salary and travel for the manual collection of bedload samples at the Accotink Creek gage at Braddock Road, USGS Station ID 01654000, laboratory analysis costs, and project chief salary for oversite and data management. Deliverables include bedload measurements stored on the publicly accessible NWIS webpage and an estimate of annual bedload in Accotink Creek.	\$45,000
Laboratory Analysis - Sediment – includes laboratory costs for suspended sediment concentration, Suspended sediment % <0.0625 mm, bedload mass. Analyses will be performed by a USGS approved laboratory. *Subject to change once a laboratory is selected.	\$5,000
Laboratory Analysis – Nutrients - includes laboratory costs for nutrient analyses. These include total nitrogen, total phosphorus, and related subspecies. Analyses will be performed by a USGS approved laboratory. *Subject to change once a laboratory is selected.	\$8,000
Laboratory Analysis – Major Ions - includes laboratory costs for ion analyses. These include a suite of major ions (chloride, sodium, etc.). Analyses will be performed by a USGS approved laboratory. *Subject to change once a laboratory is selected.	\$5,000
Streambank Erosion Stations - includes technician salary and travel for the operation and maintenance of streambank-geomorphology monitoring stations using bank pins, and project chief salary to process data. Tasks include initial installation of pins and survey of channel cross-sections, with subsequent pin measurements repeated biannually. Deliverables will include quantification of the rate and volume of bank erosion/deposition.	\$8,000
In-channel Sediment-Depositional Surveys - includes technician salary and travel for surveys of in-channel fine-grained sediment deposits, technician salary for data entry, laboratory costs for radionuclides ⁷ Be and ²¹⁰ Pb _{xs} , and project chief salary for data computation. Tasks include annual surveys of the several 500 meter reaches of Accotink Creek. Deliverables will include quantification of the total volume and mass of available in-channel sediment deposits expressed as volume and mass per unit stream length, estimates of the total storage of sediment by mass expressed as a percentage of the total annual suspended-sediment load. Age-dating techniques will provide the approximate age of sediments which will be used to infer residence time in storage.	\$21,000
Floodplain Depositional Monitoring - includes technician salary and travel for the manual collection of sediment samples and lab analyses for bulk density as well as technician salary for data entry. Tasks will include manual collection of sediment cores from floodplain monitoring plots and measurement of deposition/erosion at marker pins installed within floodplain along cross-sections spaced longitudinally throughout Accotink Creek. Deliverables will include rates of sedimentation (g/cm ² /yr), annually.	\$7,000
Cross-sectional Surveys - includes technician salary, travel, and equipment/supplies for surveys, technician salary to process and store survey data in the USGS database, and project chief salary to analyze data. Tasks will include a channel cross-sectional survey at 10 representative locations on Accotink Creek, co-located with floodplain and bank erosion transects. Surveys will be completed with a total station and referenced to datum with GNSS leveling. Each location will be resurveyed annually. Deliverables will include quantification of the change in channel geometry at each channel cross-section each year, and over the duration of the study. ^Includes startup costs (cost is ~\$40,000 in each of years 2 and 3)	\$90,000^

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United States Department of the Interior

U.S. GEOLOGICAL SURVEY
VA/WV Water Science Center
1730 E. Parham Rd.
Richmond, VA 23228

June 6, 2024

Mr. Shannon Curtis

Fairfax County, VA
12000 Government Center Parkway Suite 449
Fairfax, VA 22035

Dear Shannon:

Enclosed is our standard joint-funding agreement 24LMJFAVA138 between the U.S. Geological Survey VA/WV Water Science Center and Fairfax County, VA for ***Quantifying Sediment Mass Balance in Lake Accotink and Identifying Sources and Sinks of Sediment in Accotink Creek***, during the period July 17, 2024, through June 30, 2028, in the amount of \$1,140,200 from your agency. U.S. Geological Survey contributions for this agreement are \$0 for a combined total of \$1,140,200. Please sign and return the agreement to Paige Nossaman at pnossaman@usgs.gov.

Federal law requires that we have a signed agreement before we start or continue work. Please return the signed agreement by **July 17, 2024**. If, for any reason, the agreement cannot be signed and returned by the date shown above, please contact Aaron Porter at (804) 261-2628 or email aporter@usgs.gov to make alternative arrangements.

This is a fixed cost agreement to be billed quarterly via Down Payment Request (automated Form DI-1040). Please allow 30-days from the end of the billing period for issuance of the bill. If you experience any problems with your invoice(s), please contact Paige Nossaman at phone number (304) 347-5130 or pnossaman@usgs.gov.

The results of all work performed under this agreement will be available for publication by the U.S. Geological Survey. We look forward to continuing this and future cooperative efforts in these mutually beneficial water resources studies.

Sincerely,

DOUGLAS
MOYER

Digitally signed by DOUGLAS
MOYER
Date: 2024.06.06 16:44:16 -04'00'

Douglas L. Moyer
Chief Science Officer

Enclosure
24LMJFAVA138

**Form 9-1366
(May 2018)**

**U.S. Department of the Interior
U.S. Geological Survey
Joint Funding Agreement
FOR
Water Resource Investigations**

**Customer #: 6000000666
Agreement #: 24LMJFAVA138
Project #: LM009RO
TIN #: 54-0787833**

Fixed Cost Agreement YES[X] NO[]

THIS AGREEMENT is entered into as of the July 17, 2024, by the U.S. GEOLOGICAL SURVEY, VA/WV Water Science Center, UNITED STATES DEPARTMENT OF THE INTERIOR, party of the first part, and the Fairfax County, VA party of the second part.

1. The parties hereto agree that subject to the availability of appropriations and in accordance with their respective authorities there shall be maintained in cooperation for negotiated deliverables (see attached), herein called the program. The USGS legal authority is 43 USC 36C; 43 USC 50, and 43 USC 50b.

2. The following amounts shall be contributed to cover all of the cost of the necessary field and analytical work directly related to this program. 2(b) include In-Kind-Services in the amount of \$0.00

- (a) \$0 by the party of the first part during the period July 17, 2024 to June 30, 2028
- (b) \$1,140,200 by the party of the second part during the period July 17, 2024 to June 30, 2028
- (c) Contributions are provided by the party of the first part through other USGS regional or national programs, in the amount of: \$0

Description of the USGS regional/national program:

- (d) Additional or reduced amounts by each party during the above period or succeeding periods as may be determined by mutual agreement and set forth in an exchange of letters between the parties.
- (e) The performance period may be changed by mutual agreement and set forth in an exchange of letters between the parties.

3. The costs of this program may be paid by either party in conformity with the laws and regulations respectively governing each party.

4. The field and analytical work pertaining to this program shall be under the direction of or subject to periodic review by an authorized representative of the party of the first part.

5. The areas to be included in the program shall be determined by mutual agreement between the parties hereto or their authorized representatives. The methods employed in the field and office shall be those adopted by the party of the first part to insure the required standards of accuracy subject to modification by mutual agreement.

6. During the course of this program, all field and analytical work of either party pertaining to this program shall be open to the inspection of the other party, and if the work is not being carried on in a mutually satisfactory manner, either party may terminate this agreement upon 60 days written notice to the other party.

7. The original records resulting from this program will be deposited in the office of origin of those records. Upon request, copies of the original records will be provided to the office of the other party.

8. The maps, records or reports resulting from this program shall be made available to the public as promptly as possible. The maps, records or reports normally will be published by the party of the first part. However, the party of the second part reserves the right to publish the results of this program, and if already published by the party of the first part shall, upon request, be furnished by the party of the first part, at cost, impressions suitable for purposes of reproduction similar to that for which the original copy was prepared. The maps, records or reports published by either party shall contain a statement of the cooperative relations between the parties. The Parties acknowledge that scientific information and data developed as a result of the Scope of Work (SOW) are subject to applicable USGS review, approval, and release requirements, which are available on the USGS Fundamental Science Practices website (<https://www.usgs.gov/office-of-science-quality-and-integrity/fundamental-science-practices>).

U.S. Department of the Interior
U.S. Geological Survey
Joint Funding Agreement
FOR
Water Resource Investigations

Customer #: 6000000666
Agreement #: 24LMJFAVA138
Project #: LM009RO
TIN #: 54-0787833

9. Billing for this agreement will be rendered quarterly. Invoices not paid within 60 days from the billing date will bear Interest, Penalties, and Administrative cost at the annual rate pursuant the Debt Collection Act of 1982, (codified at 31 U.S.C. § 3717) established by the U.S. Treasury.

USGS Technical Point of Contact

Name: Aaron Porter
Physical Scientist
Address: 1730 East Parham Road
Richmond, VA 23228
Telephone: (804) 261-2628
Fax: (804) 261-2657
Email: aporter@usgs.gov

Customer Technical Point of Contact

Name: Shannon Curtis
Address: 12000 Government Center Parkway
Suite 449
Fairfax, VA 22035
Telephone: (703) 324-5811
Fax: (703) 802-5955
Email: Shannon.Curtis@fairfaxcounty.gov

USGS Billing Point of Contact

Name: Paige Nossaman
Budget Analyst
Address: 11 Dunbar Street
Charleston, WV 25301
Telephone: (304) 347-5130
Fax: (304) 347-5133
Email: pnossaman@usgs.gov

Customer Billing Point of Contact

Name: Jennifer Miller
Address: 12000 Government Center Parkway Suite
449
Fairfax, VA 22035
Telephone: (571) 474-5540
Fax:
Email: Jennifer.Miller2@fairfaxcounty.gov

U.S. Geological Survey
United States
Department of Interior

Fairfax County, VA

Signature

By DOUGLAS MOYER Digitally signed by DOUGLAS MOYER
Date: 2024.06.06 16:44:46 -04'00'

Name: Douglas L. Moyer
Title: Chief Science Officer

Signatures

By _____ Date: _____

Name: Bryan J. Hill
Title: County Executive
Fairfax County

By _____ Date: _____

Name:
Title:

By _____ Date: _____

Name:
Title:



United States Department of the Interior

U. S. GEOLOGICAL SURVEY
12202 Sunrise Valley Drive
Reston, Virginia 20192

IN REPLY REFER TO:

Memorandum

June 20, 2023

To: Michael H. Tupper
Regional Director, Northeast Region

From: Mark R. Bennett
Director, U.S. Geological Survey

Subject: Designation of Succession for the Virginia and West Virginia Water
Science Center Director Position

The following positions in the U.S. Geological Survey will automatically succeed the Director of the Virginia and West Virginia Water Science Center in the absence of the incumbent and in the order listed.

The incumbent in all of the positions are hereby delegated the authority to perform all duties and responsibilities of the Virginia and West Virginia Water Science Center Director when required to ensure continued, uninterrupted direction and supervision to perform essential functions and activities of the office. The authority of the Virginia and West Virginia Water Science Center Director may be exercised only when an official in one of the following positions is reasonably certain that no superior in the list is able and available to exercise that authority, and when the nature of the situation requires immediate action.

Individuals exercising the authority of the Virginia and West Virginia Water Science Center Director will be relieved of this responsibility as soon as a superior on the list is available, or when an official with the requisite authority designates a permanent or Acting Center Director. Individuals exercising the authority of the Virginia and West Virginia Water Science Center Director will keep a record of important actions taken and the period during which the authority was exercised. Officials serving in an acting capacity are not permitted in this line of succession.

Position One: VA and WV WSC Chief Operations Officer
Position Two: VA and WV WSC Chief Science Officer
Position Three: VA and WV WSC Supervisory Hydrologist, WUA Chief
Position Four: VA and WV WSC Supervisory Hydrologist, Studies Chief

cc: Bureau Emergency Management Coordinator

Board Agenda Item
July 16, 2024

ACTION – 2

Approval of a Resolution Authorizing Execution of a Project Agreement Between the Virginia Department of Rail and Public Transportation (DRPT) and Fairfax County for Fairfax Connector Route 798 Service Between Tysons West Park Transit Center and Bethesda Metrorail Station (Dranesville, Hunter Mill and Providence Districts)

ISSUE:

Board of Supervisors' approval of a resolution (Attachment 1) authorizing the Director of the Fairfax County Department of Transportation (FCDOT) to execute the attached Project Agreement, substantially in the form of Attachment 2, between Fairfax County and the Virginia Department of Rail and Public Transportation (DRPT), to begin implementation of Fairfax Connector Route 798 service between the Tysons West Park Transit Station and the Bethesda Metrorail Station.

RECOMMENDATION:

The County Executive recommends that the Board approve the attached resolution (Attachment 1) authorizing the Director of FCDOT to execute the Project Agreement between DRPT and Fairfax County, substantially in the form of Attachment 2, for Route 798 service between the Tysons West Park Transit Station and the Bethesda Metrorail Station.

TIMING:

Board approval is requested on July 16, 2024, so that DRPT can release FY 2024 transit operating funds to Fairfax County. Fairfax Connector will begin revenue service on Route 798 in August 2024.

BACKGROUND:

The I-495 Express Lanes Northern Extension Project ("495 NEXT") is a 2.5-mile extension of the I-495 Express Lanes from its current terminus near the Dulles Access Road interchange to the vicinity of the American Legion Bridge. Two new express lanes will run in each direction to address congestion, safety, travel reliability, and provide additional travel choices. The I-495 American Legion Bridge Transit and Transportation Demand Management (TDM) Study, led by the Maryland Department of Transportation (MDOT), the Maryland Transit Administration (MTA) and DRPT, identified transit routes that would promote opportunities for transit ridership between key destinations in Maryland and Virginia. Route 798 was created in response to the recommendations in the Transit and TDM study and will offer a connection between Tysons and Bethesda.

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The Commonwealth of Virginia and Transurban have already committed to funding Route 798 once the 495 NEXT Express Lanes are open. In the interim, the Virginia Department of Transportation (VDOT) has developed a unified Transportation Management Plan (TMP), which includes funding Route 798 prior to the opening of the express lanes, to minimize and mitigate the impacts arising from 495 NEXT construction by providing an alternative to single-occupancy travel through the corridor.

EQUITY IMPACT:

The use of these grant funds should have a neutral or positive impact on equity. The agreement included in this Board item provides transit operating assistance for the Fairfax Connector. The Fairfax Connector is required by statute to meet the requirements of Title VI of the Civil Rights Act of 1964, which prohibits discrimination based on race, color, or national origin in federally funded programs, including public transportation. A detailed Title VI analysis of the transit system is completed every three years.

FISCAL IMPACT:

The attached agreement provides the County with a \$2,000,000 operating subsidy to fund the costs of Route 798 operations while the toll lanes remain under construction. The revenues provided by this agreement and expenditures associated with Route 798 operating costs were anticipated and are included in Fund 40000, County Transit Systems in the FY 2024 Revised Budget Plan. Staff will request these funds be carried over into FY 2025.

ENCLOSED DOCUMENTS:

Attachment 1 – Resolution to Authorize Execution of a Project Agreement with DRPT
Attachment 2 – Proposed Project Agreement with DRPT for I-495 NEXT Route 798 Operating Service

STAFF:

Gregg Stevenson, Acting Director, Fairfax County Department of Transportation (FCDOT)
Noelle Dominguez, Chief, Coordination and Funding Division, FCDOT
Ray Johnson, Chief, Funding Section, FCDOT
Malcolm Watson, Transportation Planner, FCDOT

ASSIGNED COUNSEL:

John A. Dorsey, Assistant County Attorney

RESOLUTION

AGREEMENT EXECUTION RESOLUTION

A RESOLUTION FOR THE BOARD OF SUPERVISORS OF THE COUNTY OF FAIRFAX,
VIRGINIA
FOR THE EXECUTION OF AN AGREEMENT FOR IMPLEMENTATION OF FAIRFAX
CONNECTOR ROUTE 798 SERVICE

At a regular meeting of the Board of Supervisors of Fairfax County, Virginia, held in the Board Auditorium of the Government Center at 12000 Government Center Parkway, Fairfax, Virginia, on Tuesday, July 16, 2024, at which meeting a quorum was present and voting, the following resolution was adopted:

NOW, THEREFORE, BE IT RESOLVED, that the Board of Supervisors of Fairfax County, Virginia, authorizes the Director of the Fairfax County Department of Transportation to execute, on behalf of the County of Fairfax, the Project Agreement (UPC 116754) with the Virginia Department of Rail and Public Transportation for I-495 NEXT funding to implement and operate Fairfax Connector Route 798 service in the I-495 corridor. Implementation of the project will be handled by Fairfax County.

ADOPTED this 16th day of July, 2024

A Copy Teste:

Jill G. Cooper
Clerk for the Board of Supervisors

**Project Agreement for
Use of Commonwealth Transportation Funds
Fiscal Year 2024
Six Year Improvement Program Approved Project
UPC 116754
Grant Number #####-##**

This Project Agreement (“Agreement”), effective July 1, 2022, by and between the Commonwealth of Virginia Department of Rail and Public Transportation (“Department”) and Fairfax County (“Grantee”) (collectively, the “Parties”), is for the provision of funding new Fairfax Connector Route 798 service between Tysons WestPark Transit Center in Tysons, Virginia and Bethesda Metro Station in Bethesda, Maryland (“Project”).

WHEREAS, the Virginia Department of Transportation (“VDOT”) has developed a unified Transportation Management Plan (“TMP”) to minimize and mitigate the impacts arising from construction projects collectively referred to as 495 NEXT to extend the I-495 Express Lanes by 2.5 miles to the George Washington Memorial Parkway in the vicinity of the American Legion Bridge in Fairfax County; and

WHEREAS, the Federal Highway Administration (“FHWA”) approved the TMP on April 5, 2022; and

WHEREAS, on June 20, 2022, the Commonwealth Transportation Board (“CTB”) allocated funding for the Project; and

WHEREAS, the Department and VDOT executed an interagency agreement dated April 30, 2024, whereby the Department through the Grantee will provide certain Transportation Demand Management/Transit services stated in the Interagency Agreement to fulfill the purposes of the TMP; and

WHEREAS, the Parties wish to define the extent of the Project, the responsibilities of each Party, the manner of performing the necessary Work, the method and time of payment, and to set out additional conditions associated with the Project.

NOW, THEREFORE, in consideration of the covenants and agreements set forth, and other good and valuable consideration, the sufficiency of which is acknowledged, the Parties agree as follows:

ARTICLE 1. SCOPE OF WORK, TERM AND BUDGET

1. Under the terms of this Project Agreement, the Grantee shall:
 - a. Provide new Fairfax Connector Route 798 bus service between Tysons Westpark Transit Station in Tysons, Virginia and Bethesda Metro Station in Bethesda, Maryland.
2. Submit quarterly performance reports, by electronic mail, to the Department, by the 30th day of each month following the end of a calendar quarter (i.e., January 30, April 30, July 30 and October 30), a report on services provided during the previous calendar quarter. In order to receive reimbursement by the Department under this Project Agreement, the Grantee must be current on its quarterly performance reporting requirements. The quarterly report shall include the following data:
 - a. Identification of transit services provided during the quarter (by dates, times, route numbers and run/trip numbers).

- b. Total ridership for the previous quarter for all trips provided on the specified eligible routes.
 - c. Monthly ridership totals for the previous quarter for all trips provided on the specified eligible routes.
 - d. Daily ridership totals for the previous quarter for all trips provided on the specified eligible routes.
 - e. Running month to month comparison of monthly ridership totals for all trips provided on the specified eligible routes.
 - f. Monthly ridership totals for all trips provided on the specified eligible routes for the same months in the previous year (for year-to-year comparison).
 - g. Passengers per revenue hour for the previous quarter for the specified eligible routes.
 - h. Passengers per revenue mile for the previous month for the specified eligible routes.
- 3. The Grantee's request for reimbursement by the Department pursuant to this Agreement will only be paid by the Department upon approval for payment by the Department, and VDOT agreeing to make payment to the Department for the requested amount under the terms of the Interagency Agreement.
 - 4. The maximum amount of state grant funding available for payment by the Department to the Grantee for the Project under this Agreement is \$2,000,000. Details concerning this funding are contained in Appendix 1, which is attached and made a part of this Agreement.
 - 5. The Project Agreement may be amended only upon written agreement of the Parties prior to the Project Expiration Date identified in Appendix 1.
 - 6. The Grantee acknowledges that state grant funding for this grant is subject to appropriation by the General Assembly of Virginia and allocation by the CTB.

ARTICLE 2. INCORPORATION OF MASTER AGREEMENT FOR USE OF COMMONWEALTH FUNDS

The Master Agreement for Use of Commonwealth Transportation Funds agreed and executed by the Parties dated August 19, 2020 ("Master Agreement"), is hereby incorporated by reference, as if set out in full herein. Terms not defined in this Project Agreement are defined in the Master Agreement.

Appendix 1

Grantee: Fairfax County

Project: Provide new Fairfax Connector Route 798 service between Tysons WestPark Transit Station in Tysons, Virginia and Bethesda Metro Station in Bethesda, Maryland

**Transportation Management Program Assistance Agreement
UPC #116754**

Project Number: #####-##

Project Start Date: July 1, 2022

Project Expiration Date: December 31, 2025

Fund Code		Item Amount
#####	Grant Amount (State share of Project cost - 100%)	\$2,000,000
	Total Project Expense	\$2,000,000

In no event shall this grant exceed \$2,000,000.

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ACTION - 3

Approval of FY 2025 Fare Changes for Fairfax Connector and Associated Fare Equity Analysis

ISSUE:

Board of Supervisors' approval of proposed fare changes for FY 2025 Fairfax Connector services, as well as the associated Title VI Fare Equity Analysis required by the Federal Transit Administration (FTA).

RECOMMENDATION:

The County Executive recommends that the Board of Supervisors approve the proposed FY 2025 Fairfax Connector fare changes, as well as the Fairfax County Department of Transportation's (FCDOT) Fare Equity Analysis (Attachment 1). The Fare Equity Analysis shows no Disparate Impact or Disproportionate Burden will be incurred by Title VI communities in Fairfax County.

TIMING:

Board approval is requested on July 16, 2024, to allow for implementation of the new fare changes on July 29, 2024.

BACKGROUND:

The budget approved by the Washington Metropolitan Area Transit Authority (WMATA) on April 25, 2024, includes fare changes in FY 2025 across all modes. For bus services, WMATA is primarily increasing fares by 12.5 percent. As examples, the base fare for Metrobus will increase from \$2.00 to \$2.25. MetroAccess' maximum fare (fares are calculated as twice the equivalent fixed-route fare up to the maximum fare) will increase from \$4.00 to \$4.50. Specialty fare media, such as the 7-day regional bus pass and monthly transit link cards, will also increase by 12.5 percent.

Fairfax Connector Fare Changes

Fairfax Connector participates as a regional partner with WMATA in the use of the SmarTrip pre-paid fare card and digital media (i.e., the SmarTrip app). In keeping with the Board's past policy of matching regional fare changes, Fairfax County proposes to match the percentage increase (12.5 percent, generally rounded to the nearest 5 cent denomination) of WMATA's fare changes for FY 2025 Fairfax Connector bus services. For regular Fairfax Connector customers, base fares would increase from \$2.00 to

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\$2.25 for local bus service and from \$4.25 to \$4.80 for express bus service. For seniors/disabled customers, the local bus fare would increase from \$1.00 to \$1.10, and the express bus fare would increase from \$2.10 to \$2.40. For Fairfax Connector circulator services (Routes 350, 423, 427), the proposed fare would increase from 50 cents to 55 cents.

For Fairfax Connector express service on Route 599, the regular fare of \$7.50 will be reduced to \$4.80 to bring the fare in-line with the proposed fares for the rest of the standard express routes. Similarly, the senior/disabled fare for express Route 599 would be reduced from \$3.75 to \$2.40. For Fairfax Connector circulator routes that are currently fare free, such as Routes 351, 352, and 353, the fare would not change. Attachment 1 (Table 1) outlines each of the changes discussed above.

Due to uncertainty about the composition of WMATA's FY 2025 budget until late April, information about FY 2025 WMATA fare adjustments was not available in time to match Fairfax Connector fares as part of the County's FY 2025 Adopted Budget Plan.

Title VI Fare Equity Analysis

Recipients of federal transportation financial assistance (e.g., states, local governments, transit providers) are subject to Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) and United States Department of Transportation (USDOT) regulations. Recipients must maintain a valid Title VI Plan that demonstrates how the recipient is complying with Title VI requirements, including prohibiting discrimination on the basis of race, color, or national origin, in the provision of public transportation services. As part of a Title VI Plan, recipients must also develop a Major Service Change, and Disparate Impact and Disproportionate Burden (DIDB) policy. The County's Major Service Change and DIDB policy was adopted independently on July 11, 2023, and subsequently included in the County's Title VI Plan approved by the Board of Supervisors on September 25, 2023.

According to the County's Title VI Plan, a Title VI Equity Analysis must be performed and approved by the Board any time a fare change is proposed. This analysis determines if either a Disparate Impact or Disproportionate Burden on Title VI communities will occur as a result of the proposed fare changes. The County's Title VI Plan stipulates that a Disparate Impact occurs when the difference between minority riders and non-minority riders affected by a proposed service change or fare change is 10 percent or greater. A Disproportionate Burden occurs when the difference between low-income riders and non-low-income riders affected by a proposed service change or fare change is 10 percent or greater. If either one of these occurs, then the County must take steps to mitigate potential impacts. As further discussed in Attachment 1, the Fare Equity Analysis indicated the proposed fare changes will not result in a Disparate Impact for minority riders or a Disproportionate Burden for low-income households.

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Public Involvement

To inform the public of the proposed fare changes in advance of implementation, staff hosted public meetings on May 14, and May 16, 2024, and conducted an online survey beginning on May 7, 2024, through May 28, 2024.

EQUITY IMPACT:

In accordance with the County's Title VI Plan, FCDOT staff performed a Fare Equity Analysis based on adoption of WMATA's proposed fare changes. The analysis indicated the proposed fare changes will not result in a Disparate Impact for minority riders or a Disproportionate Burden for low-income households. Attachment 1 (Title VI Fare Equity Analysis – Proposed July 2024 Fairfax Connector Fare Changes) includes the full analysis that supports these findings.

Although the Fare Equity Analysis showed no Disparate Impact or Disproportionate Burden, the proposed FY 2025 Fairfax Connector fare changes do have the potential to exacerbate existing inequity and restrict access to vital opportunities for County residents, including employment, education, and other essential life activities. Increasing fares may widen existing socioeconomic gaps among community residents, as they can disproportionately affect lower-income riders who must spend a larger portion of their income on transportation. To alleviate potential burdens on low-income individuals, the County offers programs and services to provide free and reduced fares. A risk does exist, however, that some transit-dependent individuals will not be able to afford the higher fares. It is, therefore, imperative that staff work to identify and register passengers who may qualify for one of the reduced fare programs, including the Transit Ridership Incentive Program (TRIP), Seniors and People with Disabilities, and/or the Student Bus Pass Program.

FISCAL IMPACT:

The proposed fare increases are anticipated to have a positive impact on farebox revenues for the Fairfax Connector. Based on current ridership projections and the impact of fare changes on ridership, the proposed fare increase would result in an estimated \$1.1 million increase in fare revenue. If the proposed policy change is approved, FCDOT will include fare increase impacts as a part of the *FY 2024 Carryover Review* for Fund 40000, County Transit Systems.

ENCLOSED DOCUMENTS:

Attachment 1 – Title VI Fare Equity Analysis – Proposed July 2024 Fairfax Connector Fare Changes

Board Action Item
July 16, 2024

STAFF:

Gregg Steverson, Acting Director, Fairfax County Department of Transportation
(FCDOT)

Dwayne Pelfrey, Chief, Transit Services Division, FCDOT

Michael Felschow, Chief, Planning Section, Transit Services Division, FCDOT

Hejun Kang, Transportation Planner IV, Transit Services Division, FCDOT

Noelle Dominguez, Chief, Coordination and Funding Division, FCDOT

Brent Riddle, Chief, Coordination Section, Coordination and Funding Division, FCDOT

Title VI Fare Equity Analysis – Proposed July 2024 Fairfax Connector Fare Changes

Summary of Fare Equity Analysis Results

The Fairfax Connector fare changes proposed for implementation in July 2024 were reviewed as mandated by the Federal Transit Administration (FTA) in Circular C-4702.1B, Title VI Requirements and Guidelines for Federal Transit Administration. The fare equity analysis requirement applies to all fare changes regardless of the amount of increase or decrease. The proposed fare changes would not result in a disparate impact for minority riders or a disproportionate burden for low-income riders. Given this finding, no further examination of alternatives is required by the FTA Circular.

Relevant Fairfax County Title VI Program Elements

The FTA Circular requires that FCDOT establish policies for what constitutes a disparate impact and a disproportionate burden for use in service equity and fare equity analyses. The policies listed in this section are contained in the County's Title VI Program, as approved by the Board of Supervisors in July 2023.

- A *disparate impact* occurs when the difference between the percentage of minority riders and the percentage of overall riders affected by a proposed fare change is 10 percent or greater. For service increase or fare reduction, overall utilization minus minority utilization is used. For service decrease or fare increase, the percentage of minority utilization minus overall utilization is used.
- A *disproportionate burden* occurs when the difference between the percentage of low-income riders and the percentage of overall riders affected by a proposed fare change is 10 percent or greater. For service increase or fare reduction, overall utilization minus low-income utilization is used. For service decrease or fare increase, the percentage of low-income utilization minus overall utilization is used.

Fare Equity Analysis Procedure

To determine whether a fare change will cause a disparate impact, the percentage of the minority riders served by Fairfax Connector using a particular fare medium and fare level is to be compared to the percentage of the overall riders served by Fairfax Connector using that fare medium and fare level. If the percentage of minority riders using a particular fare medium and fare level exceeds the percentage of overall riders by at least ten percent, then the change in fares for that fare medium and fare level must be examined. If a disparate impact is found, the transit provider may implement the fare change only if a substantial legitimate justification for the proposed fare change exists, and there are no alternatives that would have a less disparate impact on minority to meet the same legitimate program goals. Minority riders were defined as any person identifying themselves as Latino or indicating a race of anything other than white on the most recent Fairfax Connector on-board ridership survey (customer survey).

To determine whether a fare change will cause a disproportionate burden, a similar process is used comparing the percentage of the low-income users served by Fairfax Connector using a particular fare medium and fare level to the percentage of the overall users served by Fairfax Connector using that fare medium and fare level. If a disproportionate burden is found, then it must take steps to avoid, minimize or mitigate impacts where practicable, and describe alternatives available to low-income populations affected by the fare changes. Low-income riders were defined as any person

reporting a household income of \$60,000 or less (the customer survey used income categories in \$10,000 increments).

Rationale and Description for the Fare Change

The Washington Metropolitan Area Transit Authority (WMATA) recently issued a plan for a proposed fare change in FY 2025 to keep Metro safe, reliable and affordable. WMATA provides approximately 27 percent of the total bus service revenue hours in the County through Metrobus. Fairfax Connector participates as a regional partner with WMATA in the use of the SmarTrip (pre-paid fare card). Fairfax County Board of Supervisors policy is for fare changes for the Fairfax Connector to be consistent with WMATA fare changes. A fare increase will help Fairfax Connector to defray the increasing cost of providing bus service to its riders.

On April 25, 2024, the Metro Board of Directors approved the WMATA FY2025 capital and operating budget. Service across all modes in FY2025 will continue at FY2024 Approved Budget service plan levels with only modest changes. The FY2025 budget's fare policy will increase weekday fares across all modes by 12.5 percent. Late night and weekend fares for Metrorail will increase by up to 25 percent, resulting in a fare range from \$2.25 to \$2.50. Specialty fare media such as the 7-day regional bus pass and monthly transit link cards also will increase by 12.5 percent. MetroAccess fares are calculated as twice the equivalent fixed-route fare up to the maximum fare. Under the recommended FY2025 budget, MetroAccess's maximum fare would increase from \$4.00 to \$4.50, or 12.5 percent.

For the reasons given above, the proposed Connector fare changes for local and express bus service match those proposed for similar WMATA Metrobus service. For regular customers, bus fares would increase 25 cents for local bus and 55 cents for express bus which is 12.5% and 12.9% higher than the current prices respectively. For seniors/disabled, the local bus fare would increase 10 cents (10.0%), and the express bus fare would increase 30 cents (14.3%). For Connector circulator services, routes 350, 423, 427, proposed fare would increase 5 cents (10.0%). For circulator routes that are currently fare free such as routes 351, 352, and 353, fare would not change. For Connector express service on Route 599, the regular fare of \$7.50 will be reduced by \$2.70 to \$4.80, to bring the fare in-line with the increased fares for the rest of the express routes. Similarly, the senior/disabled fare for Route 599 would be reduced from \$3.75 to \$2.40. These changes are summarized below in **Table 1**.

Table 1: Existing and Proposed Fare Changes for FY2025

Fare Category			Fares			
Service Type	Customer Type	Fare Media	Current Fare	Proposed Fare	Fare Change	% Fare Change
Local Bus	Regular	SmarTrip	\$2.00	\$2.25	+\$0.25	+12.5%
Local Bus	Regular	Cash	\$2.00	\$2.25	+\$0.25	+12.5%
Local Bus	Senior/Disabled	SmarTrip	\$1.00	\$1.10	+\$0.10	+10.0%
Local Bus	Senior/Disabled	Cash	\$1.00	\$1.10	+\$0.10	+10.0%
Circulator (350, 423, 427)	Regular	SmarTrip	\$0.50	\$0.55	+\$0.05	+10.0%
Circulator (350, 423, 427)	Regular	Cash	\$0.50	\$0.55	+\$0.05	+10.0%
Circulator (350, 423, 427)	Senior/Disabled	SmarTrip	\$0.50	\$0.55	+\$0.05	+10.0%

Fare Category			Fares			
Service Type	Customer Type	Fare Media	Current Fare	Proposed Fare	Fare Change	% Fare Change
Circulator (350, 423, 427)	Senior/Disabled	Cash	\$0.50	\$0.55	+\$0.05	+10.0%
Express Bus (393, 394, 395, 396, 598, 697, 698, 699, 798, 835)	Regular	SmarTrip	\$4.25	\$4.80	+\$0.55	+12.9%
Express Bus (393, 394, 395, 396, 598, 697, 698, 699, 798, 835)	Regular	Cash	\$4.25	\$4.80	+\$0.55	+12.9%
Express Bus (393, 394, 395, 396, 598, 697, 698, 699, 798, 835)	Senior/Disabled	SmarTrip	\$2.10	\$2.40	+\$0.30	+14.3%
Express Bus (393, 394, 395, 396, 598, 697, 698, 699, 798, 835)	Senior/Disabled	Cash	\$2.10	\$2.40	+\$0.30	+14.3%
Route 599 Express	Regular	SmarTrip	\$7.50	\$4.80	-\$2.70	-36.0%
Route 599 Express	Regular	Cash	\$7.50	\$4.80	-\$2.70	-36.0%
Route 599 Express	Senior/Disabled	SmarTrip	\$3.75	\$2.40	-\$1.35	-36.0%
Route 599 Express	Senior/Disabled	Cash	\$3.75	\$2.40	-\$1.35	-36.0%
7-Day Regional Bus Pass ¹	Regular	SmarTrip	\$12.00	\$13.50	+\$1.50	+12.5%
MetroAccess	Regular (maximum fare)	SmarTrip	\$4.00	\$4.50	+\$0.50	+12.5%
MARC/VRE Transit Link Card	Regular	SmarTrip	\$114.00	\$128.25	+\$14.25	+12.5%
Bus-to-Rail Transfer ²	All Types	SmarTrip	\$2.00 Discount	\$2.25 Discount	+\$0.25	+12.5%

1 The 7-Day Regional Pass Senior/Disabled Fare is also proposed to increase from \$6.00 to \$6.75, a 12.5% increase. However, the most recent Connector onboard rider survey does not indicate any utilization of the 7-day pass by senior/disabled riders.

2 The Bus to Rail Transfer fare category discounts reflect both Connector bus to Metrorail and Metrorail to Bus transfers. Fairfax Connector customers using SmarTrip will receive the proposed \$2.25 discount whether transferring to Metrorail or Connector Bus.

Utilization of Survey Data for the Fare Equity Analysis

The FTA Circular requires that a transit operator use rider survey data that is no more than five years old to ascertain the percentage of users of each fare level and fare medium who are members of Title VI minority and low income protected classes. FCDOT collected an on-board customer survey from Spring to Fall of 2019. The survey consisted of 26 questions on the fare paid, household income, race and Latino origin, English proficiency, as well as questions on trip origin/destination, frequency of use, availability of travel alternatives, opinions of service and other topics. Surveys were distributed to all passengers on the equivalent of one weekday, one Saturday and one Sunday of service on all routes surveyed.

To develop current system wide estimates of ridership by fare category for low-income, minority, and all riders, the 3,672 surveyed respondents were weighted to the observed average Weekday, Saturday and Sunday daily ridership in FY2020. New routes that do not have survey data from the onboard survey were compared to similar service types that yield comparable estimated monthly

usage. The exception is route 798, a new express route connecting Tysons Corner to Bethesda targeted to start in FY 2025 (August 2024). The fare for the 798 express service is similar to other express bus services, however, there is no survey data comparable for riders traveling from Tysons to Bethesda. For this reason, route 798 has a documented fare change shown **Table 1**, but does not have estimated usage or percentages in

Table 2 or **Table 3**.

Table 2: Ridership by Fare Category for Low-Income, Minority, and All Riders

Fare Category			Estimated Monthly Usage		
Service Type	Customer Type	Fare Media	Overall	Minority	Low Income
Local Bus	Regular	SmarTrip	623,182	411,853	269,975
Local Bus	Regular	Cash	108,017	83,945	63,633
Local Bus	Senior/Disabled	SmarTrip	22,798	11,475	6,519
Local Bus	Senior/Disabled	Cash	1,054	337	1,001
Circulator (350, 423, 427)	Regular	SmarTrip	26,021	12,523	5,069
Circulator (350, 423, 427)	Regular	Cash	818	818	297
Circulator (350, 423, 427)	Senior/Disabled	SmarTrip	431	431	0
Circulator (350, 423, 427)	Senior/Disabled	Cash	0	0	0
Express Bus (393, 394, 395, 396, 598, 697, 698, 699, 798, 835)	Regular	SmarTrip	29,749	9,121	1,762
Express Bus (393, 394, 395, 396, 598, 697, 698, 699, 798, 835)	Regular	Cash	0	0	0
Express Bus (393, 394, 395, 396, 598, 697, 698, 699, 798, 835)	Senior/Disabled	SmarTrip	1,544	789	0
Express Bus (393, 394, 395, 396, 598, 697, 698, 699, 798, 835)	Senior/Disabled	Cash	0	0	0
Route 599 Express	Regular	SmarTrip	6,610	2,103	300
Route 599 Express	Regular	Cash	0	0	0
Route 599 Express	Senior/Disabled	SmarTrip	0	0	0
Route 599 Express	Senior/Disabled	Cash	0	0	0
7-day Regional Bus Pass	Regular	SmarTrip	2,996	1,831	1,523
MetroAccess	Regular (maximum fare)	SmarTrip	1,161	701	701
MARC/VRE Transit Link Card	Regular	SmarTrip	1,714	365	365
Bus-to-Rail Transfer ¹	All Types	SmarTrip	221,339	119,169	60,190
Total ²			826,095	536,292	351,145

¹ Bus-to-Rail Transfer estimated usage is calculated separately from the overall, minority and low-income totals to avoid double-counting rider usage that may be taken on both local bus and rail.

² Fairfax Connector provides free fares for children under 12 with a paying adult and fare free student bus passes for Fairfax County middle and high school students. These are not included in the total usage as they are not affected by the proposed fare changes.

Profile of Fare Usage and Fare Changes by Group

Table 3 shows the percentage of low-income, minority and all riders using each fare category alongside the fare changes proposed. The first step in the determination of whether disparate impacts or disproportionate burdens exist is to compare the percent utilization of each fare category by low-income and minority groups to the percent utilization of all riders. The final two columns in **Table 3** show the difference between the percent utilization by Title VI protected groups and the percent utilization by all riders. If any of the categories had shown differences of 10% or more, the relative differences in the percent of the fare increase would have to be examined to note whether those categories with a difference of 10% or more would have larger fare increases.

The disparate impact analysis of the data in **Table 3** shows that utilization of the various fare media by minority riders ranges between 1.9% below and 4.6% above the utilization of the same fare category by all riders. The County's policy threshold to establish the potential of a disparate impact when utilization of any fare category by minority riders exceeds the utilization of that same fare category by all riders by at least 10%. Therefore, no disparate impact exists for the proposed fare changes.

The disproportionate burden analysis of the data in **Table 3** shows that utilization of the various fare categories by low-income ranges between 3.1% below and 9.7% above the utilization of the same fare category by all riders. The County's policy threshold establishing potential of a disproportionate burden when utilization of any fare category by low-income riders exceeds the utilization of that same fare category by all riders by at least 10%. Therefore, no disproportionate burden exists for the proposed fare change.

Table 3: Percentage of Ridership by Fare Category for Low-Income, Minority, and All Riders

Fare Category			Fares				Percentage of Estimated Monthly Usage			Difference from Overall Usage ²	
Service Type	Customer Type	Fare Media	Current	Proposed	Change	% Change	Overall ¹	Minority	Low-Income	Minority	Low-Income
Local Bus	Regular	SmarTrip	\$2.00	\$2.25	+\$0.25	+12.5%	75.4%	76.8%	76.9%	1.4%	1.5%
Local Bus	Regular	Cash	\$2.00	\$2.25	+\$0.25	+12.5%	13.1%	15.7%	18.1%	2.6%	5.0%
Local Bus	Senior/Disabled	SmarTrip	\$1.00	\$1.10	+\$0.10	+10.0%	2.8%	2.1%	1.9%	-0.7%	-0.9%
Local Bus	Senior/Disabled	Cash	\$1.00	\$1.10	+\$0.10	+10.0%	0.1%	0.1%	0.3%	0.0%	0.2%
Circulator (350, 423, 427)	Regular	SmarTrip	\$0.50	\$0.55	+\$0.05	+10.0%	3.1%	2.3%	1.4%	-0.8%	-1.7%
Circulator (350, 423, 427)	Regular	Cash	\$0.50	\$0.55	+\$0.05	+10.0%	0.1%	0.2%	0.1%	0.1%	0.0%
Circulator (350, 423, 427)	Senior/Disabled	SmarTrip	\$0.50	\$0.55	+\$0.05	+10.0%	0.1%	0.1%	0.0%	0.0%	-0.1%
Circulator (350, 423, 427)	Senior/Disabled	Cash	\$0.50	\$0.55	+\$0.05	+10.0%	0.0%	0.0%	0.0%	0.0%	0.0%
Express Bus (393, 394, 395, 396, 598, 697, 698, 699, 798, 835)	Regular	SmarTrip	\$4.25	\$4.80	+\$0.55	+12.9%	3.6%	1.7%	0.5%	-1.9%	-3.1%
Express Bus (393, 394, 395, 396, 598, 697, 698, 699, 798, 835)	Regular	Cash	\$4.25	\$4.80	+\$0.55	+12.9%	0.0%	0.0%	0.0%	0.0%	0.0%
Express Bus (393, 394, 395, 396, 598, 697, 698, 699, 798, 835)	Senior/Disabled	SmarTrip	\$2.10	\$2.40	+\$0.30	+14.3%	0.2%	0.1%	0.0%	-0.1%	-0.2%
Express Bus (393, 394, 395, 396, 598, 697, 698, 699, 798, 835)	Senior/Disabled	Cash	\$2.10	\$2.40	+\$0.30	+14.3%	0.0%	0.0%	0.0%	0.0%	0.0%
Route 599 Express	Regular	SmarTrip	\$7.50	\$4.80	-\$2.70	-36.0%	0.8%	0.4%	0.1%	0.4%	0.7%
Route 599 Express	Regular	Cash	\$7.50	\$4.80	-\$2.70	-36.0%	0.0%	0.0%	0.0%	0.0%	0.0%
Route 599 Express	Senior/Disabled	SmarTrip	\$3.75	\$2.40	-\$1.35	-36.0%	0.0%	0.0%	0.0%	0.0%	0.0%
Route 599 Express	Senior/Disabled	Cash	\$3.75	\$2.40	-\$1.35	-36.0%	0.0%	0.0%	0.0%	0.0%	0.0%
7-Day Regional Bus Pass	Regular	SmarTrip	\$12.00	\$13.50	+\$1.50	+12.5%	0.4%	0.3%	0.4%	-0.1%	0.0%
MetroAccess	Regular (maximum fare)	SmarTrip	\$4.00	\$4.50	+\$0.50	+12.5%	0.1%	0.1%	0.2%	0.0%	0.1%
MARC/VRE Transit Link Card	Regular	SmarTrip	\$114.00	\$128.25	+\$14.25	+12.5%	0.2%	0.1%	0.1%	-0.1%	-0.1%
Bus-to-rail Transfer ³	All Types	SmarTrip	\$2.00 discount	\$2.25 discount	+\$0.25	+12.5%	26.8%	22.2%	17.1%	4.6%	9.7%

1 Overall number utilization weights per category were used accounting for differences in blank and no-response answers between low-income and minority survey questions.

2 Service Type and Fare Medium where fare is increasing use a low-income and minority minus overall usage to determine disproportionate burden and disparate impact over 10%. Categories where the fare is decreasing use the overall minus low-income and minority difference to determine disproportionate burden and disparate impact over 10%.

3 Bus-to-rail transfer fare usage double counts the primary fare category. Therefore, the totals in each monthly usage column will not equal 100%.

Findings

For the proposed fare change by FCDOT, the analysis of the recent survey data shows that the utilization of the various fare media and fare levels among minority and low-income riders does not differ substantially from that of the overall ridership. In summary, the finding of this analysis is that the proposed fare change would not result in disparate impacts on minority populations or disproportionate burdens on low-income riders. Given this finding, no further examination of alternatives is required by the FTA Title VI Circular.

Board Agenda Item
July 16, 2024

ACTION - 4

Approval of Changes to the Fairfax County Purchasing Resolution

ISSUE:

Board of Supervisors' approval of changes to the Fairfax County Purchasing Resolution ("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 16, 2024.

TIMING:

Board action is requested on July 16, 2024.

BACKGROUND:

The Board of Supervisors adopted the current version of the Fairfax County Purchasing Resolution on July 11, 2023. During the 2024 General Assembly session, thirteen (13) bills relating to procurement and/or contracts passed the House and Senate. There were no successful bills that modified a mandatory section of the Virginia Public Procurement Act (VPPA), however, there were two (2) bills that changed non-mandatory sections of the VPPA with potential benefits to the County. These two (2) bills are proposed for inclusion in the Purchasing Resolution and are listed below under the heading "Code Changes."

The remaining eleven (11) bills either:

- Modify sections of the Code that can affect contracting and procurement, but are not required to be addressed in the Purchasing Resolution, or
- Modify a section of the VPPA that is not included in the Purchasing Resolution.

This year, staff recommends (6) administrative amendments to the Purchasing Resolution, worth mentioning in this Item, which can be found under the heading "Administrative Changes." Other administrative changes not listed in this Item are incidental changes to correct formatting or administrative errors. These amendments are clarifications and technical corrections to the Purchasing Resolution.

Code Changes

1. *House Bill 1113, Code of Virginia §§2.2-4303.2.* Job order contracting; limitations. Increases from \$6 million to \$10 million, the maximum threshold above which the sum of all jobs performed in a one-year job order contract term shall not exceed. The bill also increases the maximum threshold amount for any individual job order from \$500,000 to \$1 million. Finally, the bill also increases from two to three the number of additional one-year terms for which job order contracts may be renewable, and the bill only applies to contracts entered into on or after the bill's effective date. (Attachment 1 - Page 48).
2. *House Bill 1116, Code of Virginia § 2.2-4303.G.* Methods of procurement; certain construction projects. Allows a public body to establish purchase procedures, if adopted in writing, not requiring competitive sealed bids or competitive negotiation for single or term contracts for non-transportation-related construction projects if the aggregate or the sum of all phases is not expected to exceed \$300,000. Current law places the limit at \$200,000. (Attachment 1 - Pages 26, 45).

Administrative Changes

1. Updated definition of Emergency to explicitly include "public health emergency" and "threat to the community that demands immediate action". (Attachment 1 - Page 10).
2. Updated title of Fixed Assets to Accountable Equipment to clarify that only equipment items, and not all fixed assets, are included in the Accountable Equipment Inventory Property Management program. (Attachment 1 - Page 11).
3. Changed composition of Selection Advisory Committee to provide required flexibility. Overlooked in this section last year. (Attachment 1 - Page 19).
4. Updated Emergency Procurement process to provide needed flexibility. (Attachment 1 - Page 25).
5. Increased fair market donation value to \$10,000 to be consistent with excess and surplus property values. Overlooked last year. (Attachment 1 - Page 68).
6. Added "or public bodies" as eligible recipients of surplus items valued at less than \$10,000. (Attachment 1 - Page 68).

The text changes proposed in the Purchasing Resolution are presented in "track changes" format and legislative references are provided in the comments. 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.

Board Agenda Item
July 16, 2024

EQUITY IMPACT:

None.

FISCAL IMPACT:

None.

ENCLOSED DOCUMENTS:

Attachment I - Revised Fairfax County Purchasing Resolution

STAFF:

Christina Jackson, Deputy County Executive/Chief Financial Officer
Lee Ann Pender, Director, Department of Procurement and Material Management

ASSIGNED COUNSEL:

Emily Harwood Smith, Assistant County Attorney

FAIRFAX COUNTY PURCHASING



RESOLUTION

July
20232024

~~Adopted by the Board of Supervisors on July 11,~~
~~2023~~Adopted by the Board of Supervisors on July 16,
~~2024~~

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FAIRFAX COUNTY PURCHASING RESOLUTION

WHEREAS, the Fairfax County Board of Supervisors (the Board) 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, a central purchasing system is authorized by Virginia Code §15.2-831, and is a part of the Urban County Executive Form of Government adopted by Fairfax County in 1951; and

WHEREAS, the Virginia Public Procurement Act (Chapter 43 of Title 2.2 of the Code of Virginia, as amended), enunciates 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; and

WHEREAS, the Virginia Code § 15.2-831 and Virginia Code § 15.2-1236 (as amended) require all purchases of and contracts for supplies, materials, equipment and contractual services be in accordance with the Virginia Public Procurement Act and under such rules and regulations consistent with the Act as established by the Board through this resolution; and

WHEREAS, Virginia Code § 15.2-831, § 2.2-4302, and § 2.2-4343 (as amended) allow implementation of the Virginia Public Procurement Act through resolutions and regulations consistent with this Act; and

WHEREAS, Virginia Code § 15.2-831 and §15.2-1543 empower the Board to employ a County Purchasing Agent, Virginia Code § 2.2-4302 authorizes the Board to act through its County Purchasing Agent, and § 15.2-831, § 15.2-1233 through § 15.2-1240, and § 15.2-1543 -set the County Purchasing Agent's duties;

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 on July 195, 20224, as follows:

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FAIRFAX COUNTY PURCHASING RESOLUTION

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 Procurement and Material 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 Procurement and Material Management shall be the County Purchasing Agent who shall have general supervision of the DPMM. The Purchasing Agent shall be appointed by the Board of County Supervisors upon recommendation of the County Executive.

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. The County Purchasing Agent, or their designee, has the authority to take any action or fulfill any duty granted by this Purchasing Resolution or by law, including, but not limited to, executing and administering contracts and making findings and addressing remedies as outlined in Article 5 of this Resolution.

Section 3. Exclusions from Duties.

- A. The procurement of architectural, engineering and related consultant services for capital 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 (DPWES), pursuant to Virginia Code §15.2-834, the Board of Supervisors' Resolution dated September 18, 1968, and this Resolution, is responsible for Fairfax County construction projects administered

FAIRFAX COUNTY PURCHASING RESOLUTION

by DPWES and the architectural, engineering and consultant services related to those projects. The Director, Department of Public Works and Environmental Services or their designee, has the same authority as the County Purchasing Agent to execute and administer contracts and to make findings and address remedies as outlined in Article 5 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 their designee has the authority to enter into agreements pursuant to Virginia Code § 2.2-4366. Any such agreements shall be approved by the County Attorney.

2. The Fairfax County Public School Board is 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 Virginia Code § 22.1-79. The school division's Superintendent or their designee has 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 is responsible for Fairfax County Park Authority capital construction and related architectural and engineering services per Virginia Code § 15.2-5704 of the Code of Virginia, Board of Supervisors' Ordinance dated July 13, 2021, and a Memorandum of Understanding governing the relationship of the Fairfax County Park Authority and Fairfax County. The Director of the Park Authority or their 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 5 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 their designee shall have the authority to enter into agreements pursuant to Virginia Code § 2.2-4366. 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 the architectural, engineering, and consultant services for all programs and projects administered by the Department on behalf of either the Redevelopment and Housing Authority per Virginia Code §36-19 or the Fairfax County Board of Supervisors, The Director of the Department of Housing and Community Development or their 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 5

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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 Virginia Code § 33.2-338 and this Resolution, may be responsible for constructing or improving highways, including related architectural, engineering, and consulting services. Highways may include 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 their 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 5 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 Fairfax County Public Schools is excluded from the duties of the County Purchasing Agent. 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.
 - C. The Fairfax County Sheriff shall be the purchasing agent in all matters involving the commissary and non-appropriated funds received from inmates, in accordance with §53.1-127.1 Code of Virginia. The Purchasing Agent shall make all other purchases governed by Virginia Code § 53.1-126.

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 material management system.

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- B. The Agencies designated in Section 3(A) 1 - 6 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 Purchasing Agent for County staff agencies or the administrative head of the respective public body involved.

Section 5. Authority of Purchasing Agent.

- A. The Purchasing Agent, the individuals described in Section 3 (above), and their respective designees have exclusive authority for procurement transactions undertaken by the County. No County Employee shall attempt, directly or indirectly, to influence or coerce the Purchasing Agent in the performance of their duty.

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Section 6. Definitions.

1. Acquisition Function Closely Associated with Inherently Governmental Functions means supporting or providing advice or recommendations with regard to the following activities:
 - a. Planning acquisitions.
 - b. Determining what supplies or services are to be acquired by the County, including developing statements of work.
 - c. Developing or approving any contractual documents, to include documents defining requirements, incentive plans, and evaluation criteria.
 - d. Evaluating bids or proposals.
 - e. Awarding County contracts.
 - f. 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).
 - g. Terminating contracts.
 - h. Determining whether contract costs are reasonable, allocable, and allowable.
2. 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.
3. 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).
4. 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).
5. Complex Project means a construction project that includes one or more of the following significant components: difficult site location, unique equipment, specialized building systems, multifaceted program, accelerated schedule, historic designation, or intricate phasing or some other aspect that makes competitive sealed bidding not practical.
6. Construction shall mean building, altering, repairing, improving or demolishing any structure, building, or highway, and any draining, dredging, excavation, grading or similar work upon real property.

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7. 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.
8. 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.
9. Covered Employee means an individual who
 - a. Is an employee of the contractor or subcontractor, a consultant, partner, or a sole proprietor; and
 - b. Performs an acquisition function closely associated with inherently governmental functions.
10. Debarment is an action taken by the County Purchasing Agent, a contracting officer, or their designee, within the scope of their procurement authority, to exclude prospective contractors from contracting with County agencies or organizations for particular types of supplies, services, insurance, or construction, for specified periods of time.
11. Department means the Virginia Department of General Services
12. 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.
13. DPMM shall mean the Department of Procurement and Material Management.
14. Emergency shall be deemed to exist when a breakdown in machinery and/or a threatened termination of essential services or a dangerous condition develops including a public health emergency, or when any unforeseen circumstances arise causing curtailment or diminution of essential service and/or threat to the community that demands immediate action.
15. Employment Services Organization shall mean an organization that provides community based employment services to individuals ~~and with~~ disabilities that is an approved Commission on Accreditation of Rehabilitation Facilities (CARF) accredited vendor of the Department for Aging and Rehabilitative Services.

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16. Excess Property shall mean that property which exceeds the requirement of the department to which the property is assigned.
17. FCPS shall mean Fairfax County Public Schools.
18. 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.
19. 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.
20. ~~Fixed Asset~~ Accountable Equipment 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 \$10,000.
21. Goods shall mean all material, equipment, supplies, printing, and information technology hardware and software.
22. Immediate Family shall mean a spouse, child, parent, brother, sister, and any other person living in the same household as the employee.
23. 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.
24. Ineligibility shall mean an action taken to suspend or debar a prospective contractor from consideration for award of contracts. The suspension shall not be for a period exceeding twelve (12) months and the debarment shall not be for a period exceeding three (3) years.
25. 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.
26. 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.

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27. 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--
- Is exempt from disclosure under the Virginia Freedom of Information Act; or
 - Has not been disseminated to the general public and is not authorized by the agency to be made available to the public.
28. Nonprofessional Services shall mean any service not specifically identified as a professional or consultant service.
29. 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.
30. 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.
31. 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.
32. 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--
- Financial interests of the covered employee, of close family members, or of other members of the household;
 - Other employment or financial relationships (including seeking or negotiating for prospective employment or business); and
 - Gifts, including travel.
- Financial interests may arise from--
- 1) Compensation, including wages, salaries, commissions, professional fees, or fees for business referrals;
 - 2) Consulting relationships (including commercial and professional consulting and service arrangements, or serving as an expert witness in litigation);
 - 3) Services provided in exchange for honorariums or travel expense reimbursements;

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- 4) Investment in the form of stock or bond ownership or partnership interest (excluding diversified mutual fund investments);
 - 5) Real estate investments;
 - 6) Patents, copyrights, and other intellectual property interests; or
 - 7) Business ownership and investment interests.
33. 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.
34. Prevailing Wages shall mean the rate, amount or level of wages, salaries, benefits, and other remuneration prevailing for the corresponding classes of mechanics, laborers, or workers employed for the same work in the same trade or occupation in the locality in which the public facility or immovable property that is the subject of construction is located as determined by the Commissioner of Labor and Industry on the basis of applicable prevailing wage rate determinations made by the U.S. Secretary of Labor under the provisions of the Davis-Bacon Act, 40 U.S.C. §276 et seq., as amended.
35. 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.
36. 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).
37. Project Labor agreement shall mean a pre-hire collective bargaining agreement with one or more labor organizations that establishes the terms and conditions of employment for a specific public works project.
38. 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.

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- 39. Public Contract shall mean an agreement between a public body and a nongovernmental source that is enforceable in a court of law.
- 40. Public or County Employee shall mean any person employed by the County of Fairfax, including elected officials or appointed members of governing bodies.
- 41. 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.
- 42. 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.
- 43. 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.
- 44. SAC shall mean Selection Advisory Committee.
- 45. 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.
- 46. Surplus Property shall mean that property which exceeds the requirement of the entire County.
- 47. Suspension is a type of ineligibility based upon an immediate need when there is evidence that a prospective contractor has committed any of the grounds for debarment.

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Article 2

PROCUREMENT 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. 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 has certified that the unencumbered balance in the appropriation concerned, in excess of all unpaid obligations, is sufficient to defray the cost of such order. If any department or agency of the County government purchases or contracts 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 is void and of no effect. The head of such department or agency shall be personally liable for the costs of such orders and contracts.
- E. Notwithstanding any other provision of law 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, including the accessibility of such housing to employees of the county, town, or city or employees of the local school board. 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

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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.

- 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.
- 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.
- H. The County may, when procuring products or services or letting contracts for construction, manufacture, maintenance, or operation of public works, or when overseeing or administering such procurement, construction, manufacture, maintenance or operation, in its bid specifications, project agreements, or other controlling documents:
 - 1. Require bidders, offerors, contractors or subcontractors to enter into or adhere to project labor agreements with one or more labor organizations, on the same or related public works projects; and
 - 2. Require bidders, offerors, contractors, subcontractors, or operators to become or remain signatories or otherwise adhere to project labor agreements with one or more labor organizations, on the same or other related public works projects.
- I. The County adopted an ordinance that requires payment of the Prevailing Wage Rate on County Construction Contracts, as those terms are defined in the Fairfax County Code (Chapter 2, Article 3, Section 2-3-1 and Section 2-3-2). Each County Construction Contract, as defined in the County's Prevailing Wage Ordinance, must contain a provision requiring that the remuneration to any individual performing the work of any mechanic, laborer, or worker on the work contracted to be done under the public contract shall be at a rate equal to the prevailing wage rate.
- J. In alignment with the County's One Fairfax Policy on racial and social equity and its recognition that economic inclusivity benefits all, the County Purchasing Agent will establish and expand programs consistent with all provisions of this Resolution and applicable law to facilitate the participation of small businesses, businesses owned by women, minorities, and service-disabled veterans (SWaM Businesses) in procurement transactions. SWaM businesses are those businesses as defined by the Virginia Department of Small Businesses and Supplier Diversity (SBSD) at <https://www.sbsd.virginia.gov/faqs/>. Such programs may

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include cooperation with the SBSD, the United States Small Business Administration, and other public or private agencies.

To measure the success of such programs, the County Purchasing Agent will track bid and proposal submissions by SWaM Businesses as well as procurement transactions under their authority with SWaM businesses.

- K. In the solicitation or awarding of contracts, no public body shall discriminate against a bidder or offeror because of race, religion, color, sex, sexual orientation, gender identity, national origin, age, disability, status as a service disabled veteran, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the fulfillment of the contract.
- L. It is the County's policy to require that its contractors do not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, sexual orientation, gender identity, 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.

Section 2. Methods of Procurement.

- A. Competitive Sealed Bidding.- is a method of contractor selection that 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. The Invitation to Bid may include criteria to be used in determining whether a bidder who is not prequalified by the Virginia Department of Transportation is a responsible bidder pursuant to § 2.2-4301. Such criteria may include a history of (i) completion by the bidder and any potential subcontractors of specified safety training programs established by the U.S. Department of Labor, Occupational Safety and Health Administration; (ii) participation by the bidder and any potential subcontractors in apprenticeship training programs approved by state agencies or the U.S. Department of Labor; or (iii) maintenance by the bidder and any potential subcontractor of records of compliance with applicable local, state and federal laws. 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

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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 on the Department of General Services' central electronic procurement website, the Fairfax County Government website, other appropriate websites, or publication in a newspaper of general circulation. 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 that 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. A public body may include as a factor that will be used in evaluating a proposal the proposer's employment of persons with disabilities to perform the specifications of the contract. 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.
 2. Public notice of the Request for Proposal at least five days prior to the date set for receipt of proposals by posting on the Department of General Services' central electronic procurement website, the Fairfax County Government website, or other appropriate websites, or by publication in a newspaper of general circulation. In addition, proposals may be solicited directly from potential vendors.

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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 \$200,000, the Director of DPMM or other Authorized Agency, or the FCPS Division Superintendent, or designee, shall appoint a Selection Advisory Committee to recommend to the Director of DPMM or other Authorized Agency, those consultant services firms that are to be retained by the County. The SAC will be composed of principal staff personnel and other such individuals as determined by the Purchasing Agent and a member of the DPMM or other authorized agency. 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 DPMM or other authorized agency. Elected Officials and/or their appointed office staff may not participate as members of a Selection Advisory Committee or Technical Advisory Committee. For purposes of this section, Elected Officials does not include Constitutional Officers.

2) When selecting a firm for consultant services, where the compensation for such consultant services is estimated to be less than \$200,000, the Director of the funded Agency or FCPS Department Head shall appoint a Selection Advisory Committee composed of 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.

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 \$200,000 may be accomplished without public announcement.

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

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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 \$200,000, after review of the SAC recommendation, shall be awarded by the Purchasing Agent for the County or an agency of the County. The Purchasing Agent or FCPS Division Superintendent will notify the Board of Supervisors and/or the School Board of such contract award prior to final execution.

3) All proposed contracts for consultant services, where the compensation to be paid is less than \$200,000, shall be approved by the Director of DPMM 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 \$80,000, the Director of DPMM or other Authorized Agency, or the FCPS Division Superintendent, or designee shall appoint a Selection Advisory Committee to recommend to the Director of DPMM or other Authorized Agency, those professional services firms that are to be retained by the County. The SAC will be composed of principal staff

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personnel and other such individuals as determined by the Purchasing Agent and a member of the DPMM or other authorized agency. Elected Officials and/or their appointed office staff may not participate as members of a Selection Advisory Committee or Technical Advisory Committee. For purposes of this section, Elected Officials does not include Constitutional Officers.

2) When selecting a firm for professional services, where the compensation for such professional services is estimated to be less than \$80,000, the Director of the funded Agency or FCPS Department Head shall appoint a Selection Advisory Committee composed of 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.

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 \$80,000 may be accomplished without public announcement.

2) For architectural or engineering services estimated to cost less than \$80,000, 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 \$80,000, 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

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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. DPMM 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 \$200,000, after review of the SAC recommendation a contract shall be awarded by the Purchasing Agent for those professional services to be retained by the County or an agency of the County. The Purchasing Agent or FCPS Division Superintendent will notify the Board of Supervisors and/or the School Board prior to final contract execution.

3) All proposed contracts for professional services, where the compensation to be paid is less than \$200,000, shall be approved by the Director of DPMM 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

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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) §2.2-4303.1.

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 \$200,000, the Director of DPMM or other Authorized Agency, or the FCPS Division Superintendent, or designee shall appoint a Selection Advisory Committee to recommend to the Director of DPMM or other Authorized Agency, those non-professional services firms that are to be retained by the County. The SAC will be composed of principal staff personnel and other such individuals as determined by the Purchasing Agent and a member of the DPMM or other authorized agency. Elected Officials and/or their appointed office staff may not participate as members of a Selection Advisory Committee or Technical Advisory Committee. For purposes of this section, Elected Officials does not include Constitutional Officers.

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2) When selecting a firm for non-professional services, where the compensation is estimated to be less than \$200,000, the Director of the funded Agency or FCPS Department Head shall appoint a Selection Advisory Committee composed of 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 \$200,000 may be accomplished without public announcement.

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 DPMM 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. Cooperative: The County or any entity identified in Article 1, 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, the District of Columbia, the Metropolitan Washington Council of Governments, the National Association of Counties, for the purpose of combining requirements to increase efficiency or reduce administrative

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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 or from the contract of the Metropolitan Washington Council of Governments or the Virginia Sheriff's Association 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.

- D. Emergency.- In case of an eEmergency, 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 eEmergency 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 General Services' central electronic procurement website, the Fairfax County Government website, or other appropriate websites, or in a newspaper of general circulation for contracts in excess of \$200,000.
1. If an eEmergency occurs during regular County business hours, the head of the using agency or their designee 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 eEmergency occurs at times other than regular County business hours and there is an immediate threat to required to protect personal safety and/or property, the using agency head or their designee may purchase the required goods or services directly. The agency head or their designee 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 or their designee 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 emergencyEmergency.
 3. The County Purchasing Agent shall maintain a record of all emergencyEmergency purchases supporting the particular basis upon which the emergency purchase was

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made. Such records shall be available for public inspection during regular County business hours in the office of the County Purchasing Agent.

- E. Informal Procurement.- An informal procurement is not subject to the rules governing competitive sealed bidding or competitive negotiation. Pursuant to Article 1, Section 4, the Purchasing Agent will adopt written procedures for informal procurements that will provide for competition wherever practicable. Informal procurements are subject to Article 2, Section 5 of this Resolution. No informal procurement procedures will waive compliance with the Uniform State Building Code.

1. ~~Goods and Services and Non-Transportation Related Construction~~: If the estimated contract value is \$200,000 or less, an informal procurement may be used for (i) goods and services, other than professional services, ~~and (ii) non-transportation-related construction. For purposes of this section, the contract value of non-transportation related construction is the aggregate or the sum of all phases of the contract.~~

1-2. ~~Non-Transportation Related Construction~~: If the estimated contract value is \$300,000 or less, an informal procurement may be used for non-transportation-related construction. For purposes of this section, the contract value of non-transportation related construction is the aggregate or the sum of all phases of the contract.

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2-3. ~~Transportation-Related Construction~~: Informal procurement may be used for transportation-related construction contracts if the estimated contract value is \$25,000 or less. For purposes of this section, the contract value for transportation-related construction includes the aggregate or sum of all phases of the contract.

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3-4. ~~Professional Services~~: An informal procurement may be used for single or term contracts for professional services if the estimated contract value is \$80,000 or less. For purposes of this section, the contract value for professional services includes the aggregate or sum of all phases of the contract.

- 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 \$10,000, shall be deemed a small purchase and shall not be subject to the rules governing the competitive bidding process.

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- 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 General Services' central electronic procurement website, the Fairfax County Government website, or other appropriate websites, or in a newspaper of general circulation for contracts in excess of \$200,000.
- I. 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.

Section 3. Exceptions to the Requirement for Competitive Procurement.

- A. 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. H.). 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.
- B. 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 and provided that the public body has made a determination in advance after reasonable notice to the public and set in writing that

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competitive sealed bidding and competitive negotiation are not fiscally advantageous to the public. The writing shall document the basis for this determination.

- C. Insurance: As provided in § 2.2-4303(C), 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(A)(3) of the Virginia Public Procurement Act.
- D. Legal Services: The County (or any public body that has adopted this Resolution) may enter into contracts without competition for (1) the purchase of legal services; and (2) expert witnesses or other services associated with litigation or regulatory proceedings. Any contract for Legal Services may be entered into upon terms established by the County Attorney.
- E. Public Assistance Programs: The County may procure goods or personal services without competition for direct use by a recipient of County administered public assistance or social services programs as defined by § 63.2-100 of the Code of Virginia, or community services board as defined in §37.2-100, or any public body purchasing services under the Children's 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 personal 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.
- F. Workshops or Employment Services Organizations: 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 Blind and Visually Impaired; or which are produced or performed by employment services organizations which offer transitional or supported employment services serving individuals with disabilities.
- G. Other Special Exemptions: Procurement for single or term contracts for goods and services not expected to exceed \$200,000 as identified by the Purchasing Agent.
- H. Ballots and Elections Materials: The provisions of Articles 1, 2, and 5 of the Purchasing Resolution 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 Fairfax County Purchasing Resolution, Article 6, shall apply to such contracts.

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Section 4. Exemptions from the Purchasing Resolution.

- A. Retirement Board Investments, Actuarial Services: The selection of services related to the management, purchase, or sale of investments authorized by Virginia Code Ann. §51.1-803, including but not limited to actuarial services, shall be governed by the standard of care set forth in Virginia Code Ann. § 51.1-803(A) and shall not be subject to the provisions of the Purchasing Resolution or the VPPA.
- B. Conference Planning: Acquisition of the use of meeting rooms and lodging rooms in hotels or motels is considered to be short term rentals of portions of real property -real estate transactions. So long as the procurement involves only the use of the facilities, the competitive requirements of the Fairfax County Purchasing Resolution do not apply. However, if the procurement includes the provision of catered meals, audio visual equipment, or other related services, and the value of these other included services exceeds the \$10,000 level for which competition is required, the entire procurement, including the use of the space, shall be procured competitively as a package based on its anticipated value.
- C. Virginia Grown Food Products: Neither the VPPA or the Purchasing Resolution applies to the purchase of Virginia-grown food products for use by a public body where the annual cost of the product is not expected to exceed \$100,000, provided that the procurement is accomplished by (i) obtaining written solicitation of a minimum of three bidders or offerors if practicable and (ii) including a written statement regarding the basis for awarding the contract.
- D. Finance Board Investments: Pursuant to Virginia Code Ann. § 15.2-1548, the selection of services related to the management, purchase, or sale of authorized investments, including but not limited to actuarial services, of the local finance board shall not be subject to the provisions of the Virginia Public Procurement Act.
- E. Multidivision Online Providers: Pursuant to Virginia Code Ann. §22.2-212.24, the Fairfax County Public Schools may enter into contracts, consistent with the criteria approved by the FCPS Board, with approved private or nonprofit organizations to provide multidivision online courses and virtual school programs. Such contracts shall be exempt from the Virginia Public Procurement Act.
- F. Subaward Agreements: Subaward Agreements entered into pursuant to the principles set forth in the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 C.F.R. § 200 *et seq.*) are not subject to the Purchasing Resolution. Subaward Agreements and associated documents may, however, be executed by the Purchasing Agent.

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- G. Public Private Education Facilities and Infrastructure.- The "Public-Private Education Facilities and Infrastructure Act of 2002 (PPEA)" (Virginia Code § 56-575 et seq.) 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.

Section 5. 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 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 re-advertising 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 their knowledge no Fairfax County official or employee having official responsibility for the procurement transaction, or member of their immediate family, has received or will receive any financial benefit of more than nominal or

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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 5, 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:

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- 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 5, Paragraph C.

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 their 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

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if the public interest will not permit the delay of re-advertisement 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. When in the course of procuring goods, if the County receives two or more bids for products that are Energy Star certified, meet FEMP-designated efficiency requirements, appear on FEMP's Low Standby Power Product List, or are WaterSense certified, the County may only select among those bids unless, before selecting a different bid, the Purchasing Agent provides a written statement that demonstrates the bid price(s) of such products are unreasonable.
3. 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;

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- 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;
 - j. Whether the bidder who is not prequalified by the Virginia Department of Transportation has complied with criteria set forth in the solicitation regarding safety training programs, apprenticeship, and compliance records; 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.
- 4. Pursuant to Virginia Code §15.2-1237, 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.
 - 5. 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.
 - 6. 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.
- C. 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.

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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 5.E 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. A bidder, offeror, or contractor shall not designate as trade secrets or proprietary information (a) an entire bid, proposal, or prequalification application; (b) any portion of a bid, proposal, or prequalification application that does not contain trade secrets or proprietary information; or (c) line item prices or total bid, proposal, or prequalification application prices.
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.

D. 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

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- 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 their 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.

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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.

E. 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.
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

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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 (a) through (f) of this subsection.

Section 6. 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

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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 7. HIPAA Compliance.

The County is a "covered entity" as defined in 45 Code of Federal Regulations Section 160.103 by the Health Insurance Portability and Accountability Act of 1996 (HIPAA). The County has elected to designate itself as a Hybrid Covered Entity. In particular, the County performs HIPAA covered functions when it provides services as a health care provider transmitting health care information in an electronic format in connection with a transaction for which there has been a standard established in accordance with Subparts 160 and 162. A contractor 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; the Health Department; Fire and Rescue Department - Emergency Medical Services Division; and the Department of Human Resources, Benefits Division (health plan) upon award of contract.

Each contractor must adhere to all relevant federal, state, and local confidentiality and privacy laws, regulations, and, if required, the 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: <https://www.fairfaxcounty.gov/topics/hipaa-health-insurance-portability-accountability-act>

Section 8. Compliance with State Law; Foreign and Domestic Businesses Authorized to Transact Business in the Commonwealth.

- A. 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.

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- B. 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.
- C. 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.
- D. 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

CONTRACT TERMS AND CONDITIONS

Section 1. Authority to Bind the County.

The parties agree that only the Purchasing Agent may bind the County to contract terms or conditions. Any term or condition invoked through an "I agree" click box or other comparable mechanism (i.e. "click wrap" or "brows wrap" agreement) does not bind the County or any County authorized end user to such terms or conditions, unless agreed to in writing by or on behalf of the Purchasing Agent.

Section 2. Mandatory Terms and Conditions Applicable to All Contracts.

The following terms and conditions, as set forth below, are deemed included in all contracts for the purchase of goods, services, or both governed by the Purchasing Resolution. These terms and conditions will apply with the same force and effect as if set forth in the contract or ordering document.

A. Non-Discrimination: During the performance of this contract, the contractor agrees as follows:

1. 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

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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.

2. 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.
3. 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.

The contractor will include the provisions of paragraphs 1, 2, and 3 above in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

- B. Immigration Reform and Control Act Compliance: 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.
- C. Nonvisual Access: -All information technology, which is purchased or upgraded by the County, must comply with the following access standards from the date of purchase or upgrade until the expiration of the Contract:
 1. Effective, interactive control and use of the technology (including the operating system), applications programs, and format of the data presented, shall be readily achievable by nonvisual means;
 2. The technology equipped for nonvisual access shall be compatible with information technology used by other individuals with whom the blind or visually impaired individual interacts;
 3. Nonvisual access technology shall be integrated into networks used to share communications among employees, program participants, and the public; and
 4. The technology for nonvisual access shall have the capability of providing equivalent access by nonvisual means to telecommunications or other interconnected network services used by persons who are not blind or visually impaired. A covered entity may stipulate additional specifications in any procurement.

Compliance with the nonvisual access standards set out this Section is not required if the Purchasing Agent determines that (i) the information technology is not available with nonvisual access because the essential elements of the information technology are visual and (ii) nonvisual equivalence is not available.

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- D. Prohibition on the Use of Certain Products, Services, Applications, and Website. Fairfax County may not use, whether directly or through work with or on behalf of another public body, any hardware, software, or services that have been prohibited by the Commonwealth of Virginia and/or the U.S. Federal Government, including the Department of Homeland Security, for use on federal systems.
- E. Venue. Venue for any claim under a contract or arising out of an order is exclusively in the state courts of Fairfax County, Virginia or the United States District Court for the Eastern District of Virginia, Alexandria Division.
- F. Choice of Law. Any contract or ordering document will be governed for all purposes by and construed in accordance with the laws of the Commonwealth of Virginia.
- G. Order of Precedence. If a term or condition included in a contract or ordering document (including any addendum, schedule, appendix, exhibit, or attachment) conflicts with the contract terms contained in this Article, this Article will control.
- H. Contractual Disputes. Contractual disputes must be resolved as set forth in Article 5 of the Purchasing Resolution.
- I. Electronic Signatures. Contractors agree that contracts and other associated documents may be executed using electronic signatures and delivered by electronic means. When electronic signatures are used, Contractors agree that the signatures are the same as handwritten signatures for the purposes of validity, enforceability, and admissibility.

Section 3: Mandatory Terms Applicable to Contracts (including Amendments) in Excess of \$200,000

- A. Authorization to Transact 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 or as otherwise required by law.
- B. Audit by the County. The County or its agent has reasonable access to and the right to examine any 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. For purposes of this clause, the term "records" includes documents, and papers regardless of whether they are in written form,

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electronic form, or any other form. The Purchasing Agent may accept modifications to this requirement, in their discretion.

- C. 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 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. The Purchasing Agent may, in their discretion, accept a vendor's drug free workplace policy as satisfaction of this requirement, even if the vendor's drug free workplace policy differs from the requirements stated above.

Section 4. Prohibited Terms and Conditions.

The following terms and conditions are prohibited in any contract or ordering document executed by the County. If a contract governed by the Purchasing Resolution, including any exhibits, attachments, or other documents incorporated by reference therein, includes a prohibited term or condition then that term or condition is stricken from the contract and of no effect.

- A. No Indemnification by the County. Under applicable law the County cannot indemnify or defend the Contractor or any third party.
- B. Contracts Subject to Appropriation by Board of Supervisors. The County is not bound by any provision in a contract or ordering document that may or will cause the County, its agencies, or employees, to make or otherwise authorize an obligation in excess of the amount appropriated by the Fairfax County Board of Supervisors for such purpose. Such provisions include, for example, automatic renewal of the agreement, penalty payments by the County, indemnification by the County, and payment by the County of taxes or charges not specifically included in the prices of the goods or services.

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- C. Binding Arbitration or Mediation. The County does not agree to submit to any form of binding alternative dispute resolution, including without limitation arbitration or mediation, unless specifically authorized by the Board of Supervisors.
- D. Limitation of Rights and Waiver of Remedies. The County does not agree to limit its rights or waive its remedies at law or in equity, unless specifically authorized by the Board of Supervisors.
- E. Limitation of Liability. There is no limitation on the liability of a contractor for claims for bodily injury, including death, and damage to real property or tangible personal property resulting from the negligence of a contractor or any employee of a contractor. For Information Technology contracts in excess of \$200,000 there is no limitation of liability of a contractor for the intentional or willful misconduct, fraud, or recklessness of a supplier or any employee of a supplier.
- F. Confidentiality. The County will not be bound by any confidentiality provision that is inconsistent with the requirements of the Virginia Code, including the Virginia Freedom of Information Act.
- G. Unilateral Modification. Unilateral modification of the contract or ordering document by the contractor is prohibited.

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Article 4

CONSTRUCTION CONTRACTING

Section 1. Authority.

The procurement of architectural, engineering and related consultant services for construction projects and the contracting for construction projects are as set out in Article 1, Section 3.

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 Purchasing Agent for County staff agencies or the administrative head of the respective public body involved.

Section 3. 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. The Purchasing Agent may establish written purchase procedures not requiring competitive sealed bids or competition negotiation for single or term contracts for non-transportation-related construction, if the aggregate or the sum of all phases is not expected to exceed \$299300,000; and transportation-related construction, if the aggregate or sum of all phases is not expected to exceed \$25,000. However, such purchase procedures shall provide for competition wherever practicable.
- C. 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.

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- D. A contract for architectural or professional engineering services relating to multiple projects may be awarded 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 three additional 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 a contract term shall not exceed \$10 million, (c) the fee for any single project shall not exceed \$2.5 million. 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.
- E. 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 their behalf or on behalf of their 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.
1. Subsection E shall not be construed to render void any provision of a County construction contract that:
 - a. 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;
 - b. Requires notice of any delay by the party claiming the delay;
 - c. Provides for liquidated damages for delay; or
 - d. Provides for arbitration or any other procedure designed to settle contract disputes.
 2. 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.
 3. 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

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delay claim for which the County's denial is determined through litigation or arbitration to have been made in bad faith.

Section 4. Methods of Procurement.

- A. Construction Management/Design Build Services. 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.
1. Prior to making a determination as to the use of construction management or design-build 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 (i) advise the County regarding the use of construction management or design-build for that project and (ii) assist the County with the preparation of the Request for Proposal and the evaluation of such proposals.
 2. A written determination shall be made in advance by the County that competitive sealed bidding is not practicable or fiscally advantageous, and such writing shall document the basis for the determination to utilize construction management or design-build. The determination shall be included in the Request for Qualifications and be maintained in the procurement file.
 3. Procedures adopted by the County for construction management pursuant to this article shall include the following requirements:
 - a. Construction management may be utilized on projects where the project cost is expected to be less than the project cost threshold established in the procedures adopted by the Secretary of Administration for the Commonwealth using construction management contracts, provided that (i) the project is a complex project and (ii) the project procurement method is approved by the local governing body. The written approval of the governing body shall be maintained in the procurement file; public notice of the Request for Qualifications is posted on the Department's central electronic procurement website, known as eVA, at least 30 days prior to the date set for receipt of qualification proposals;
 - b. The construction management contract is entered into no later than the completion of the schematic phase of design, unless prohibited by authorization of funding restrictions;
 - c. Prior construction management or design-build experience or previous experience with the Department's Bureau of Capital Outlay Management shall not be required as a prerequisite for award of a contract. However, in the

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- selection of a contractor, the County may consider the experience of each contractor on comparable projects;
- d. Construction management contracts shall require that (i) no more than 10 percent of the construction work, as measured by the cost of the work, be performed by the construction manager with its own forces and (ii) the remaining 90 percent of the construction work, as measured by the cost of the work, be performed by subcontractors of the construction manager, which the construction manager shall procure by publicly advertised, competitive sealed bidding to the maximum extent practicable. The provisions of this subdivision shall not apply to construction management contracts involving infrastructure projects;
 - e. The procedures allow for a two-step competitive negotiation process; and
 - f. Price is a critical basis for award of the contract.
4. Procedures adopted by the County for 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 for state public bodies.
 5. The County shall report by no later than November 1 of each year to the Director, Department of General Services on all completed capital projects in excess of \$2 million, which report shall include at a minimum (i) the procurement method utilized; (ii) the project budget; (iii) the actual project cost; (iv) the expected timeline; (v) the actual completion time; and (vi) any post-project issues.
- C. Job order contracting; limitations. Where the method for procurement of job order construction is competitive negotiation, the following shall apply:
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~~ three 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 \$~~10-6~~ million. Subject to the maximum threshold amount, no individual job order shall exceed \$~~1,0500,000~~.
 3. For the purposes of this section, any unused amounts from one contract term shall not be carried forward to any additional term.

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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. However, job order contracting may be used for safety improvements or traffic calming measures for individual job orders up to \$250,000, subject to the maximum annual threshold amount established in this section.

Section 5. 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 C.
 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.

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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

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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.
 - 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 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. If a bid contains both clerical and judgment mistakes, a bidder may withdraw their 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

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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 their claim of right to withdraw their 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 construction contracts in excess of \$500,000 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.

No forfeiture under a bid bond shall exceed the lesser of:

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- 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.

2. Performance and payment bonds:

- a. Upon the award of any public construction contract exceeding \$500,000 awarded to any prime contractor, 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.
 - 2) A payment bond in the sum of the contract amount, unless the contract is an indefinite delivery or quantity contract and the County has adopted an ordinance pursuant to subsection f. 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 furtherance of the work provided for in the contract, and shall be conditioned upon the prompt payment for all materials furnished or labor supplied or performed in the furtherance of the work. As used in this subdivision "Labor or materials" includes 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.
- 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

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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.

- f. For indefinite delivery or quantity contracts awarded pursuant to subsection a, the County may, by ordinance allow the contractor awarded such contract to furnish to the County a performance bond and a payment bond, each of which shall be equal to the dollar amount of the individual tasks identified in the underlying contract. Such contractor shall not be required to pay the performance bond and payment bond in the sum of the contract amount if the County has adopted such an ordinance pursuant to this subsection. For purposes of this section, "indefinite delivery or quantity contract" means a contract that only requires performance of contractual obligations upon the request of the County and which establishes an annual cap for the total work that may be authorized for such contract.
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

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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 their 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.

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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 their 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 F. 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 F. shall apply to contracts as provided in the Code of Virginia, §2.2-4334.

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Article 5

BIDDER/CONTRACTOR REMEDIES

Section 1. Ineligibility.

- A. Debarment as used in this section means any action taken by the County Purchasing Agent to exclude individuals or entities from contracting with County agencies or organizations for particular types of supplies, services, insurance, or construction for a specified period of time. A prospective contractor may be suspended from participating in County procurements if there is evidence that the prospective contractor has committed an act that would be the basis of a debarment and immediate action is needed to protect the County's interests. Debarment or suspension do not relieve the contractor of responsibility for its existing obligations.
- B. The County Purchasing Agent shall have the authority to suspend or debar a prospective contractor from contracting for particular types of supplies, services, insurance or construction, for specified periods of time 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

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- 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. Ineligibility Period. Debarment shall be for a period of ninety (90) days to three (3) years, at the discretion of the County Purchasing Agent. The period of suspension shall not exceed one year. A debarment or suspension may be lifted or stayed at any time if the County Purchasing Agent determines that doing so is in the best interests of the County.
- D. 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 ten (10) 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 ten (10) days of receipt of the notice by instituting legal action as provided in the Code of Virginia.
- E. 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.

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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 5A, 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 Non-responsibility.

- 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

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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 5.C, 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 5.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. Nothing in this section shall be construed to permit a bidder to challenge the validity of the terms or conditions of the Invitation for Bid or Request for Proposal.

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- 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.

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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 their 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. The Contractor's contractual claims, whether for money or other relief, must be submitted to the County Purchasing Agent 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 to the County Purchasing Agent 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. In addition to the requirements of Section 5, any bidder, offeror, potential bidder or offeror, or contractor that seeks monetary relief or damages from the County must submit its claim to the Board of Supervisors in compliance with Virginia Code §§ 15.2-1243 through 1249. The requirement to submit a claim for monetary relief or damages to the Board of Supervisors does not alter, toll, extend, or otherwise vary the Contractor's obligation to appeal the Purchasing Agent's decision within six (6) months of the date of Purchasing Agent's final written decision by instituting legal action, as described in Section 5.
- B. No bidder, offeror, potential bidder or offeror, or contractor shall institute any legal action until all statutory requirements have been met.

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Article 6

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 B1, B2, and B3 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 personal use rebates or anything

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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. No employee shall use rebates provided by any vendor for personal use. All monetary rebates received as the result of a procurement transaction are for the sole use of the County.

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 their suppliers or their 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

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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.

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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 6 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:

- A. Identify and prevent personal conflicts of interest of their employees who perform an acquisition function closely associated with inherently governmental functions; and
- B. 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~~the Purchasing Agent determines in writing that such mitigation is in the best interest of the County.

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Article 7

PROPERTY MANAGEMENT

The Director of the Department of Procurement and Material Management is responsible for the management of all Fairfax County and Fairfax County Public Schools (FCPS) property, 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. DPMM 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 (Logistics Center).

The Director of the Department of Procurement and Material Management is responsible for operation of the County Logistics Center which provides temporary storage and distribution of the supplies and equipment to all County departments. The Logistics Center may be used as the storage point for customer owned inventory from other departments. The Director of the Department of Procurement and Material Management is responsible for space management and logistics coordination at the Logistics Center.

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 Procurement and Material Management.

Section 3. Consumable Inventory Property Management.

The Director of the Department of Procurement and Material Management shall exercise oversight responsibility over all consumable inventory warehouses and stockrooms. The program shall be administered in accordance with industry standards and best practices.

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Section 4. Accountable Equipment Inventory Property Management.

- A. The Director of the Department of Procurement and Material Management shall exercise oversight responsibility over all accountable equipment.
- B. The Director of the Department of Procurement and Material 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 5. Excess and Surplus Property Management.

- A. The Director of the Department of Procurement and Material Management is responsible for redistribution of serviceable excess property and inventory, to include furniture, equipment, , etc.
- B. The Director of the Department of Procurement and Material 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.

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Section 6. Donations.

A. Accepting Donations:

1. Items \$10,000 or more:
The Director of the Department of Procurement and Material Management or Assistant Superintendent of Financial Services is responsible for approving the acceptance of donated items or services with a fair market value of ~~\$105~~,000 or more, and ensuring accepted items are properly accounted for.
2. Items under \$10,000:
Department Heads, Principals, or their equivalents may accept donated items or services with a fair market value under \$10,000.
3. Inasmuch as the County is not offering consideration nor is it purchasing or initiating the provision of services, the County may accept a gift of services pursuant to the Virginia State Government Volunteers Act. Such services must be provided from a person who acts of their own free will and without any financial gain.

B. Making Donations:

1. Items \$10,000 or more:
When the fair market value of an item exceeds \$10,000, 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 Procurement and Material Management or Assistant Superintendent of Financial Services shall coordinate all requests to donate items with their respective Board.
2. Items under \$10,000:
When the fair market value of a surplus item is less than \$10,000, the Director of the Department of Procurement and Material Management or FCPS Chief Financial Services may donate the item directly to charitable or nonprofit organizations or public bodies as appropriate and allowed by law.

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It is further resolved that this resolution shall be effective July 11th, 2023.

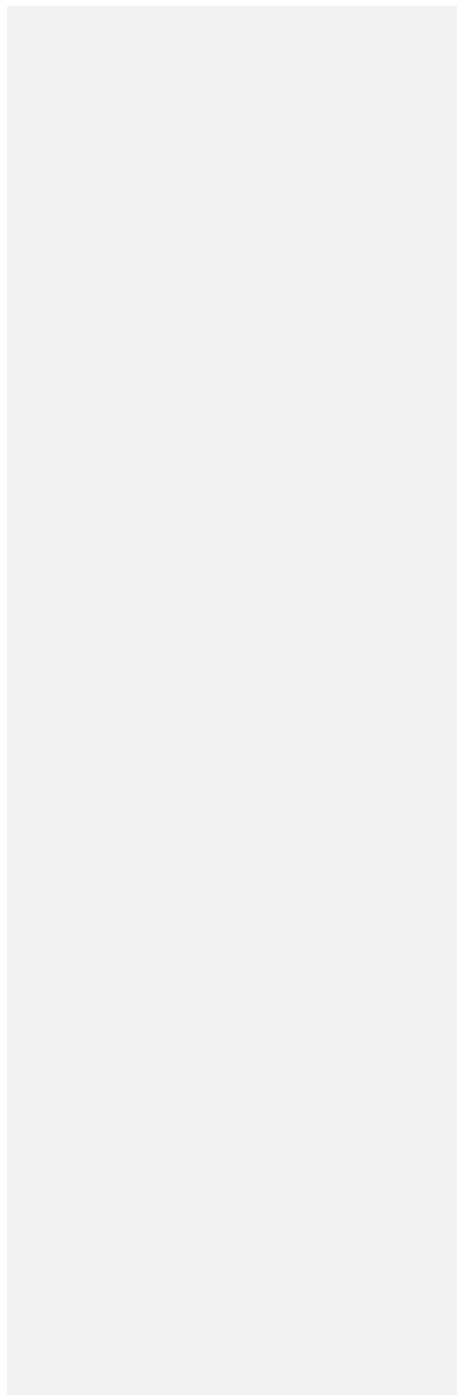
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A Copy Teste:

Jill G. Cooper
Clerk to the Board of Supervisors

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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, as identified below, where discussion in an open session would adversely affect the negotiating or litigating posture of the public body, as well as consultation with legal counsel regarding specific legal matters listed below requiring the provision of legal advice by such counsel, all as permitted by Virginia Code § 2.2-3711(A) (7) and (8).
 - 1. *Edward M. Williams v. Fairfax County and Fairfax County Department of Family Services*, Case No. 23-cv-1004 (E.D. Va.)
 - 2. *Wen Chen v. Franconia Police Station and Kamille Anyia Pickens*, Case No. CL-2024-0005698 (Fx. Co. Cir. Ct.)
 - 3. *Wen Chen v. Police Officer Victor Cruz*, Case No. CL-2024-0008532 (Fx. Co. Cir. Ct.)
 - 4. *Claudette Gama-Salazar v. Katharine M. Follot Layton*, Case No. GV23-020296 (Fx. Co. Gen. Dist. Ct.)
 - 5. *Rita M. Leach-Lewis, Trustee of the Rita M. Leach-Lewis Trust 18MAR13 v. Board of Supervisors of Fairfax County, Virginia*, Record No. 230491 (Va. Sup. Ct.) (Sully District)
 - 6. *Justin Sand and Liviya Piccione-Sand v. Fairfax County Wetlands Board, Fairfax County Department of Planning and Development, and Board of Supervisors of Fairfax County*, Case No. CL-2024-0008317 (Fx. Co. Cir. Ct.) (Mount Vernon District)

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7. *Board of Supervisors of Fairfax County, Virginia v. Serenity3 LLC, Lawrence K. Doll, William R. Lange, Ironshore Indemnity Inc., Lexon Insurance Company, and Sompco International Insurance, d/b/a Sompco International Companies*, Case No. CL-2024-0008788 (Fx. Co. Cir. Ct.) (Franconia District)
8. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Alan F. Kravitz and Lilian A. Kravitz*, Case No. CL-2024-0009026 (Fx. Co. Cir. Ct.) (Braddock District)
9. *Jay Riat, Building Official for Fairfax County, Virginia v. Robert H. Jongwe*, Case No. GV22-010640 (Fx. Co. Gen. Dist. Ct.) (Braddock District)
10. *Gabriel M. Zakkak, Property Maintenance Code Official for Fairfax County, Virginia v. Barbara A. Anderson, Trustee of the Barbara A. Anderson Trust Dated July 30, 2007*, Case No. CL-2023-0004613 (Fx. Co. Cir. Ct.) (Dranesville District)
11. *Jay Riat, Building Official for Fairfax County, Virginia v. Daniel Y. Solomon*, Case No. GV23-004147 (Fx. Co. Gen. Dist. Ct.) (Franconia District)
12. *Jay Riat, Building Official for Fairfax County, Virginia v. Wilmer Gamboa Machado*, Case No. GV23-004033 (Fx. Co. Gen. Dist. Ct.) (Franconia District)
13. *Jay Riat, Building Official for Fairfax County, Virginia v. Jennifer Mossgrove and John Mossgrove*, Case No. CL-2024-0001666 (Fx. Co. Cir. Ct.) (Hunter Mill District)
14. *Gabriel M. Zakkak, Property Maintenance Code Official for Fairfax County, Virginia v. Hosam Summakie*, Case No. CL-2024-0008792 (Fx. Co. Cir. Ct.) (Hunter Mill District)
15. *Jay Riat, Building Official for Fairfax County, Virginia v. 43616 Habitat Circle, LLC*, Case No. GV24-004045 (Fx. Co. Gen. Dist. Ct.) (Hunter Mill District)
16. *Jay Riat, Building Official for Fairfax County, Virginia v. The Unit Owners Association of the Mercer Condominiums*, Case No. G24-013997 (Fx. Co. Gen. Dist. Ct.) (Hunter Mill District)
17. *Jay Riat, Building Official for Fairfax County, Virginia v. 5238 Navaho LLC*, Case No. CL-2022-0013381 (Fx. Co. Cir. Ct.) (Mason District)

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18. *Jay Riat, Building Official for Fairfax County, Virginia v. Steuart Backlick Plaza, LLC and Fesh World One, Inc.*, Case No. CL-2022-0013730 (Fx. Co. Cir. Ct.) (Mason District)
19. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Jean Claude Lambrechts and Selam & Hanan Enterprises, LLC*, Case No. CL-2023-0014142 (Fx. Co. Cir. Ct.) (Mason District)
20. *Jay Riat, Building Official for Fairfax County, Virginia v. Jean Marie Cherubin*, Case No. GV24-004028 (Fx. Co. Gen. Dist. Ct.) (Mason District)
21. *Gabriel M. Zakkak, Property Maintenance Code Official for Fairfax County, Virginia v. Robert S. Kohut*, Case No. GV24-013996 (Fx. Co. Gen. Dist. Ct.) (Mason District)
22. *Gabriel M. Zakkak, Property Maintenance Code Official for Fairfax County, Virginia v. Robert Edward Carr*, Case No. CL-2024-0000262 (Fx. Co. Cir. Ct.) (Mount Vernon District)
23. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Robert Edward Carr*, Case No. CL-2024-0004245 (Fx. Co. Cir. Ct.) (Mount Vernon District)
24. *Jay Riat, Building Official for Fairfax County, Virginia v. Johnnie A. Zelaya and Rachel R. Zelaya*, Case No. CL-2024-0008630 (Fx. Co. Cir. Ct.) (Mount Vernon District)
25. *Jay Riat, Building Official for Fairfax County, Virginia v. Hometown Audubon, LLC, and Jose Balmore and Sindy Sandoval*, Case No. GV24-001089 (Fx. Co. Gen. Dist. Ct.) (Mount Vernon District)
26. *Jay Riat, Building Official for Fairfax County, Virginia v. Susan Kay Mahon Revocable Trust*, Case No. GV24-007257 (Fx. Co. Gen. Dist. Ct.) (Mount Vernon District)
27. *Jay Riat, Building Official for Fairfax County, Virginia v. Timothy E. Rizer and Barbara J. Rizer, Co-Trustees of the Timothy E. Rizer Revocable Trust and the Barbara J. Rizer Revocable Trust*, Case No. GV24-013659 (Fx. Co. Gen. Dist. Ct.) (Mount Vernon District)
28. *Jay Riat, Building Official for Fairfax County, Virginia v. L&T Food Distributor, Inc., and My Vo Management, LLC*, Case No. GV24-013660 (Fx. Co. Gen. Dist. Ct.) (Mount Vernon District)

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29. *Jay Riat, Building Official for Fairfax County, Virginia v. B9 Sequoia NVIP Owner, LLC*, Case No. GV24-013658 (Fx. Co. Gen. Dist. Ct.) (Mount Vernon District)
30. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Charles A. Williams Trust and Vet/Cor of Merrifield, LLC*, Case No. CL-2024-0005956 (Fx. Co. Cir. Ct.) (Providence District)
31. *Jay Riat, Building Official for Fairfax County, Virginia v. Adrita Prova and Kawsar A. Khan*, Case No. GV24-013657 (Fx. Co. Gen. Dist. Ct.) (Providence District)
32. *Gabriel M. Zakkak, Property Maintenance Code Official for Fairfax County, Virginia and Leslie B. Johnson, Fairfax County Zoning Administrator v. Jennifer Souders Mayer, Gregory S. Souders, and Mildred K. Souders*, Case No. CL-2021-0013670 (Fx. Co. Cir. Ct.) (Springfield District)
33. *Jay Riat, Building Official for Fairfax County, Virginia v. Derek W. Murray and Sarah A. Murray*, Case No. GV24-012023 (Fx. Co. Gen. Dist. Ct.) (Springfield District)
34. *Leslie B. Johnson, Fairfax County Zoning Administrator v. Casiano Cespedes Vargas*, Case No. GV24-013998 (Fx. Co. Gen. Dist. Ct.) (Springfield District)

Board Agenda Item
July 16, 2024

3:30 p.m.

Public Hearing on SE 2024-HM-00004 (ST Wiehle LLC) to Permit Certain Sign Modifications to Allow Additional Signage On-Site, Located on Approximately 1.84 Acres of Land (Hunter Mill District)

This property is located at 11500 Commerce Park Dr., Reston 20191. Tax Map 17-4 ((12)) 11B1.

PLANNING COMMISSION RECOMMENDATION:

On June 26, 2024, the Planning Commission voted 11-0 (Commissioner Murphy was absent from the meeting) to recommend to the Board of Supervisors approval of SE 2024-HM-00004, subject to the development conditions consistent with those dated June 12, 2024.

ENCLOSED DOCUMENTS:

Additional information available online at:

<https://www.fairfaxcounty.gov/planning-development/board-packages>

Planning Commission Meetings Video Archive available online at:

<https://www.fairfaxcounty.gov/cableconsumer/channel-16/planning-commission-meetings-video-archives>

STAFF:

Suzanne L. Wright, Director, Zoning Evaluation Division, Department of Planning and Development (DPD)

Kevin McMahan, Planner, DPD

Board Agenda Item
July 16, 2024

3:30 p.m.

Public Hearing to Consider Proposed Amendments to the Uniformed Retirement Systems Ordinances

ISSUE:

Proposed amendments to Article 3 of Chapter 3 of the Code of the County of Fairfax which set forth the ordinance for the Fairfax County Uniformed (URS) Retirement System.

RECOMMENDATION:

The County Executive recommends that the Board adopt the proposed amendment to the URS ordinance for the purpose of adding certain provisions with respect to active-duty military service and other public safety service purchases. The URS Board of Trustees have reviewed and support the proposed amendments.

TIMING:

On June 25, 2024, the Board authorized a public hearing on July 16, 2024, at 3:30 p.m.

BACKGROUND:

The Board approved amendments to the Code for the URS, based on the Collective Bargaining Agreements between Fairfax County and IAFF Local 2068 and the Police Benevolent Association. Those amendments allowed URS members who are firefighters or sworn members of the Fairfax County Police Department to purchase up to four years of service credit for prior active-duty military service in the armed forces of the United States.

As presented to the Board at their June 18, 2024, Personnel Committee, the amendments presented here are to allow:

- All members of URS (including Sheriff's Deputies, Helicopter Pilots, and Public Safety Communicators) to purchase up to 4 years of prior active-duty military service in the armed forces of the United States, and
- All members of URS to purchase up to 4 years of prior service as a full-time public safety employee of another federal, state, or local government agency in the United States or of a private university located in the United States

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The ordinance for the URS needs to be amended to allow these purchases to be made, as detailed in the Attached Code amendments.

EQUITY IMPACT:

None.

FISCAL IMPACT:

The full cost of any service purchased will be paid by the member, resulting in no increase in the unfunded liability of the systems at the time of the purchase. As reflected in the attached letters from the systems' actuary, Cheiron, has re-confirmed that the cost to the retirement system is expected to be immaterial. The calculations developed by the actuary to determine the members' cost for purchase of service credits will be re-evaluated on an annual basis and revised as needed. Although there is no cost incurred by the County at the time of the service purchase, the systems will assume the risk that all actuarial assumptions will be met for purchased service credits. If the system experiences investment losses, due to returns falling short of the assumption, or liability losses, such as those resulting from improvements to member mortality, then the increase in unfunded liability will be amortized and included in the employer contribution rates paid by the County. The magnitude of the impact of purchased service credits will depend on the number of members utilizing this option but is not anticipated to be significant.

ENCLOSED DOCUMENTS:

Attachment 1: Amendments to Chapter 3, Article 3

Attachment 2: Letter from the actuary for the Uniformed Retirement System

STAFF:

Christina Jackson, Deputy County Executive/Chief Financial Officer

Jeff Weiler, Executive Director, Retirement Administration

Linnaea Jablonski, Director, Department of Human Resources

ASSIGNED COUNSEL:

Cynthia A. Bailey, Deputy County Attorney

Patricia Moody McCay, Senior Assistant County Attorney

1 **AN ORDINANCE AMENDING CHAPTER 3 OF THE FAIRFAX COUNTY**
2 **CODE, RELATING TO PURCHASE OF SERVICE CREDIT**
3 **FOR PRIOR ACTIVE-DUTY MILITARY SERVICE AND PRIOR PUBLIC**
4 **SAFETY SERVICE**

5
6 **AN ORDINANCE to amend Chapter 3, Article 3 the Fairfax County**
7 **Code by adding Section 3-3-25.2 Purchase of Service Credit for Prior**
8 **Active-Duty Military Service and for Prior Public Safety Service.**

9
10 **Draft of May 30, 2024**

11
12 **Be it ordained by the Board of Supervisors of Fairfax County:**

- 13 **1. That Chapter 3, Article 3 of the Fairfax County Code is amended, as**
14 **follows:**

15
16 **Section 3-3-25.2. Purchase of Service Credit for Prior Active-Duty**
17 **Military Service and ~~for Certain Members, Prior Law Enforcement~~**
18 **Public Safety Service.**

- 19
20 (a) ~~Any member in active service who is a uniformed member of the Fairfax~~
21 ~~County Fire and Rescue Department may purchase service credit for prior~~
22 ~~active-duty military service in the armed forces of the United States, provided~~
23 ~~that the discharge from a period of active-duty status with the armed forces~~
24 ~~was not dishonorable. Any member in active service who is a sworn member~~
25 ~~for the Fairfax County Police Department may purchase service credit for: (1)~~
26 service as a full-time sworn **public safety** employee of another federal, state,
27 or local government agency in the United States or of a public or private
28 university located in the United States; and (2) prior active-duty military
29 service in the armed forces of the United States, provided that the discharge
30 from a period of active-duty status with the armed forces was not
31 dishonorable.
- 32
33 (b) No member in service shall be allowed to purchase more than a total of four
34 (4) years of service credit. Nor shall any member in service be allowed to
35 purchase service credit included in the calculation of any retirement
36 allowance received or to be received by the member from this System or any
37 other retirement system, or if there is a balance in a defined contribution
38 account that serves as a primary retirement account related to such service,
39 except as otherwise required by Chapter 1223 of Title 10 of the United States
40 Code, as amended. Service credit purchased pursuant to this Section shall
41 apply to the calculation of the member's retirement allowance and the
42 calculation of the member's retirement eligibility but shall not apply to the
43 vesting requirements of this System.
- 44
45 (c) Service credit purchased pursuant to this Section shall be credited to a

member only for each full month of service, as indicated on the member's DD-214 or NGB Form 22 submitted to the Fairfax County Retirement Administration Agency ("RAA").

(d) For purposes of this Section:

1. "Active-duty military service" shall mean full-time service of at least one-hundred-eighty (180) consecutive days in the United States Army, Marine Corps, Navy, Air Force, Space Force, Coast Guard, or reserve components thereof (including the National Guard); and
2. "State" shall include the District of Columbia and any territory of the United States.
3. "Public safety" shall include sworn or uniformed law enforcement service, uniformed fire and emergency medical service, public safety communicators or emergency dispatch, and helicopter pilots ~~who provided emergency service response for federal, state, or local government agencies.~~

(e) A member may make payment for service credits covered under this Section in a lump sum at the time of purchase, through the transfer of funds from another retirement account, as permitted by and consistent with federal and state law, or by a payment plan with a maximum duration of forty-eight (48) months, or any combination thereof. Regardless of the method of payment, the member shall be responsible for paying the full costs of the service credits, including any increase in cost due to the timing of payments. In addition, any member who chooses a payment plan shall enter into a contract with the RAA, which shall be responsible for calculating the total cost of the purchase, including any applicable interest. The contract shall provide that, in the event the member terminates the payment plan prior to making full payment, the member shall only be credited service credits equivalent to the total amount of the payments made prior to the termination.

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. This amendment is effective upon adoption. Any application received within 30 days of adoption will be treated as received as of July 1, 2024.

GIVEN under my hand this ____ day of _____ 2024.

1
2

Jill G. Cooper
Clerk for the Board of Supervisors



June 10, 2024

Mr. Jeffrey Weiler
Executive Director
12015 Lee Jackson Memorial Highway, Suite 350
Fairfax, Virginia 22033

Re: Uniformed Retirement System Additional Proposed Ordinance Change

Dear Jeff:

As requested, we are writing to provide the actuarial impact of an additional change to the Uniformed Retirement System (URS) ordinance. It is our understanding that the change to the ordinance, effective July 1, 2024, provides any Uniformed member in active service the ability to purchase: 1) service credit as a full-time public safety employee of another federal, state, or local government agency in the US or of a public or private university located in the US and 2) prior active-duty military service in the armed forces of the United States, provided that the discharge from a period of active-duty status with the armed forces was not dishonorable.

Overall, the cost of these changes would be immaterial to the System. That is because the full cost of the projected increase in the present value of benefits due to the service purchase would be paid to the System assets making the plan whole. This payment would be made through one of three options: a) a lump sum, b) payment plan with a maximum duration of 48 months, or c) transfer of funds from another retirement account.

This letter was prepared exclusively for the Fairfax County Retirement Systems for the purpose described herein. Other users of this letter are not intended users as defined in the Actuarial Standards of Practice, and Cheiron assumes no duty or liability to any other user.

This letter and its contents have been prepared in accordance with generally recognized and accepted actuarial principles and practices, and our understanding of the Code of Professional Conduct, and applicable Actuarial Standards of Practice set out by the Actuarial Standards Board, as well as applicable laws and regulations. Furthermore, as credentialed actuaries, we meet the Qualification Standards of the American Academy of Actuaries to render the opinion contained in this letter. This letter does not address any contractual or legal issues. We are not attorneys, and our firm does not provide any legal services or advice.

Please call if you have any questions or comments.

Sincerely,
Cheiron

Fiona E. Liston, FSA
Principal Consulting Actuary

Coralie Taylor, FSA
Consulting Actuary

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4:00 p.m.

Public Hearing on Proposed Plan Amendment 2023-CW-1CP, For-Sale Workforce Dwelling Unit Policy and Program

ISSUE:

Plan Amendment (PA) 2022-CW-1CP proposes changes to the Housing and Land Use Elements of the Policy Plan, the Plan's Glossary, and the Area Plan volumes of the Comprehensive Plan related to for-sale Workforce Dwelling Units (WDUs) to consider changes based on the WDU For-sale Policy Task Force's recommendations.

PLANNING COMMISSION RECOMMENDATION:

On June 12, 2024, the Planning Commission voted 10-0 (Commissioners Murphy and Carter were absent from the meeting) to recommend to the Board of Supervisors adoption of the staff recommendation for PA 2023-CW-1CP as shown, as found in the staff report dated May 22, 2024.

The Planning Commission also voted 10-0 (Commissioners Murphy and Carter were absent from the meeting) to recommend to the Board of Supervisors that it direct staff to prepare an action item to revise these rates based on the annual increase in Consumer Price Index and to outline procedures for the regular update.

RECOMMENDATION:

The County Executive recommends that the Board of Supervisors adopt the Planning Commission recommendation.

TIMING:

Planning Commission, Public Hearing – June 12, 2024
Board of Supervisors' Public Hearing – July 16, 2024

BACKGROUND:

Fairfax County's Guidelines for the Provision of Workforce Housing (WDU Policy), a component of the Comprehensive Plan's Policy Plan, recommend residential development proposals, including proposals with a residential component, commit a percentage of units be available for eligible households at affordable rates. The county administers programs to encourage the provision of both for-sale and rental WDUs in line with the policy. The for-sale WDU policy currently applies to proposed

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developments within the county's designated mixed-use centers, including the Tysons Urban Center, suburban centers, transit station areas (TSAs), and community business centers (CBCs). This countywide policy is designed to encourage affordable homeownership opportunities to households with a range of incomes from up to 80% to a maximum of 120% of the Area Median Income (AMI).

The Board of Supervisors appointed the WDU For-sale Policy Task Force to address challenges with and provide recommendations for changes to the for-sale WDU Policy. The task force included affordable housing advocates, representatives from the market development industry, members of the Planning Commission and the Redevelopment and Housing Authority, and staff from Departments of Housing and Community Development and Planning and Development. The Task Force met from April through October 2023 and evaluated such topics as income levels served in the program, the number of units produced and sold, WDU sales prices, the financial impact of shifting targeted affordability ranges, resale best practices, term controls, and geographic applicability of the policy. The task force considered options to maximize the potential of the for-sale WDU program to serve low- and moderate-income families, while maintaining project feasibility.

On December 5, 2023, the Board of Supervisors (Board) authorized consideration of a Comprehensive Plan amendment for the WDU for-sale policy based on recommendations of the task force. The proposed amendment considers the following general policy changes, based on the task force recommendations:

- Shift the affordability level of the program from *up to 80% to 120% AMI*, to *up to 70% to 100% AMI*.
- Expand guidance on proportionality of bedroom counts between the WDU and market rate units in a development with flexibility for family-sized units (units with three bedrooms or more); and,
- Extend the geographic applicability of the policy to properties outside of development centers that are planned and zoned for 8 dwelling units per acre (du/ac) or more.

Editorial and other related changes are proposed to better align elements of the rental and for-sale WDU policies, to better accommodate larger household sizes and families, and to bring the WDU recommendations in certain Area Plans in the Comprehensive Plan closer to the countywide policy in the Policy Plan of the Comprehensive Plan. The latter revisions would remove Area Plan recommendations that are duplicative of the countywide policy and replace them with a reference to the countywide policy, as necessary. In addition, revisions and actions related to guidance on monetary contributions are proposed.

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A full description of the changes proposed with the amendment is contained in the staff report, which is provided below in the Enclosed Documents section.

EQUITY IMPACT:

The Plan amendment supports the One Fairfax Policy Area of Focus #2 “Housing policies that encourage all who want to live in Fairfax to be able to do so, and the provision of a full spectrum of housing opportunities across the county...” by expanding the policy expectation for inclusionary, for-sale workforce housing to lower income levels. The proposed changes will also address the demand for affordable family-sized bedrooms through new expectations for bedroom mixes and room sizes. The Plan amendment recommends expanding the geographic applicability of the WDU policy to certain properties outside of development centers to increase the supply of land where inclusionary housing policies could be implemented through development. As stated in the Communitywide Housing Strategic Plan, “when everyone has access to housing that is affordable for them: positive outcomes are more likely for families and children, including better educational outcomes for children and better health outcomes for people of all ages. People have better prospects for upward economic mobility and self-sufficiency. Employers can hire workers who are able to live close to where they work, and there is less congestion on our roads. Persons with disabilities have access to housing that is appropriate for their needs and the elderly are more able to age in place.” This Plan amendment will aim to increase access to opportunities and contribute to the prosperity of all residents.

Stakeholders and other community groups were engaged in the amendment process. The Plan amendment was presented for discussion and comment to the general public via community meetings, as well as to numerous associations and organizations throughout the county.

FISCAL IMPACT:

None.

ENCLOSED DOCUMENTS:

The Planning Commission Meetings Video Archive available online at:
[Planning Commission Meetings Video Archive - Fairfax County, Virginia](#)

The Staff Report for PA 2022-III-FC1 has been previously furnished and is available online at: https://www.fairfaxcounty.gov/planning-development/sites/planning-development/files/Assets/Documents/compplanamend/for-sale-wdu/2023-CW-1CP_Staff-Report.pdf

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The Workforce Dwelling Unit For-Sale Policy Task Force Recommendations:
<https://www.fairfaxcounty.gov/boardofsupervisors/sites/boardofsupervisors/files/Assets/Recommendations-of-the-Workforce-Dwelling-Unit-For-Sale-Task-Force.pdf>

STAFF:

Christopher Leonard, Deputy County Executive
Tom Fleetwood, Director, Housing and Community Development (HCD)
Tracy Strunk, Director, Department of Planning and Development (DPD)
Anna Shapiro, Deputy Director, HCD
Kelly Atkinson, Director, Planning Division (PD), DPD
Meghan Van Dam, Director, Affordable Housing Development Division, (AHD), HCD
William Mayland, Deputy Zoning Administrator, Zoning Administration Division, DPD
Graham Owen, Branch Chief, Policy & Plan Development Branch, PD, DPD
Grace Highman, Affordable and Workforce Housing Program Administrator, (AHD) HCD
Lia Niebauer, Planner II, Policy & Plan Development Branch, PD, DPD
Susan Timoner, Assistant County Attorney, Office of the County Attorney

4:00 p.m.

Public Hearing on a Proposed Zoning Ordinance Amendment Re: Data Centers

ISSUE:

The proposed Zoning Ordinance amendment revises the permissions and adds or revises the use-specific standards for data centers to address issues of compatibility with surrounding uses, noise, and aesthetics.

PLANNING RECOMMENDATION:

The Planning Commission held a public hearing on June 5, 2024, and deferred the decision to June 6, 2024. On June 6, 2024, the Commission voted 9 – 0 to recommend to the Board adoption of the proposed Zoning Ordinance amendment, as set forth in the Staff Report dated May 17, 2024, and where options are presented in the Staff Report, the Commission recommended approval of Option 1. In addition, the Commission recommended revising the proposed standard in subsection 4102.6.A(4) for the setback from a residential lot line to require a data center building to be located at least 200 feet from a residential lot line and any ground-level equipment to be located at least 500 feet from a residential lot line, unless it is separated from the residential lot line by the data center building. The 500-foot setback would apply to any equipment, including cooling equipment, generators, accessory substation, or other power equipment that is mounted on the ground. The Commission also recommended revising the proposed standard in subsection 4102.6.A(5) to require a one-mile setback from a Metro station entrance. Lastly, the Commission recommended adding provisions relating to previous approvals to Appendix 1 for the data centers amendment as follows:

For all applications for rezonings and related development plans and special exceptions, site plans, and building permits approved before the effective date of this amendment, the applicant/owner may continue under their previous approval. Required subsequent plan and permit submissions may be accepted and new approvals may be granted, consistent with those prior approvals. Revisions to such prior approvals may be approved if they do not aggravate conflicts with this amendment.

The text as recommended by the Planning Commission is included in Attachment 3.

On June 12, 2024, the Planning Commission voted 9 – 0 to approve two follow-on motions to recommend to the Board the following actions:

- Direct staff to initiate discussions with Dominion and the Northern Virginia Electric Cooperative (NOVEC) on procedures to ensure coordinated County input

on utility infrastructure for data center applications and enhanced coordination on utility infrastructure planning to inform County land use decisions; and

- Direct the Department of Public Works and Environmental Services to monitor the wastewater issues and concerns identified collaboratively by Fairfax Water and the Upper Occoquan Service Authority (UOSA) and to report back to the Board of Supervisors and Planning Commission any findings and recommendations from that study, as it becomes available.

RECOMMENDATION:

The County Executive recommends that the Board adopt a Zoning Ordinance amendment for data centers.

TIMING:

The Board authorized advertisement of the public hearings for this amendment on March 19, 2024, and May 7, 2024; the Planning Commission public hearing was held on June 5, 2024, at 7:00 p.m., with the decision deferred to and a recommendation made on June 6, 2024, at 7:30 p.m.; and the Board public hearing is scheduled for July 16, 2024, at 4:00 p.m.

BACKGROUND:

The proposed Zoning Ordinance amendment revises the permissions and use-specific standards for data centers.

Permissions

With the proposed amendment, data centers would continue to be allowed in the C-3, C-4, I-2, I-3, I-4, I-5, I-6, PDC, and PTC zoning districts. A data center would be allowed by right if it meets the use-specific standards, or certain of the standards could be modified with special exception approval. The amendment proposes to remove the permission for a data center in the PRC District (Town Center and Convention/Conference Center areas). In addition, the amendment proposes to revise the permissions in the planned districts to require special exception approval.

To provide flexibility for the Board, the permissions options have been broadly advertised to allow the Board to adopt any permission (other than special permit) – including permitted, SE, permitted if shown on an approved development plan, and/or not permitted in certain districts.

Use Standards and Submission Requirements

The new and revised standards are listed in the following table.¹ The standards and advertised options are further described below.

	By-right standards	SE standards
Equipment screening/enclosure <i>(revised)</i>	All districts	Same
Maximum building size <i>(revised)</i>	C-3, C-4: 40,000 SF I-2, I-3, I-4: 80,000 SF	Size limit may be exceeded; zoning district FAR still applies
Setback from residential <i>(new)</i>	200 feet (<i>PC: 200 feet for the building; 500 feet for ground-level equipment unless separated from the residential by the building</i>)	SE for lesser distance
Distance from Metro <i>(new)</i>	½ mile (<i>PC: one mile</i>)	SE for lesser distance
Noise study <i>(new)</i>	All districts	Same
Building design standards <i>(new)</i>	Conventional districts: main entrance feature; variation in façade surface every 150 feet; minimum 30% fenestration	SE or development plan: submit architectural sketches, sight line studies; variation in massing if within 200 feet of residential

- Screening and enclosure of equipment – The proposed amendment includes several revisions to the standard for screening or enclosure of equipment such as air conditioning and generators: (a) removes the exception for the I-4, I-5, and I-6 Districts; (b) adds that the purpose of the provision is to provide visual screening and reduce noise; (c) requires equipment to be fully enclosed, except where the Director of Land Development Services determines that it is not mechanically feasible and adds a requirement for a screening wall if the equipment cannot be fully enclosed; and (d) adds a requirement for a screening wall for any accessory electrical substation.
- Size thresholds for by-right data centers – In order to guide data centers to locate in the I-5 and I-6 Districts, the heaviest industrial areas in the County, no additional building size limit is proposed for these districts. Each district's limitations on floor area ratio and height would continue to apply.

¹ Abbreviations used in the table: SE (special exception); FAR (floor area ratio); PC (Planning Commission)

- C-3 and C-4: The amendment retains the current maximum size of 40,000 square feet of gross floor area, with a larger size allowed with SE approval. The amendment proposes to remove the by-right allowance for a larger size with the repurposing of an existing building. Advertised options are included to retain the allowance for a larger size with repurposing or to add a maximum size of 200,000 square feet of gross floor area (GFA) for a by-right data center through repurposing.
- I-2, I-3, and I-4: The proposed amendment adds the I-4 District to the standard that currently applies to I-2 and I-3, which limits the maximum size of a data center to 80,000 square feet of GFA, with a larger size allowed with SE approval. As with the C-3 and C-4 Districts, the amendment proposes to remove the by-right allowance for a larger size with the repurposing of an existing building. Advertised options are included to retain the allowance for a larger size with repurposing or to add a maximum size of 200,000 square feet of GFA for a by-right data center through repurposing.
- Setback from residential – A new standard is included that requires a data center building and/or its equipment (e.g., HVAC, generators) to be located a minimum distance from property with residential zoning or use, and a lesser distance could be allowed with SE approval. The proposed standard includes a setback of 200 feet, but up to 500 feet has been advertised for consideration. As noted above, the Planning Commission recommended a setback of 200 feet for the building, and a setback of 500 feet for ground-level equipment unless the equipment is separated from the residential lot line by the building.
- Distance from Metro – Because of the expectation for pedestrian activity and active street fronts, and the desire to put high-population and employment centers near transit, a standard is included that would not allow a data center within ½ mile of a Metro station entrance without SE approval. The ½-mile distance is in accordance with the higher density/intensity planned for these areas in the Comprehensive Plan. An advertised option to consider any distance up to one mile is included, and the Planning Commission recommended a setback of one mile.
- Noise study – The amendment includes a use standard and submission requirements for a noise study to be submitted for by-right data centers as well as those undergoing rezoning or SE review. The proposed standard requires that, prior to site plan approval and prior to issuance of the first Nonresidential Use Permit (NonRUP), a noise study demonstrate, to the Zoning Administrator's satisfaction, that the proposed operation of the data center will comply with the Noise Ordinance.
- Building design – To facilitate a high-quality building design, standards are proposed for by-right data centers for a main entrance feature, façade variation, and a minimum amount of fenestration design features, which can include faux windows. For data centers undergoing rezoning or SE review, architectural renderings and

sight-line studies would be required to demonstrate that the building would be reflective of a high-quality design. For data centers that are closer to residential areas, a variation in massing would also be required, such as changes in the building height.

A more detailed discussion of these and other proposed changes is contained in the Staff Report (Attachment 2).

EQUITY IMPACT:

This Zoning Ordinance amendment relates to One Fairfax Policy Area of Focus 11, which encourages a quality built and natural environment that supports a high quality of life for all people. The proposed amendment would regulate data centers countywide and strengthen the standards to mitigate potential impacts of data centers on surrounding properties. One specific proposed standard that advances equity requires a setback from properties that are both zoned to a residential district and properties that are developed with a residential use, even if the zoning is not residential. This will ensure that the setback applies in instances, such as with certain manufactured home communities, where the residential use is zoned to a nonresidential district.

In addition, the One Fairfax policy encourages expansive community engagement to ensure that all people are heard and considered. Community meetings were broadly advertised and held to obtain public input on the proposed amendment as described in the Staff Report.

REGULATORY IMPACT:

The proposed amendment revises existing and adds new regulations for data centers.

FISCAL IMPACT:

None.

ENCLOSED DOCUMENTS:

Attachment 1 – [Planning Commission Action](#) (June 6, 2024)

[Planning Commission Action](#) (June 12, 2024)

Attachment 2 – [Staff Report](#)

Attachment 3 – Text Recommended by the Planning Commission

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STAFF:

Tracy Strunk, Director, Department of Planning and Development (DPD)
Leslie B. Johnson, Zoning Administrator, DPD
William Mayland, Assistant Zoning Administrator, DPD
Carmen Bishop, Deputy Zoning Administrator, DPD

ASSIGNED COUNSEL:

T. David Stoner, Deputy County Attorney
Laura Gori, Senior Assistant County Attorney

Proposed Text as Recommended by the Planning Commission, June 6, 2024

The text below reflects the proposed amendment as recommended by the Planning Commission. This includes Option 1 as shown in the Staff Report, and additional changes to the text in subsections 4102.6.A(4) and (5) as described in the Board Item. In the revisions shown below, text to be deleted is identified with ~~strike-through~~ and text to be added is underlined, as compared to the text in the Zoning Ordinance currently in effect. In addition, the Planning Commission recommended adding provisions relating to previous approvals to Appendix 1, as shown below.

ARTICLE 4 - USE REGULATIONS

4101. Use Tables

3. Use Table for Residential, Commercial, and Industrial Districts

TABLE 4101.1: Use Table for Residential, Commercial, and Industrial Districts

P = permitted; SE = special exception; SP = special permit; blank cell = not allowed

A = allowed as accessory use only; A+ = permitted as an associated service use; AP = allowed with approval of administrative permit

Use	Residential Districts															Commercial Districts								Industrial Districts						Use-Specific Standards NOTE: General Standards also apply	
	R-A	R-C	R-E	R-1	R-2	R-3	R-4	R-5	R-8	R-12	R-16	R-20	R-30	R-MHP	C-1	C-2	C-3	C-4	C-5	C-6	C-7	C-8	I-1	I-2	I-3	I-4	I-5	I-6			
Industrial Uses																															
Freight Movement, Warehousing, and Wholesale Distribution: uses involving the movement, storage, and distribution of goods. Goods are generally delivered to other firms or the final consumer.																															
Data Center																		P SE	P SE							P SE	P SE	P SE	P SE	P SE	4102.6.A

4. Use Table for Planned Development Districts

TABLE 4101.2: Use Table for Planned Development Districts

✓ = permitted if shown on final development plan/PRC development plan and PRC plan;

✓/SE = permitted if shown on final development plan/PRC development plan and PRC plan, or as special exception if not on plan(s)

SE = special exception; SP = special permit; blank cell = not allowed

A = allowed as accessory use only; A+ = permitted as an associated service use;

AP = allowed with approval of administrative permit

Use	PDH		PRC					PDC		PRM		PTC	PCC		Use-Specific Standards NOTE: General Standards also apply
	Principal	Secondary	Residential	Neighborhood Convenience Center	Village Center	Town Center	Convention/Conference Center	Principal	Secondary	Principal	Secondary		Principal	Secondary	
Industrial Uses															
Freight Movement, Warehousing, and Wholesale Distribution: uses involving the movement, storage, and distribution of goods. Goods are generally delivered to other firms or the final consumer.															
Data Center						✓	✓	✓ SE				✓ SE			4102.6.A

4102. Use Standards

6. Industrial Uses

Freight Movement, Warehousing, and Wholesale Distribution

A. Data Center

Standards applicable to all data centers:

- (1) ~~In all districts except the I-4, I-5, and I-6 Districts, To provide visual screening and reduce noise levels, all equipment necessary for cooling, ventilating, or otherwise operating the facility, including power generators or other power supply equipment, must be contained within an fully enclosed, except where determined by the Director not to be mechanically feasible. building where the use is located. This includes emergency power generators and other emergency power supply equipment. If the Director determines it is not mechanically feasible to fully enclose the equipment, it must be screened by a wall or similar barrier. In addition, any accessory electrical substation must be screened by a wall or similar barrier. This standard does not apply to solar panels.~~
- (2) In the C-3 and C-4 Districts, the maximum building size is 40,000 square feet of gross floor area. However, this size limit may be exceeded:
 - ~~(a) If the use is located in a building existing on May 10, 2023; or~~
 - ~~(b) With special exception approval in accordance with subsection 8100.3.~~
- (3) In the I-2, ~~and I-3, and I-4~~ Districts, the maximum building size is 80,000 square feet of gross floor area. However, this size limit may be exceeded:

- ~~(a)~~ If the use is located in a building existing on May 10, 2023; or
~~(b)~~ ~~With~~ with special exception approval in accordance with subsection 8100.3.
- (4) Any data center building must be located at least 200 feet from the lot line of an R district or a property developed with a residential use. Any equipment for cooling, ventilating, or otherwise operating the facility, power generator, or other power supply equipment that is located on the ground must be either: located at least 500 feet from the lot line of an R district or a property developed with a residential use; or separated from the lot line of an R district or a property developed with a residential use by the principal data center building. Lesser distances may be allowed with special exception approval in accordance with subsection 8100.3. For the purpose of this provision, an R district does not include an area within a public street right-of-way.
- (5) A data center building must be located at least one mile from a Metro station entrance. A lesser distance may be allowed with special exception approval in accordance with subsection 8100.3.
- (6) Prior to site plan approval, a noise study must be submitted demonstrating to the Zoning Administrator's satisfaction that the operation of the data center will comply with the Noise Ordinance, Chapter 108.1 of the County Code. In addition, prior to issuance of a Nonresidential Use Permit, a post-construction noise study must be submitted demonstrating to the Zoning Administrator's satisfaction that the operation complies with the Noise Ordinance.

Standards when permitted by right:

- (7) A data center building must include a main entrance feature that is differentiated from the remainder of the building façade by a change in building material, pattern, texture, color, or accent material. The entrance feature must also either project or recess from the adjoining building plane.
- (8) All building façades must include:
- (a) A change in the façade surface for every 150 horizontal feet of at least one of the following: building material, pattern, texture, color, or accent material; and
- (b) Windows, doors, or similar fenestration design features such as faux windows, must be distributed horizontally and vertically across the façade and comprise a minimum of 30 percent of the individual façade.

Standards when permitted by development plan or special exception:

- (9) A data center building must be designed to minimize adverse visual impacts on surrounding development as demonstrated by the submission of elevations, architectural sketches, or sight line studies. The building should have a high-quality design as evidenced by the use of materials, color, and texture. If the building is located less than 200 feet from an R district or a property developed with a residential use, it should include changes in building height or other design techniques to provide variation in building mass as viewed from the nearby residential district.

ARTICLE 8 - ADMINISTRATION, PROCEDURES, AND ENFORCEMENT

8101. Submission Requirements

2. Zoning Map Amendments (Rezoning)

E. Supporting Reports and Studies

The following additional information must be submitted:

(12) Data Center

For a rezoning to allow a data center, the application requires the following additional information:

- (a)** A noise study demonstrating that the operation of the data center will comply with the Noise Ordinance, Chapter 108.1 of the County Code.
- (b)** Architectural depictions of the proposed building and associated equipment as viewed from all lot lines and street lines.

3. Special Exceptions, Special Permits, and Variances

D. Additional or Modified Submission Requirements for Specific Special Exception Applications

The following are additional or modified submission requirements for special exception applications for:

(8) Data Center

- (a)** A noise study demonstrating that the operation of the data center will comply with the Noise Ordinance, Chapter 108.1 of the County Code.
- (b)** Architectural depictions of the proposed building and associated equipment as viewed from all lot lines and street lines.

APPENDIX 1 - PROVISIONS RELATING TO PREVIOUS APPROVALS

...

2. Specific Provisions Regarding Previous Approvals

...

Data Centers (ZO#)

For all applications for rezonings and related development plans and special exceptions, site plans, and building permits approved before (insert effective date of the amendment), the applicant/owner may continue under their previous approval. Required subsequent plan and permit submissions may be accepted and new approvals may be granted, consistent with those prior approvals. Revisions to such prior approvals may be approved if they do not aggravate conflicts with this amendment.